



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

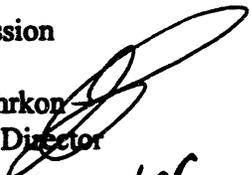
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COMMISSION
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February 5, 1999

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon 
Acting Staff Director

FROM: Kim Bright-Coleman 
Associate General Counsel

SUBJECT: Pete Wilson for President Committee, Inc. Repayment to the United States Treasury (LRA #478)

This informational memorandum is to advise you that on January 29, 1999, the Office of General Counsel received a \$9,360.60 check from the Pete Wilson for President Committee, Inc. ("Wilson Committee") made payable to the United States Treasury. *See Attachment.* This check represents the total amount due to the United States Treasury by the Wilson Committee for non-qualified campaign expenses that it incurred on behalf of the Pete Wilson for President Compliance Committee, Inc. *See Statement of Reasons on the Pete Wilson for President Committee, Inc. approved by the Commission on December 18, 1998.* The check has been forwarded to the Department of Treasury.

If you have any questions regarding this repayment, please contact Andre G. Pineda, the attorney assigned to this matter, at 694-1650.

Attachment

HUCKABY·DAVIS
AND ASSOCIATES

MEMORANDUM

TO: KIM BRIGHT-COLEMAN
ASSOCIATE GENERAL COUNSEL
FEDERAL ELECTION COMMISSION

FROM: LISA R. LISKER *LL*
ASSISTANT TREASURER
PETE WILSON FOR PRESIDENT COMMITTEE, INC.

DATE: JANUARY 25, 1999

RE: REPAYMENT

Per the Federal Election Commission's final determination of repayment notification, dated December 23, 1998, and received by the Pete Wilson for President Committee, Inc. on December 31, 1998, enclosed please find a check in the amount of \$9,360.60.

RECEIVED
FEDERAL ELECTION COMMISSION
JAN 29 4 42 PM '99

PETE WILSON FOR PRESIDENT
COMMITTEE INC.

7263

15-154/540

January 21 19 99

PAY
TO THE
ORDER OF United States Treasury

\$ 9,360.60

Nine-Thousand Three-Hundred Sixty and 60/100*****

DOLLARS Security Features
optional.
Printed on back.

FRANKLIN
NATIONAL BANK
1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006

FOR Wilson Primary Non Qualified Expenditures Repayment

John Pappas
Lee R. Kelly

⑆007263⑆ ⑆054001547⑆ 1014387112⑆

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 13, 1999

MEMORANDUM

TO: Ronald M. Harris
Chief, Press Office

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

Rhonda J. Vosdingh *RJV*
Assistant General Counsel

SUBJECT: Public Issuance of the Statement of Reasons
for the Repayment Determination for The Honorable Pete Wilson
and the Pete Wilson for President Committee, Inc.

Attached please find a copy of the above-referenced Statement of Reasons which the Commission approved on December 18, 1998.

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

Attachments as stated.

cc: Audit Division
FEC Library
Public Disclosure
Reports Analysis Division

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Honorable Pete Wilson)
Pete Wilson for President Committee, Inc.)

LRA #478

STATEMENT OF REASONS

On November 5, 1998, the Federal Election Commission ("the Commission") determined that Governor Pete Wilson and the Pete Wilson for President Committee, Inc. ("the Committee") must repay \$9,360.60 to the United States Treasury for non-qualified campaign expenses.

26 U.S.C. § 9038(b)(2)(A); *see also*; 11 C.F.R. § 9038.2(c)(3). The Committee is ordered to pay \$9,360.60 to the United States Treasury within 30 calendar days after service of this determination. 11 C.F.R. § 9038.2(d)(2). This Statement of Reasons sets forth the legal and factual basis for the repayment determination. 11 C.F.R. § 9038.2(c)(3).

I. BACKGROUND

In 1995, Governor Pete Wilson was a candidate for the Republican presidential nomination. The Committee registered with the Commission on April 3, 1995, and on September 29, 1995, Governor Wilson withdrew his candidacy for the Republican presidential nomination. Attachment A at 6-7; 11 C.F.R. § 9033.5(a)(1). The Committee received \$1,724,257 in public funds under the Presidential Primary Matching Payment Account Act ("the Matching Payment Act"). *Id.*; 26 U.S.C. §§ 9031-9042. Following Governor Wilson's withdrawal, the Commission conducted an audit and examination of the Committee's receipts,

WILSON FOR PRESIDENT

disbursements and qualified campaign expenses, as provided for in the Matching Payment Act and the Commission's regulations.¹ 26 U.S.C. § 9038(a) and 11 C.F.R. § 9038.1.

On November 4, 1996, staff from the Commission's Audit Division held an exit conference with the Committee to discuss preliminary findings and recommendations based on information obtained during the audit that they planned to present to the Commission for approval. Attachment A at 3; 11 C.F.R. § 9038.1(b)(2)(iii). The Audit Division's preliminary findings and recommendations were contained in an Exit Conference Memorandum ("ECM"), which Audit staff delivered to the Committee during the exit conference. Attachment A at 3. The ECM identified expenditures totaling \$1,271,985 that the Committee spent on fundraising, such as mailings and invitations as well as event and other related costs, of which \$699,098 appeared to have been incurred on behalf of both the Committee and the Pete Wilson for President Compliance Committee, Inc. ("the Wilson GELAC"). *Id.* at 32-33. The Wilson GELAC's share of these joint fundraising costs totaled \$351,856. *Id.* The ECM further stated that the Committee paid an additional \$10,000 on behalf of the Wilson GELAC for "Compliance Committee Processing." *Id.* Therefore, the ECM concluded that the Committee paid a total of \$361,856 (\$351,856 + \$10,000) for Wilson GELAC expenses between April 3, 1995 and September 29, 1995. *Id.* The ECM recommended that the Committee submit evidence demonstrating that the Wilson GELAC's share of fundraising costs were qualified campaign

¹ The Committee and Governor Wilson were permitted to incur qualified campaign expenses from April 3, 1995 through September 29, 1995. 11 C.F.R. §§ 9032.9(a) and 9034.4(a). Governor Wilson and the Committee were also permitted, and may have incurred, qualified campaign expenses prior to the date Governor Wilson became a candidate. See 11 C.F.R. § 9034.4(a)(2) ("testing the waters"). Additionally, Governor Wilson and the Committee were permitted to incur qualified campaign expenses, subject to certain contingencies, after Governor Wilson withdrew from the presidential nominating process for costs associated with the termination of his political activity. 11 C.F.R. § 9034.4(a)(3).

expenses or that it make a pro-rata repayment of \$83,387 ($\$361,856 \times .230443$) to the United States Treasury.² *Id.*

On January 21, 1997, the Committee filed its written response to the ECM.³ The Committee responded that it should not be required to make a pro-rata repayment for the Wilson GELAC expenditures for several reasons. First, the Committee contended that the Commission's regulations are internally contradictory. *Id.* Second, the Committee argued that the mailings and invitations were not Wilson GELAC solicitations because they did not directly solicit funds for the Wilson GELAC. *Id.* at 34. Third, the Committee argued that the mailings and invitations were not joint solicitations due to the amount of money the mailings and invitations generated for the Wilson GELAC. *Id.* at 35. Finally, the Committee asserted that nearly all of the costs associated with the mailings and invitations were incurred prior to the effective date of 11 C.F.R. § 9034.4(e)(6)(i).⁴ *Id.* at 36. Accordingly, the Committee argued that a "funds received" method, like that described at 11 C.F.R. § 106.5(f), should be used to determine the allocable amount, rather than the 50/50 allocation described at 11 C.F.R. § 9034.4(e)(6)(i). *Id.*

On August 21, 1997, the Commission considered the Audit Report on the Committee and Governor Wilson. The Audit Report concluded that the Committee incurred non-qualified

² The pro-rata repayment ratio for the Committee was .230443. Attachment A at 33; 11 C.F.R. § 9038.2(b)(2)(iii).

³ The Committee had 60 calendar days after the exit conference to submit written legal and factual materials disputing or commenting on the proposed findings contained in the ECM. 11 C.F.R. § 9038.1(c). The Committee's response was due January 3, 1997. At an unspecified date in December of 1996, the Audit Division granted the Committee a 17-day extension of time to submit its written response to the ECM; the Committee's written response was due January 21, 1997. The Committee timely filed its written response.

⁴ The Committee argued that the costs associated with only one mailing and invitation were incurred after August 16, 1995. Attachment A at 36.

campaign expenses totaling \$130,577 for Wilson GELAC fundraising and processing costs which were subject to a pro-rata repayment to the United States Treasury.⁵ Accordingly, the Commission determined that the Committee was required to repay \$29,861 ($\$130,577 \times .230443$)⁶ to the United States Treasury.⁷ Attachment A at 38; 26 U.S.C. § 9038(b)(2)(A).

The Audit Report noted that the regulations do not mandate the establishment of a general election legal and accounting compliance fund ("GELAC") or require joint fundraising efforts between a GELAC and a primary committee. *Id.* at 34. It further stated that expenses incurred to benefit a candidate's general election campaign are not qualified campaign expenses of a primary campaign. *Id.*; 11 C.F.R. § 9034.4(b)(3). In addition, the Audit Report noted that the solicitations at issue sought contributions for both the Committee and the Wilson GELAC and noted that the amount of money generated by the solicitations has no bearing on whether the fundraisers were jointly conducted by the Committee and the Wilson GELAC. *Id.* at 34-36.

In the Audit Report, the Audit Division agreed with the Committee that a funds received allocation method was appropriate for fundraising costs incurred prior to the effective date of

⁵ The Audit Report refers to non-qualified campaign expenses totaling \$130,577. Attachment A at 37. Due to a mathematical error, the correct amount for non-qualified campaign expenses resulting from Wilson GELAC solicitations and processing costs is \$129,577 ($(\$638,144 \times 13.94\%) + \$30,620 + \$10,000$). See Attachment F.

⁶ Despite the mathematical error noted in note 4, the ratio-repayment amount is correct.

⁷ The Commission also determined that the Committee must pay \$32,929 and the Wilson GELAC must pay \$63,450 to the United States Treasury for stale-dated checks. Attachment A at 39 and 42. The Committee did not dispute the findings for stale-dated checks and submitted the payments. Attachment B at 1-2. The amount for the Wilson GELAC was reduced \$1,000 from the determination because one check for \$1,000 stale-dated check cleared the Wilson GELAC bank account. *Id.* at 2 and Attachment C at 2.

The Audit Report also includes two non-repayment findings: (1) Craig Fuller, the Committee Campaign Chairman, made a \$28,193 excessive contribution to the Committee pursuant to 11 C.F.R. § 116.5; and (2) AT&T Credit Corporation extended credit totaling \$213,365 to the Committee outside of its normal course of business pursuant to 11 C.F.R. § 116.3. Attachment A at 16 and 24. These non-repayment findings have no impact upon the Commission's repayment determinations.

11 C.F.R. § 9034.4(e)(6)(i), August 16, 1995. *Id.* at 37. Prior to this date, the Committee incurred costs totaling \$638,144 for fundraising conducted on behalf of both the Committee and the Wilson GELAC. Attachment F at 5. The Audit staff found that 13.94% of the funds raised were on behalf of the GELAC. Attachment A at 37. Thus, the Audit Report applied a 13.94% funds received ratio ($\$638,144 \times 13.94\%$), compared to the Committee's calculation of 10.37%.

After August 16, 1995, the effective date of section 9034.4, the expenses the Committee incurred on behalf of both the Committee and the Wilson GELAC were split 50/50 pursuant to 11 C.F.R. § 9034.4(e)(6)(i). The Audit staff calculated that \$30,620 in fundraising costs incurred on or after August 16, 1995 were incurred on behalf of the Wilson GELAC. Attachment F at 1.

On October 29, 1997, in response to the Commission's determination, the Committee submitted legal and factual materials attempting to demonstrate that a lesser repayment is required to be paid to the United States Treasury, 11 C.F.R. § 9038.2(c)(2)(i), and requested an opportunity to address the Commission in an open session pursuant to 11 C.F.R. § 9038.2(c)(2)(ii). Attachment B at 2. The Commission granted the Committee's request, and the oral hearing was held on February 25, 1998.⁸ Attachment D.

II. COMMITTEE'S RESPONSE TO THE REPAYMENT DETERMINATION

The Committee "disputes strenuously" the repayment determination contained in the Audit Report.⁹ Attachment B at 1. The Committee contends that the fundraising and

⁸ The Committee was also notified that it could submit additional materials for the Commission's consideration within five (5) days after the oral hearing. Attachment D at 4. The Committee did not submit additional materials to the Commission within this time period nor at any later time.

⁹ The Committee asserts that the repayment amount is "muddied" because the Commission did not make a final decision with respect to its request for additional matching funds at the time it filed its response to the Audit Report. On October 22, 1998, the Commission considered the Committee's Petition for Rehearing that was filed in connection with its additional matching funds request. Because the Commission voted 3-2 to grant the Petition for Rehearing, the Petition for Rehearing was not granted and the Committee is not entitled to additional matching

administrative costs that it paid on behalf of the Wilson GELAC are qualified campaign expenses because the costs were undertaken to benefit the Committee. *Id.* at 2. It argues that the solicitations were only Committee solicitations because they would have been undertaken irrespective of whether the Wilson GELAC was mentioned. *Id.* It also argues that any mention of the Wilson GELAC in the solicitations was incidental. *Id.*

Additionally, the Committee asserts that “any mention of the [Wilson GELAC] in the [] solicitations came about because of the Regulation’s plain wording that a candidate may establish a [GELAC] ‘prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.’ 11 C.F.R. § 9003.3(a)(1).” *Id.* at 2-3; *see also*, Attachment D at 6. Moreover, the Committee claims that it paid for the solicitations because 11 C.F.R. § 102.9(e)(2) states that unsuccessful candidates with GELAC funds must return or redesignate donations to the contributor. Attachment B at 3. Thus, the Committee asserts that the Commission’s regulations are “the ultimate regulatory Catch-22,” Attachment D at 9, and that it is “being penalized” for following the Commission’s regulations. Attachment B at 3; *see also*, Attachment D at 9. It also argues that if the Wilson GELAC had paid these costs, the Commission would claim that the Wilson GELAC was underwriting the Committee. Attachment B. Therefore, the Committee maintains that based on the regulations, it

funds. *See* 2 U.S.C. § 437c(c). Contrary to the Committee’s assertion in response to the Audit Report, the Commission’s October 22nd consideration of its Petition for Rehearing had no impact on the repayment process. Specifically, the repayment is for matching funds spent on non-qualified campaign expenses. The main issue in the Committee’s Petition for Rehearing was the valuation on the Statement of Net Outstanding Campaign Obligations of a telephone system purchased by the Committee after the candidate’s date of ineligibility. Regardless of the Commission’s decision on the Petition for Rehearing, the Committee would still be required to repay matching funds spent on non-qualified campaign expenses. 26 U.S.C. § 9038(b)(2).

had no choice but to pay for the entire fundraising and administrative costs related to the solicitations.¹⁰ *Id.*

The Committee further urges the Commission to re-examine whether the Audit Report correctly characterizes the mailings as solicitations for the Wilson GELAC. Attachment B at 4. The Committee argues that the plain wording of the mailings fails to meet the generally accepted meaning, as well as the dictionary definition, of "solicitation." *Id.* At the oral hearing, the Committee's counsel referred to a four-page sample invitation which mentioned the Wilson GELAC in "one small line in the response device" that noted "there is another vehicle in which funds can be deposited." Attachment D at 10. The Committee asserted that nothing in the response device stated " 'Please contribute to the GELAC, please contribute to the Committee.' " *Id.* The Committee further contended that mention of the Wilson GELAC in the response device was "a political decision" which enhanced Governor Wilson's status as a candidate and "showed the inevitability of his nomination." *Id.* at 11. The Committee also contended that "there was never any intent, desire or thought about diluting the [] Committee's fundraising message" by mentioning the Wilson GELAC in its solicitations. *Id.* at 14. In short, the Committee argued throughout its oral hearing that its solicitations were "purely" solicitations for the Committee, and a "fleeting reference" to the Wilson GELAC in the solicitations did not negate this fact. *See generally*, Attachment D at 20.

Additionally, the Committee argues that if the mailings really constituted joint solicitations, the response rate for the Committee and the Wilson GELAC "should have been

¹⁰ The Committee also contends that the Audit Report's reference to 11 C.F.R. § 9034.4(b)(3) is misplaced because no general election expenditures were incurred, and fundraising and administrative costs are not "expenses incurred . . . for property, services or facilities." Attachment B at 4.

roughly the same.” Attachment B at 5. However, since only 8.3% of the mailings generated donations solely to the Wilson GELAC, the Committee contends that the mailings are not solicitations for the Wilson GELAC. *Id.*

Finally, the Committee “disputes the 13.94 percent repayment figure used in the Audit Report.”¹¹ *Id.* at 6. Although the Committee did not elaborate upon this argument in its submission or during its oral hearing, the Committee claims

If this had been a ‘solicitation’, then logic would dictate that the response rate for the Primary and Compliance Committees should have been roughly the same. Instead, they were off by a factor of 10, indicating that there was no ‘solicitation’ for the Compliance Committee that would trigger the disqualification of any expenses by the Primary Committee.

Id. at 5. Without further explanation, the Committee states “[a]s this argument demonstrates, the Committee disputes the 13.94 percent repayment figure used in the Audit Report.”¹² *Id.* at 6; *see also*, Attachment D at 30-32.

III. ANALYSIS

A. LAW

A qualified campaign expense means, in part, a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value that is: (1) incurred by or on behalf of a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate’s eligibility as determined under 11 C.F.R. § 9033.5; and (2) made in connection with his or her campaign for nomination. 11 C.F.R. § 9032.9(a); *see also*, 11 C.F.R. § 9034.4(b) (listing examples of qualified campaign expenses).

¹¹ The 13.94 percent figure is the funds received ratio calculated by the Audit Division. Attachment A at 37.

¹² It appears that the Committee is arguing that the repayment standard should be based on the number of people who gave only to the Compliance Committee (8.3%) versus the total number of persons who gave to both the Compliance Committee and the Primary Committee or only to the Primary Committee.

If the Commission determines that a candidate used any part of a matching fund payment for a purpose other than a qualified campaign expense, the candidate shall be required to repay to the United States Treasury the portion of the non-qualified campaign expense that represents the matching fund payment. 26 U.S.C § 9038(b)(2)(A); 11 C.F.R. § 9038.2(b)(2). The amount of the repayment shall bear the same ratio to the total amount of the non-qualified campaign expenses as the amount of matching funds certified bears to the total amount of deposits of contributions and matching funds, as of 90 days after the candidate's date of ineligibility. 11 C.F.R. § 9038.2(b)(2)(iii).

A general election legal and accounting compliance fund ("GELAC") may be established by a major party candidate who seeks election to the office of President of the United States or the office of Vice President of the United States. 11 C.F.R. §§ 9002.2(a)(1) and 9003.3(a)(1)(i). A candidate is defined, in part, to mean any individual who has been nominated by a major party for election to the office of President of the United States or the office of Vice President of the United States. 11 C.F.R. § 9002.2(a)(1). Such a candidate may establish a GELAC prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. 11 C.F.R. § 9003.3(a)(1)(i).

Commission regulations promulgated for the 1996 election cycle require expenditures to be attributed in specific ways when candidates receive public funding in both the primary and general elections. 11 C.F.R. § 9034.4(e).¹¹ For campaign communications, Commission regulations require that, depending on the purpose of the solicitation, the costs of the solicitations be attributed to the primary election or to the GELAC. 11 C.F.R. § 9034.4(e)(6). If the

¹¹ The effective date for the 1996 election cycle regulation was August 16, 1995.

candidate solicits funds for both the primary election and the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election and 50% to the GELAC. *Id.*

B. DISCUSSION

The fundraising on behalf of the Wilson GELAC was not in connection with Governor Wilson's campaign for the Republican nomination for President of the United States. *See* 11 C.F.R. § 9032.9(a)(2). The Commission's regulations, when viewed in their totality, limit and contemplate the establishment of GELAC accounts by general election Presidential candidates. By their nature, GELACs are established for general election purposes and are not related to primary elections. *See* 11 C.F.R. §§ 9002.2(a)(1) and 9003.3(a)(1)(i). Accordingly, the Committee's fundraising and administrative expenses associated with the Wilson GELAC are not related to Governor Wilson's candidacy for the Republican nomination.

Although GELACs may be established by candidates prior to their nomination for election to the office of President of the United States, 11 C.F.R. § 9003.3(a)(1)(i), it may not be advantageous for every primary candidate to establish such an account. However, a candidate who chooses to establish a GELAC may not use primary matching funds to pay for the GELAC's expenses, including the GELAC's share of expenses related to joint fundraising between it and a primary committee.¹⁴

As of August 16, 1995, the regulations provided clear guidance as to how to allocate costs associated with joint fundraising of a primary committee and a GELAC. However, prior to

¹⁴ GELAC expenses may be paid by any surplus primary committee monies that exist after all presidential primary committee repayment obligations are made. *See* 11 C.F.R. § 113.2(d). Alternatively, GELAC expenses may be paid with the personal funds of the presidential primary candidate or they may be paid with any remaining residual funds from a candidate committee that was authorized for a different election cycle. *See* 11 C.F.R. §§ 110.3(c)(5) and 9003.2(C)(8) and 9035.2(a)(1).

August 16, 1995, there was no regulation that directly addressed how costs of joint fundraising by a primary committee and a GELAC should be allocated. Thus, a publicly financed presidential primary candidate who undertook joint fundraising with a GELAC prior to August 16, 1995 did not have Commission guidance as to how to allocate the costs. Because it was not clear how such costs were to be allocated prior to the effective date of the regulation, the Commission has determined not to require the Committee to make a pro-rata repayment to the United States Treasury for joint fundraising costs¹⁵ it incurred on behalf of the Wilson GELAC prior to August 16, 1995.

The Wilson GELAC's share of the costs associated with the joint fundraising incurred after August 16, 1995 are non-qualified campaign expenses. See 11 C.F.R. § 9032.9(a)(2). Contrary to the Committee's arguments, mailings which specifically ask for contributions to the Wilson GELAC are solicitations. The response cards that were part of the solicitations at issue state "Also, enclosed is my/our contribution in the amount of \$ _____ to [the Wilson GELAC]." This wording is consistent with "asking" and "enticing," terms that *Black's Law Dictionary* use to define "solicitation." Further, this language seeking contributions to the Wilson GELAC is nearly identical to that used to seek contributions to the Committee (" . . . enclosed [is] a contribution in the amount of \$ _____ to show my/our support for Pete's Presidential campaign"). See Attachment E. Moreover, the response rate of the solicitations is irrelevant to a determination of whether a particular communication is a solicitation.¹⁶ Therefore, the

¹⁵ The Committee incurred joint fundraising costs totaling \$638,143.98 prior to August 16, 1995. Attachment G. The pro-rata repayment amount to the United States Treasury for these costs as stated in the Audit Report would have totaled \$20,499.58 (((\$638,143.98 x .1394) x .230443). *Id.*

¹⁶ Even if the response rate of the solicitations was relevant to a determination of whether a particular communication is a solicitation, no facts exist to support the Committee's claim that the response rate for joint solicitations should be approximately 50/50, as compared to some other percentage.

Commission has determined that the Committee must make a pro-rata repayment to the United States Treasury for the Wilson GELAC's share of joint fundraising costs¹⁷ incurred after August 16, 1995.

Finally, the Committee incurred processing costs totaling \$10,000 on behalf of the Wilson GELAC after August 16, 1995. These costs are related only to the general election; they were not made in connection with Governor Wilson's candidacy for the Republican nomination. 11 C.F.R. § 9032.9(a)(2). Thus, they may not be allocated between the primary and general. See 11 C.F.R. § 9034.4(e). Therefore, the Commission has determined that the Committee must make a pro-rata repayment to the United States Treasury totaling \$2,304.43 for these expenses ($\$10,000 \times .230443$).

IV. CONCLUSION

For the foregoing reasons, the Commission determines that the Committee made non-qualified campaign expenses totaling \$40,620.037 ($\$30,620.03 + \$10,000$) for Wilson GELAC solicitations and processing costs which require a pro-rata repayment of \$9,360.60 ($\$40,620.03 \times .230443$) to be made to the United States Treasury. 26 U.S.C. § 9038(b)(2)(A).

Attachments

- A. Audit Report on the Pete Wilson for President Committee, Inc., the Pete Wilson for President Compliance Committee, Inc., and the Pete Wilson for President Audit Fines and Penalties Account, Inc. approved August 27, 1997.
- B. Dispute of Repayment Determination Finding for the Pete Wilson for President Committee, Inc. dated October 29, 1997.

¹⁷ The Committee incurred joint fundraising costs totaling \$61,239.97 after August 16, 1995. Attachment G. The pro-rata repayment amount to the United States Treasury for these costs as stated in the Audit Report totaled \$7,056.17 ($\$61,239.97 \times .50 \times .230443$). *Id.*

MISSTATEMENT OF FINANCIAL ACTIVITY — 2 U.S.C. §434(b)(1), (2) and (4). The exit conference memorandum noted that both the Primary Committee and Compliance Committee misstated financial activity on disclosure reports filed for the first four months of 1996. Both Committees filed adequate amended reports during the course of audit fieldwork.

DISCLOSURE OF DEBTS/OBLIGATIONS AND OCCUPATION/NAME OF EMPLOYER — 2 U.S.C. §§434(b)(3) and (8). The exit conference memorandum found that Primary Committee reports inadequately disclosed debts/obligations. The Primary Committee filed the necessary amended reports. In addition, the Compliance Committee was found not to demonstrated best efforts to obtain, maintain and disclose occupation/name of employer. The Compliance Committee has filed the necessary amended reports.

DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS — 11 CFR §§9034.5(a) and 9034.1(b). The exit conference memo noted that the Primary Committee had not received matching funds in excess of its entitlement. The Primary Committee argued that an AT&T phone system, which was valued at its purchase price in this analysis, should have been valued at a lesser amount. The determining factor was whether the telephone system became a Primary Committee asset when it was installed, prior to the Candidate's date of ineligibility, or when the Primary Committee purchased it, well after the date of ineligibility. During its discussion of this matter, the Commission could not garner sufficient votes to adopt either position. As a result, no further matching fund payments are anticipated and the valuation of the telephone system on the NOCO is unchanged.

APPARENT NON-QUALIFIED CAMPAIGN EXPENSES — COMPLIANCE COMMITTEE EXPENSES PAID FOR BY THE PRIMARY COMMITTEE — 11 CFR §§9032.9(a), 9034.4(b)(3) and 2 U.S.C. §9038(b)(2)(A). The exit conference memorandum noted apparent non-qualified campaign expenses in the form of payments by the Primary Committee for fundraising and administrative costs incurred by the Compliance Committee. After evaluation of the General Committee's response, the Commission determined that a repayment to the U.S. Treasury totaling \$29,861 is required.

STALE-DATED COMMITTEE CHECKS — 11 CFR §9038.6 The report states that the Primary Committee and the Compliance Committee are required to pay to the U.S. Treasury \$22,929 and \$63,450, respectively, for unnegotiated, stale-dated checks.



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461

**REPORT OF THE AUDIT DIVISION
ON THE
PETE WILSON FOR PRESIDENT COMMITTEE, INC.
PETE WILSON FOR PRESIDENT
COMPLIANCE COMMITTEE, INC.
AND
PETE WILSON FOR PRESIDENT AUDIT FINES
AND PENALTIES ACCOUNT, INC.**

I. **BACKGROUND**

A. **AUDIT AUTHORITY**

This report is based on an audit of the Pete Wilson for President Committee, Inc. ("the Primary Committee") the Pete Wilson for President Compliance Committee, Inc. ("the Compliance Committee") and the Pete Wilson for President Audit Fines and Penalties Account, Inc. ("the Audit Fines Committee"). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

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

B. **AUDIT COVERAGE**

The audit of the Primary Committee covered the period from its inception April 3, 1995, through April 30, 1996. The Primary Committee reported an opening cash balance of \$-0-, total receipts of \$8,079,187, total disbursements of \$7,597,838; and a

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In addition to contributions, the Primary Committee received \$1,724,257 in matching funds from the United States Treasury. This amount represents 11% of the \$15,455,000 maximum entitlement that any candidate could receive. Governor Wilson was determined eligible to receive matching funds on August 30, 1995. The Primary Committee made a total of seven matching fund requests totaling \$1,725,013. The Commission certified 99.9% of the requested amount. For matching fund purposes, the Commission determined that Governor Wilson's candidacy ended September 29, 1995. This determination was based on the date the candidate publicly announced he was withdrawing from the campaign. The Commission's regulation at 11 CFR §9033.5(a)(1) states that the candidate's ineligibility date shall be the date the candidate publicly announces that he or she is not actively conducting campaigns in more than one State. On August 1, 1996, the Primary Committee received its final matching fund payment to defray expenses incurred through September 29, 1995 and to help defray the cost of winding down the campaign. The Primary Committee submitted an eighth matching fund request on March 3, 1997.

2. Compliance Committee

The Compliance Committee registered with the Federal Election Commission on April 20, 1995. The Treasurer of the Compliance Committee from its inception through July 5, 1995 was Charles H. Bell, Jr. He was succeeded by Mary H. Hayes, who served through January 30, 1996. Courtney Sakai became Treasurer on January 31, 1996 and served as Treasurer through June 23, 1996. The current Compliance Committee Treasurer is Renee Croce.

The Compliance Committee used two depositories, one in California and one in the District of Columbia, and maintained a total of three bank accounts at various times throughout the audit period. From these accounts the Compliance Committee received contributions totaling about \$589,000 from approximately 630 persons and political committees. The Compliance Committee also received approximately \$9,600 in interest earned on its bank accounts. The Compliance Committee made nominal disbursements for bank account fees and corporate taxes. The Compliance Committee also transferred approximately 230 contributions to the Fines Committee and refunded approximately 430 contributions to contributors.³

3. Audit Fines Committee

The Audit Fines Committee registered with the Federal Election Commission on January 23, 1996 and designated Courtney Sakai as its

³ The number of contributions received (630) does not agree with the total number of contributions redesignated or refunded (650) because in some instances a contributor would redesignate a portion of his or her contribution to the Audit Fines Committee and have the balance refunded

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Treasurer. Ms. Sakai served as Treasurer until June 24, 1996, at which time the Audit Fines Committee appointed its current Treasurer, Renee Croce.

The Audit Fines Committee used one bank account throughout the audit period. From this account, the Fines Committee received contributions totaling approximately \$234,500, from about 265 persons. Of these contributions, about 230 had been redesignated from the Compliance Committee, and 35 were received directly by the Audit Fines Committee. The Audit Fines Committee has made no disbursements to date.

II. AUDIT SCOPE AND PROCEDURES

In addition to a review of the Primary Committee's expenditures to determine the qualified and non-qualified campaign expenses incurred, the audit covered the following general categories:

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

10. other audit procedures that were deemed necessary in the situation.

As part of the Commission's standard audit process, an inventory of campaign records is normally conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state. Based on our review it was determined that the Committees' records were materially complete. Therefore, the audit fieldwork was commenced immediately upon conclusion of the inventory.

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

III. PETE WILSON FOR PRESIDENT COMMITTEE, INC.
(PRIMARY COMMITTEE)

A. AUDIT FINDINGS AND RECOMMENDATIONS: NON-REPAYMENT MATTERS

1. Apparent Excessive Contributions Resulting from Staff Advance and Extension of Credit by a Commercial Vendor

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

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution in connection with any election to any political office

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, that the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of a contribution under 11 CFR §100.7(b)(8)

Further, if the payment is not exempted, it shall be considered a contribution by the individual unless it is for the individual's transportation expenses or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate, and, the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first

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other expenses incurred under this agreement. The Committee will not reimburse Vendor for first class or business class air travel.

Authorized expenses shall be invoiced at cost and without markup to the Committee. All expenses incurred by Vendor will be reimbursed within thirty (30) days of receipt by the Committee".

Although the contract was with The Fuller Company, the Primary Committee disclosed all its transactions and wrote all but one of its checks payable to Craig Fuller. Since the contract specified that The Fuller Company was a corporation, the Audit staff attempted to verify its corporate status. The Audit staff was unable to locate a Fuller Company incorporated in either California, Washington D.C., or Virginia. A representative from the Corporate Division for the State of Virginia also stated that regardless whether a business was incorporated in Virginia, if its principal place of business was Virginia, the Corporate Division would have a record of its existence. Finally, the Audit staff located a professional biography for Craig Fuller on the Internet which made no mention of a Fuller Company. It stated that he had worked for Philip Morris until he was invited to be the chairman for Governor Wilson's Presidential campaign. Therefore, the Audit staff considered this matter under 11 CFR §116.5 rather than 11 CFR §116.3.

The Audit staff's review confirmed that the Primary Committee paid the specified monthly retainer fees from May 1995 through July 1995. The Primary Committee also maintained a record in its accounts payable file detailing that as of May 1996, the Primary Committee still owed Craig Fuller his August 1995 retainer fee (\$22,000)

The Primary Committee reimbursed Craig Fuller \$6,555 for various expenses incurred through June 1. The Primary Committee also maintained in its accounts payable file expense reimbursement requests from Mr. Fuller submitted on October 31, 1995 for expenses incurred and paid by him between May 4, 1995 and September 28, 1995. The expense reimbursement requests were signed by Mr. Fuller and submitted with supporting documentation for expenditures such as taxi fares, and meals and hotel lodging paid for on his personal credit card. The Audit staff determined the total amount of unreimbursed expenses submitted was \$29,193. This amount, plus the August retainer fee, comprise the \$51,185 reported as owed by the Primary Committee to Craig Fuller at May 31, 1996⁵

⁵ The \$8 difference between the \$51,185 reported by the Primary Committee and the sum of the \$22,000 retainer fee and \$29,193 in unreimbursed expenses is immaterial

As a result of these unreimbursed expenses, the Audit staff determined that Mr. Fuller had made an excessive contribution totaling \$28,193. The Audit staff's analysis considered Mr. Fuller's \$1,000 contribution limitation: a \$1,000 contribution made by him to the Primary Committee on September 1, 1995 and, the \$1,000 that an individual is permitted to incur for transportation pursuant to 11 CFR §100.7(b)(8).

This matter was discussed with Primary Committee officials at a conference held at the end of fieldwork. At that time, a copy of a schedule was also provided detailing the Audit staff's determination of the excessive amount. A Primary Committee representative expressed surprise that such an exorbitant amount of expenses had been submitted to the Primary Committee for reimbursement, and stated that he doubted the Primary Committee would be inclined to pay it. He added that there may have been a dispute between Mr. Fuller and the Primary Committee concerning the expenses claimed. He also stated that the Primary Committee would provide the Audit staff with more information; however, no additional information or documentation addressing this matter was submitted.

In the Exit Conference Memorandum (the Memorandum), the Audit staff recommended that the Primary Committee demonstrate that Craig Fuller did not exceed the contribution limitation of 2 U.S.C. §441a(a)(1)(A), or was reimbursed in a timely manner as defined under 11 CFR §116.5(b)(2), or submit any other comments or documentation it felt may be relevant.

In its response to the Audit staff's recommendation, the Primary Committee contended that the money owed to Craig Fuller is subject to the provisions of 11 CFR §116.3, which addresses extensions of credit by commercial vendors rather than the Audit staff's treatment of the issue under 11 CFR §116.5(b). The Primary Committee argued that, as a commercial vendor, Craig Fuller was extending credit in the usual and normal course of his business. Considered under this regulation, the Primary Committee asserted, there was no excessive contribution. The Primary Committee concludes by stating that Mr. Fuller is not the only vendor still owed funds and it treated Mr. Fuller the same as every other commercial vendor to whom it owes money.

The response included an affidavit from Craig Fuller supporting the Primary Committee's statements. In addition, the Primary Committee's response states

"The Memorandum recognizes that 11 CFR §116.3 permits commercial vendors, whether or not incorporated, to extend credit to a candidate as long as the credit is extended in the ordinary course of the commercial vendor's business and the terms are not established especially for the candidate or political committee"

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"Craig Fuller, through The Fuller Company, a sole proprietorship established in 1989, was a vendor to the Primary Committee. As such, any monies still owed Mr. Fuller for his monthly fee and expenses under his contract are subject to 11 CFR §116.3. For unexplained reasons, the Memorandum incorrectly characterizes him as an employee subject to 11 CFR §116.5."

"Indeed, the only indicia the Memorandum can site [sic] in arguing Mr. Fuller was an employee of the Primary Committee is that The Fuller Company is not incorporated. However, for a variety of business reasons and based on the recommendation of his financial advisor, Mr. Fuller opted not to incorporate the Fuller Company, and instead operate it as a sole proprietorship".

"As the Commission is well aware, Mr. Fuller is not the only vendor still owed funds.... There is simply no money to pay in full Mr. Fuller or 56 other vendors. By contrast, the Primary Committee has paid all its employees and staff. Regrettably, slow payment is the Committee's normal course of business towards vendors to whom it still owes money, including The Fuller Company.⁶ Likewise, the Fuller Company recognizes that in the normal course of business, clients may not be able to pay bills and, in such cases, credit has to be extended. The Fuller Company has extended payments and carried debt in other instances".

The Primary Committee's response, and Craig Fuller's affidavit, also mentioned that as a sole proprietor, he reported the income received from the Primary Committee to the Internal Revenue Service (IRS) on an IRS Form 1040C (Schedule C), and received an IRS Form 1099 from the Primary Committee rather than an IRS Form W-2. This tax treatment of his income, the Primary Committee concluded, supports the contention that he was not an employee of the Primary Committee, rather he was an independent contractor, subject to the provisions of a commercial vendor under 11 CFR §116.3⁸

⁶ The Audit staff notes that money paid (Schedule B-P) and owed (Schedule D-P) for Mr. Fuller's services was consistently disclosed to "Craig Fuller", not "The Fuller Company"

⁷ Both the Primary Committee and Craig Fuller failed to provide examples of situations where The Fuller Company had extended credit to nonpolitical clients of similar size and risk. (See 11 CFR §116.3(a))

⁸ The response notes the Primary Committee intends to pay "the monies owed for Mr. Fuller's services and expenses as soon as possible". In his affidavit, Craig Fuller stated that he had "made periodic inquiries about when the Committee expected to have sufficient funds to pay (the Fuller Company)".

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The affidavit from Craig Fuller further stated "I am president of the Fuller Company, a sole proprietorship I began in 1989 when I left government service. I was advised by my financial advisor to establish this business as a sole proprietorship for tax reasons". The affidavit continued by stating that "From May to September, 1995, I was retained through the Fuller Company by the Pete Wilson for President Committee, Inc.. Through my company, I served as Campaign Chairman".

i. Mr. Fuller as a Commercial Vendor

Section 116.1(c) of Title 11 of the Code of Federal Regulations defines commercial vendors as any person(s) providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services. The crux of the Primary Committee's argument is that Craig Fuller is a commercial vendor. However, neither the Audit staff's independent queries, the Primary Committee's response, nor Mr. Fuller's affidavit provide any explanation as to what constitutes the "usual and normal business" of The Fuller Company. Craig Fuller states only that the company was established upon the suggestion of a business advisor for his personal tax purposes.

Furthermore, Mr. Fuller states in his affidavit "[t]hrough my company, I served as Campaign Chairman". The Audit staff was able to locate two professional biographies on the Internet featuring Craig Fuller.⁹ According to these biographies, Craig Fuller worked as senior vice president for corporate affairs at Philip Morris Companies, Inc. before joining the Primary Committee. Previously, Mr. Fuller had worked in the Reagan and Bush White Houses until 1989, after which he became an executive at a lobbying firm. After leaving the Primary Committee, he worked at the public relations firm of Burson-Marsteller as vice-chairman. In mid-1996, Mr. Fuller accepted the position of managing director at the Washington D.C. office of Korn Ferry International, an executive search firm. The biographies make no mention of The Fuller Company nor of any other political consulting work done by Mr. Fuller since leaving the White House. Thus, absent an adequate explanation of The Fuller Company's business, and, because of the consistency in Mr. Fuller's career as a business executive, the Audit staff is unable to conclude that providing campaign chairman services to political committees is the usual and normal business of The Fuller Company, or that The Fuller Company consists of anything more than a name.

⁹ Internet sites located at 1) <http://www.register.com/prcentral/prjun24fuller.htm>, and 2) <http://www.ac2000.org/syndicate/fuller.html>

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ii. Mr. Fuller as a Primary Committee Employee

The Primary Committee response contends that the Audit staff, in applying 11 CFR §116.5, erroneously concludes that Mr. Fuller is an employee of the Primary Committee. The Primary Committee fails to realize that the application of 11 CFR §116.5 is not limited to committee staff. Indeed, the title of the regulation itself reads "Advances by committee staff and other individuals". Subsection (a) of the regulation, which clearly defines its application, makes no reference to "employees". Rather, it states its scope is "to individuals who are not acting as commercial vendors". Since the Primary Committee is unable to provide conclusive evidence that Mr. Fuller meets the definition of a commercial vendor under 11 CFR §116.3, its argument that he was not an employee of the Primary Committee and, by default, not subject to 11 CFR §116.5, is misplaced.

iii. Personal Credit Card

Section 116.5 (b)(2) of Title 11 of the Code of Federal Regulations reads as follows:

"The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted under 11 CFR 100.7(b)(8), it shall be considered a contribution by the individual unless - (2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used."

Based on the Audit staff's review of the expense documentation submitted to the Primary Committee by Craig Fuller, those expenditures which were not paid in cash were paid with his personal credit cards.¹⁰ Even if the Audit staff accepted The Fuller Company as a commercial vendor under 11 CFR §116.3, since

¹⁰ Documentation reviewed by the Audit staff indicates that at least two personal credit cards were used by Craig Fuller to pay for his expenses while serving as Campaign Chairman. The documentation included credit card statements which Craig Fuller had submitted to the Primary Committee to document his expenditures. Many of the charges itemized on the statements, and not submitted for reimbursement, appeared to be personal in nature, i.e., charges to retail jewelry stores, major department stores, and other businesses trading in consumer goods.

Mr. Fuller used his personal credit cards to pay for Primary Committee related travel, lodging, and meals, and because the expense billings did not appear to involve The Fuller Company, the contribution occurred.

The Primary Committee has failed to provide sufficient evidence to substantiate its argument that 11 CFR §116.5 was incorrectly applied in this manner. Even if consideration of this matter under 11 CFR §116.3 was contemplated, the Primary Committee failed to provide documentation demonstrating the credit extended was in the normal course of business for the Fuller Company and examples of other clients of similar size and risk for which similar services had been provided under similar billing arrangements. Additionally, consideration under 11 CFR §116.3 would preclude application of the exemption for personal travel and subsistence expenses provided under 11 CFR §100.7(b)(8); resulting in a prohibited contribution of \$29,193. Therefore, the Audit staff's conclusion that Craig Fuller made an excessive contribution, as defined under 11 CFR §116.5, in the amount of \$28,193, remains unchanged.

b. Extension of Credit by a Commercial Vendor

During the course of fieldwork, the Audit staff reviewed documentation associated with an arrangement between the Primary Committee and American Telephone and Telegraph Credit Corporation (ATT Credit). A document, titled "Master Equipment Lease Agreement Schedule" (Master Schedule) was dated June 1, 1995, and set the value of equipment to be leased, a PBX telephone system, at \$213,365.¹¹ This document specified that the Primary Committee was responsible for payment of advance rent of \$12,352, to be applied to the first month's rental payment, and monthly payments of \$12,352 thereafter. Other documents submitted after the Primary Committee's response to the Exit Conference Memorandum make it clear the Primary Committee was to provide a letter of credit to secure the lease. However, the only payment to ATT Credit ultimately made by the Primary Committee was on February 9, 1996 in the amount of \$213,365.

The Primary Committee records indicated it had also issued the following checks to "AT&T Credit Corp" check number 1328 dated May 28, 1995, check number 1509 dated June 27, 1995, and check number 1587 dated July 10, 1995. Each was in the amount of \$12,352. The checks dated May 28 and June 27 were reported on the Primary Committee's Schedules B-P for the July Quarterly 1995 reporting period. During the same reporting period, the Primary Committee also disclosed an outstanding debt to "AT&T Credit Corporation" on its Schedules D-P in the amount of \$201,013.

¹¹ The value of the telephone equipment per the Master Equipment Lease Agreement Schedule, was \$165,580. The difference between this amount and the \$213,365 is comprised of sales tax (\$12,832), installation (\$34,000) and shipping (\$952).

(\$225,716 less two \$12,352 payments).¹² In the October Quarterly 1995 reporting period, the Primary Committee reported the May and June checks as negative entries on its Schedules B-P. On its Schedules D-P, the Primary Committee reported a beginning period debt total of \$201,013, debt incurred during the period of \$12,352, and an outstanding balance at the end of the period of \$213,365. The Primary Committee reported this amount as a debt until the April 1996 Monthly (March 1 to March 31, 1996) reporting period.

The Audit staff located all three checks, un-negotiated, in the Primary Committee's void check file. According to available records, the checks had been voided on October 6, 1995. Each voided check was accompanied by a copy of a brief letter from Robert P. Wright of ATT Credit in Parsippany, New Jersey. The letter was addressed to a Primary Committee attorney, A. Peter Kezirian, Jr., and dated October 10, 1995. The letter read as follows:

"Dear Peter: Enclosed are three checks each in the amount of \$12,351.68 held in anticipation of a Letter of Credit¹³ to support funding of your lease of telecommunications equipment from AT&T. Sincerely, Robert P. Wright"

Documentation submitted by the Primary Committee on July 17, 1997, included an internal memorandum from A. Peter Kezirian, Jr. [Counsel for the Primary Committee] to Mark G. Hogland [Director of Administration for the Primary Committee]. According to this memorandum, dated August 21, 1995, discussions with an ATT Credit representative indicated that the letter of credit was an essential part of the lease and ATT Credit could not process any of the Primary Committee's payments until all the lease prerequisites were completed. The same memorandum stated that ATT Credit had been requested to consider "some variation of the letter of credit" so that the lease agreement could be executed between the parties, but had refused because it felt compelled to treat all campaigns equally.

On February 9, 1996, the Primary Committee issued check number 0101732 in the amount of \$213,365 to ATT Credit, approximately nine months after the Committee had signed the Master Schedule. Prior to February 9, 1996, the Primary Committee began negotiating for the sale of the telephone equipment to Varilease Corporation of Farmington Hills, Michigan. Based on the "Agreement of

¹² The Audit staff believes that the \$225,716 reported as the amount of debt incurred for the July Quarterly reporting period was derived by the Primary Committee to ensure that the outstanding debt reported on the October Quarterly Schedule D-P would balance to the actual value outlined in the Master Schedule (\$213,365).

¹³ Although no documentation with respect to a letter of credit was made available to the Audit staff, during November, 1995, the Primary Committee received a line of credit (\$500,000) which was used to make payments to various vendors other than AT&T.

Purchase" between VariLease Corporation and the Primary Committee, dated January 4, 1996 and signed February 1, 1996. VariLease Corporation purchased the equipment and had it shipped to Otisco Valley Telecom in Liverpool, New York. The sale price of the equipment to VariLease Corporation was \$50,000 (\$55,000 original sale price less \$5,000 deduction for parts not received). On March 7, 1996, the Primary Committee deposited a \$50,000 check, dated March 1, 1996, from VariLease Corporation.

It is the Audit staff's opinion that, based on the available documentation regarding the lease being negotiated between the Primary Committee and ATT Credit, the Primary Committee received an extension of credit from ATT Credit outside the ordinary course of business. AT&T delivered and installed the telecommunications equipment prior to all documents related to this transaction being completed. Further, the Primary Committee had possession of the telecommunications equipment owned by AT&T for nine months at no cost. All of the documentation available to the Audit staff stands in direct contrast to the (unexecuted) lease document, which although signed by a Primary Committee representative was apparently never executed by ATT Credit. The Master Schedule specifically details the value of the equipment to be leased and the amount and manner in which lease payments were to be due. The Primary Committee never made a fully negotiated payment relative to the (unexecuted) lease for the telephone equipment nor provided the necessary letter of credit to secure the (unexecuted) lease. The Audit staff concludes that the Primary Committee received a contribution from ATT Credit from May 1995 through February 1996 of \$213,365, the amount of the eventual purchase price of the telephone system.

The Audit staff discussed this matter with Primary Committee representatives at a conference held at the end of fieldwork and requested that more documentation, specifically a copy of the lease with ATT Credit, be provided. Primary Committee officials had no direct comment, but indicated that they were confident they would be able to clear the matter.

The Primary Committee did not provide the documentation requested prior to the issuance of the Exit Conference Memorandum. Rather, it provided either documentation already obtained by the Audit staff or internally generated letters from Primary Committee officials addressed to various ATT Credit representatives. The letters provided little information, with the exception of one letter from A. Peter Kezian, Jr. to Christine Myers of ATT Credit dated June 27, 1995. This letter was apparently the cover letter to an overnight package delivered from the Primary Committee to ATT Credit. In relevant part, the letter read as follows:

"Enclosed please find the following documents related to AT&T Master Equipment Lease Agreement, dated as of May 17, 1995 (the "Agreement"): (i) an executed copy of the Agreement, (ii) an executed Master Equipment Lease Agreement Schedule, (iii) an executed Financing Statement on a Form UCC-1; (iv) an executed

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Memorandum's argument". The response stated that there were "three allegations" contained in the Memorandum, each of which was "factually untrue". The response also included ATT Credit documents already obtained by the Audit staff, an affidavit from A. Peter Kezirian, Jr., and documents regarding a "buy back" arrangement between AT&T¹⁶ and the Bush/Quayle '92 Presidential campaign. On July 17, 1997, the Primary Committee submitted additional documentation including internal Committee memoranda; letters and other documents from AT&T; and copies of telephone bills paid by the Primary Committee. The Primary Committee's arguments concerning each of the three allegations, and the Audit staff's conclusion about those arguments and the supporting evidence provided, are discussed below.

i. "Improper Extension of Credit"

The first issue addressed by the Primary Committee was the Audit staff's conclusion that "the Primary Committee received 'an extension of credit from ATT [Credit] outside the ordinary course of business'". The Primary Committee began by describing the basis on which ATT Credit forms customer relationships. While the affidavit from A. Peter Kezirian, Jr. supports these statements, no documentation from ATT or ATT Credit characterizing its business policies was provided

"ATT Credit ... regularly provides leasing and credit services to facilitate the sale of equipment for ATT since, as the Primary Committee has come to learn, equipment sales are considered the best means of securing a business' overall telephone service. Therefore, while the equipment costs about which the Memorandum is concerned is a significant component, it is also a relatively small part of the entire business relationship between ATT and a customer.. The Memorandum fails to recognize that in this context, it is the normal course of business for a telephone company to install a telecommunications system and secure the service contracts before finalizing all of the credit and contract terms of such a sale or lease.. The monthly ATT billings to the Primary Committee for telephone service were often five or six times the equipment lease payments. The potential billings to ATT would continue to grow exponentially as the campaign moved closer to the primary elections. The total dollars flowing to ATT from the Primary Committee demonstrate conclusively that the service agreements are of significantly greater value to a telephone company than the equipment sales about which the Memorandum

¹⁶ The Audit staff notes that this arrangement did not involve ATT Credit. The parties involved were the Bush/Quayle '92 campaign and AT&T, the parent company of ATT Credit

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focuses. In other words, in order to obtain the lucrative business of providing the service itself, a telephone company may, as happened here, offer 'deals' and flexibility on payment for the equipment".

The Audit staff cannot rely on the Primary Committee's statements regarding what elements AT&T considers when evaluating its business relationships with its customers. All information about AT&T's business practices is provided by an attorney employed by the Primary Committee. No information from AT&T is supplied.¹⁷ Furthermore, the Audit staff has thoroughly examined a copy of the (unexecuted) lease agreement and nowhere does it require that AT&T be the telephone service provider for any period of time as a condition of the lease, nor does it contain a clause which offers "flexibility" to the lessee if it utilizes ATT's telephone service. Finally, the Audit staff finds no evidence to support the contention that it is an established business practice of ATT to install telecommunications equipment based on "potential billings", and "before finalizing all of the credit and contract terms of such a sale or lease"

The Primary Committee's response continued by describing how ATT Credit generates revenue for itself by discounting its leases and selling them in financial markets. It was this common practice, the response contends, that resulted in the Primary Committee's checks not being deposited by ATT Credit. However, the response fails to address how such a practice subsequently resulted in ATT Credit returning to the Primary Committee all three payments it had sent relative to the (unexecuted) lease

"ATT Credit provides credit to the customers of ATT to help them afford more telephone service"¹⁸ However, ATT Credit cannot survive financially if it holds onto each of the loans extended to ATT customers. Therefore ... ATT Credit will 'bundle' these loans and sell them in the financial markets at a discount.... The Primary Committee did not understand why ATT Credit had not deposited the Primary Committee's lease payments until it learned the decision was based on ATT Credit's standard practice of bundling and reselling loans. Mr. Wright told Mr. Kezarian that any deposit without the closure of any element of the Master Lease Agreement

¹⁷ Materials submitted on July 17, 1992 by the Primary Committee indicate a letter of explanation has been requested from AT&T and is expected to be received soon. To date, no such letter has been provided.

¹⁸ The statement that "ATT Credit provides credit to customers of AT&T to help them afford more telephone services" is not clear. ATT Credit finances telecommunications equipment, not telephone services.

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would have disqualified the loan for sale. ATT Credit was willing to hold deposits to maintain the option of reselling the loan ...Therefore, ATT Credit held payments until all steps were completed. The Committee believed this was a normal business decision by ATT Credit that had nothing to do with the operations of the Primary Committee."

This section concludes by stating that ATT Credit never did sell the Primary Committee's loan, "but [it] did receive full payment for the equipment in February 1996". The response then argues that as a result of the Primary Committee's purchase of the equipment at its full value, it "meant that ATT was certainly made whole and that the Primary Committee did not secure a benefit outside ATT's normal business practices".¹⁹

Given that no fully executed lease has been produced and that ATT Credit "could not process any of the payments" until the lease requirements were completed, which included a letter of credit, it appears that no lease contract existed. Without a completed (lease) contract, the sale of the instrument would seem to be impossible.

Further, the Primary Committee fails to address how ATT Credit is able to "survive financially" by returning the payments it receives relative to its leases. In the Primary Committee's case, ATT Credit never sold the (unexecuted) lease, but, after the (unexecuted) lease was in arrears, and absent the requisite letter of credit, sent the undeposited checks back to the Primary Committee. The Primary Committee does not explain why it believes that it was a "normal business decision by ATT Credit" to not only return to it \$37,056 in payments made relative to the (unexecuted) lease, but to do so in October of 1995. By this time the candidate had dropped from the race, the campaign was publicly reported as bankrupt, and, under the terms of the (unexecuted) lease, was two payments in arrears.

Finally, the Audit staff notes with interest Mr. Wright's explanation to Mr. Kezirian about why the Primary Committee checks were never deposited. As quoted previously in this report, the letter from Mr. Wright to Mr. Kezirian dated October 10, 1995, which accompanied the return of the un-negotiated checks, states that the checks were returned because they were "held in anticipation of a Letter of Credit to support funding of your lease..". It is the Audit staff's opinion that these checks were never cashed by ATT Credit to avoid any appearance of consummating the (unexecuted) lease prior to receiving a letter of credit.

¹⁹ Whether ATT Credit was or wasn't "made whole" is not the thrust of 11 CFR §116.3. This regulation deals with extensions of credit made by commercial vendors.

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"potential billings" it had supposedly anticipated from its service agreements, failed to collect the \$12,352 due in monthly payments for nine months under the (unexecuted) lease, and failed to regain control and possession of its equipment for four months after it had "penalized" the Primary Committee by terminating its telephone service in October 1995.

iii. "No Lease Payment"

The Primary Committee's discussion in the third subsection of its response argued that the Audit staff's conclusion that "the Primary Committee 'never made a fully negotiated lease payment on the telephone equipment'.... is patently incorrect". The response continues as follows:

"Three lease payments of \$12,351.68, each as required by the Master Lease Agreement, were made in a timely manner in May, June and July. The Primary Committee failed to make lease payments in August and September due to financial difficulties".

The difference between the Primary Committee's position on this issue and the Audit staff's position is merely semantic. The Primary Committee argues that, from its perspective, the payments were fully negotiated because the Primary Committee issued the checks and recorded the payments in its records. It is argued that since these payments were so recorded, the funds were unavailable for other uses. The fact that ATT Credit never cashed the checks causing the funds to be removed from the Primary Committee's accounts is not relevant to its position. In the Audit staff's view of these same facts, ATT Credit's failure to collect the funds represented by the checks, to return those checks after the (unexecuted) lease was in arrears, and not to pursue these delinquent payments represents an extension of credit beyond its ordinary course of business.

The Audit staff concludes that the Primary Committee has failed to demonstrate that ATT Credit did not extend credit outside of its normal course of business, as defined under 11 CFR 6116.3, or that the Primary Committee did not receive a contribution from ATT Credit during the period from May 1995 through February, 1996 in the amount of \$215,365.

2 Misstatement of Financial Activity

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

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The Audit staff's reconciliation of the Primary Committee's reported financial activity to bank activity for the first four months of 1996 revealed a misstatement of the Primary Committee's reported disbursements as well as its reported ending-cash-on-hand balance at April 30, 1996.

The Primary Committee reported total disbursements of \$1,719,117 for the first four months of 1996. Utilizing the Primary Committee's financial records, the Audit staff determined that the Primary Committee should have reported total disbursements of \$1,805,347. Therefore, the Primary Committee's disbursements were understated \$86,230. Similarly, the Primary Committee's reported ending-cash-on-hand of \$481,350 at April 30, 1996 was overstated by \$86,224.²¹ The correct ending-cash-on-hand balance was \$395,126.

The understatement of disbursements and overstatement of ending-cash-on-hand resulted from the Primary Committee's failure to report three disbursements totaling \$78,950 on its April 1996 Monthly Schedules B-P (March 1 to March 31, 1996), and its failure to report one disbursement in the amount of \$3,638 on its May 1996 Monthly Schedules B-P (April 1 to April 30, 1996).

On June 24, 1996, during the course of audit field work, the Primary Committee filed amended reports which corrected the errors.

In the Exit Conference Memorandum to the Primary Committee, the Audit staff recommended no further action regarding this matter. In its response to the Exit Conference Memorandum, the Primary Committee concurred with the Audit staff's recommendation.

3 Failure to Properly Disclose Debts Outstanding

Section 434(b)(8) of Title 2 of the United States Code states that each report shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee, and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefore

Section 104.11(a)(b) of Title 11 of the Code of Federal Regulations states, in part, that debts or obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished. These debts and

²¹ The difference between the misstatement totals in disbursements (\$86,230) and ending-cash-on-hand (\$86,224) are the result of minor misstatements in reported receipts and minor, unresolved differences in disbursements and ending-cash-on-hand

obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. A debt or obligation, the amount of which is \$500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary, or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

In the course of verifying the Primary Committee's Statement of Net Outstanding Campaign Obligations, the Audit staff reviewed selected disbursement records and identified significant debt reporting errors. As a result, the Audit staff reconciled amounts invoiced by vendors and payments made by the Primary Committee for 64 vendors. Primary Committee vendor files, which included all invoices both paid and unpaid, were utilized along with all canceled and/or void checks. The 64 vendors for which reconciliations were prepared included those with outstanding balances reported at May 31, 1996.

Of the 64 vendors examined, the Primary Committee had incorrectly disclosed outstanding debt on Schedules D-P for 41 vendors, or 64% of the vendors reviewed. The Audit staff determined that debts and obligations disclosed by the Primary Committee were overstated by a net amount of \$614,622 of total reportable debt:

The total amount of reportable debt was calculated by summing the reported total of outstanding debts and obligations owed by the Primary Committee for each report period. Similarly, the total amount of disclosure errors was calculated by summing the differences between the amount disclosed as outstanding by the Primary Committee on its Schedules D-P and the amount determined as outstanding by the Audit staff's reconciliations for each vendor, for each reporting period covered by the audit. As a result, debts that were repeatedly misstated are included each time they required reporting.

At a conference held at the conclusion of fieldwork, the Audit staff provided the Primary Committee with a copy of a schedule detailing the differences between the Audit staff determinations and the amounts reported by the Primary Committee. Copies of schedules were also provided detailing the amounts of debt outstanding at December 31, 1995 and May 31, 1996, as determined by the Audit staff. The Primary Committee agreed to file the appropriate amended reports.

Some debts were overstated (\$917,698) and other debts were understated (\$303,076); the sum of these errors would total \$1,604,793 which results in an error rate of 56% of correct reportable debt. The above amounts do not total \$1,604,793 due to understatements and overstatements occurring across reporting periods for certain vendors.

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In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee file amended Schedules D-P for its 1995 Year End and 1996 June Monthly (covering the period May 1 to May 31, 1996) reports to correct the disclosure of its outstanding debts and obligations.

In its response to the Exit Conference Memorandum, the Primary Committee stated that it "...concurs with this recommendation and the relevant reports are being prepared and will be filed as promptly as possible." The Audit staff received the amended Schedules D-P on April 7, 1997, and, based upon an examination of them, concluded that they were materially correct.

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

1. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other things, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs. Subsection (b) of this section states, in part, that the total outstanding campaign obligations shall not include any accounts payable for non-qualified campaign expenses

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations

Governor Wilson's date of ineligibility was September 29, 1995. The Audit staff reviewed the Primary Committee's financial activity through April 30, 1996, and on a more limited basis, activity through December 31, 1996. The Audit staff also analyzed winding down costs and prepared the Statement of Net Outstanding Campaign Obligations (NOCO) which appears below:

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PETE WILSON FOR PRESIDENT COMMITTEE, INC.
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
as of September 29, 1995
as determined December 31, 1996

<u>ASSETS</u>		=
Cash	\$404,283.00	
Accounts Receivable	84,309.00	
Capital Assets:		
Telephone System	213,365.00 (a)	
Other Capital Assets	<u>47,650.00 (b)</u>	
	261,015.00	
Total Assets		\$749,607.00
<u>OBLIGATIONS</u>		
Accounts Payable for Qualified Campaign Expenses	\$2,390,483.00	
Amount Payable to U.S. Treasury:		
State-dated Checks	32,929.00 (c)	
Winding Down Costs		
09/30/95 - 12/31/96 Actual	\$528,527.00 (d)	
1/1/97 and later: Estimated	<u>102,250.00</u>	
	630,777.00	
Total Obligations		<u>\$3,054,189.00</u>
Net Outstanding Campaign Obligations (Deficit)		<u>\$(2,304,582.00)</u>

WILSON FOR PRESIDENT COMMITTEE, INC.

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FOOTNOTES TO NOCO

- (a) Under 11 CFR §9034.5(c)(1), the Audit staff valued the AT&T telephone system at its cost of \$213,365 when purchased on 2-9-96. See Finding III.A.1.b. On August 21, 1997, the Commission considered a Statement of Reasons related to the Primary Committee's request for additional matching funds. The central question was the valuation of this asset. If valued as presented here, the Candidate has no further matching fund entitlement. If valued at a depreciated amount, some entitlement remained. The Commission was unable to garner sufficient votes to adopt either position.
- (b) These assets are valued at 60% of cost as provided under 11 CFR §9034.5(c)(1) (effective date 8-16-95). The Audit staff has requested the Primary Committee provide documentation detailing the fair market value of capital assets purchased before August 16, 1995. Prior to this date, 11 CFR §9034.5(c)(1) allowed committees the option of valuing capital assets at fair market value, rather than at 60% of cost.
- (c) Cash was adjusted for stale-dated checks issued before the candidate's date of ineligibility and actual wind-down expenses were adjusted for stale-dated checks issued after that date (September 29, 1995).
- (d) Actual wind-down expenses were reduced by the following: \$18,746 for vendor refunds associated with post date of ineligibility disbursements; and, \$14,550 in Compliance Committee expenses paid by the Primary Committee subsequent to the candidate's date of ineligibility. See Finding III.B.2.

Shown below are adjustments for funds received after September 29, 1995, based on the most current financial information available:

Net Outstanding Campaign Obligations (Deficit) as of 9-29-95	(\$2,304,582)
Matching Funds Received 9-30-95 to 8-1-96	\$1,724,257
Net Private Contributions and Other Receipts Received 9-30-95 to 8-1-96	<u>\$ 367,344</u>
Remaining Net Outstanding Campaign Obligation at 8-1-96 (Deficit)	\$ (212,981)
Net Private Contributions Received 8-2-96 to 12-31-96	\$ 298,270

As shown above, the Primary Committee has received more than sufficient contributions to eliminate its deficit. As such, the Audit staff concludes that the Primary Committee has no further entitlement to matching funds.

The Primary Committee, in its response to the Exit Conference Memorandum, stated that it was "in agreement with the [A]udit staff's NOCO determination, with the exception of the AT&T lease issue." As discussed at Finding III.A.1.b. above, the Audit staff rejected the Primary Committee's arguments concerning the AT&T lease. Since the portion of 11 CFR §9034.5(b)(2) relevant to assets acquired after a candidate's date of ineligibility was not changed as of August 16, 1995, such items still must be valued at cost. Therefore, the Audit staff NOCO remains unchanged from the Exit Conference Memorandum.

On March 3, 1997, the Primary Committee made an eighth request for matching funds totaling \$149,435. With this request, the Primary Committee also submitted a NOCO Statement, prepared at February 15, 1997, which showed a remaining net outstanding deficit of \$150,104. Based on the Audit staff's review of this NOCO, it was determined the Primary Committee's deficit was mainly due to discrepancies in the following areas:

- The inclusion of estimated fundraising costs (\$40,635) not included in the Audit staff's NOCO since sufficient moneys had been raised to eliminate the deficit.

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- the Primary Committee's estimates for legal and audit fees (\$114,884) are significantly higher than those estimates made by the Audit Staff (\$60,000); and
- the Audit staff valued the AT&T telephone system at cost (\$213,365), since it was purchased after the candidate's date of ineligibility. The Primary Committee continues to value it at 60% of cost (\$128,031).

The Primary Committee argues that the lease of the telephone system constitutes a "capital lease" and should, therefore, be considered an asset as of the date the lease was executed. The Primary Committee concludes that its valuation is correct and the Candidate has remaining matching fund entitlement. The Audit staff is not persuaded by the Primary Committee's argument. Notwithstanding whether capital leases are relevant to political campaigns, the Audit staff notes that a lease signed by both parties has not been provided for our review. As previously stated in Finding III.A.1.b., the lease payments made by the Primary Committee were not cashed by ATT Credit, rather, the Primary Committee purchased the telephone system nine months later for the full purchase price quoted (\$213,365). Further it is clear that ATT Credit did not cash any of the lease payments received awaiting a letter of credit from the Primary Committee to complete the requirements of the lease document. The letter of credit was not provided.

On August 21, 1997, the Commission also considered a Statement of Reasons and Final Determination (Commission Agenda Document #97-52-A) related to the Candidate's entitlement to all or a portion of the March 8, 1997 matching fund request. The Audit staff had recommended, and the Office of General Counsel agreed, that the Candidate had no further matching entitlement because when the telephone system is valued at cost, assets are sufficient to liquidate all Net Outstanding Campaign Obligations without the incurrence of further fundraising costs. If valued at a depreciated amount, some entitlement remains. The determining factor was whether the telephone system became a Primary Committee asset when it was installed, prior to the Candidate's date of ineligibility, or when the Primary Committee purchased it, well after the date of ineligibility. During its discussion of the Statement of Reasons the Commission could not garner sufficient votes to adopt either position. As a result, no further matching fund payments are anticipated and the valuation of the telephone system on the NOCO is unchanged.

2. Non-Qualified Campaign Expenses - Compliance Committee Expenses Paid for by the Primary Committee

Section 9032 9(a) of Title 11 of the Code of Federal Regulations, in part, defines a qualified campaign expense as one incurred by or on behalf of the candidate from the date the individual becomes a candidate through the last day of the

candidate's eligibility; made in connection with his campaign for nomination; and neither the incurrence nor the payment of which constitutes a violation of any law of the United States or the State in which the expense is incurred or paid.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, in relevant part, that any expenses incurred before the candidate's date of ineligibility for property, services, or facilities used to benefit the candidate's general election campaign are not qualified campaign expenses.

Section 9034.4(e)(6)(i) of Title 11 of the Code of Federal Regulations states that the costs of a solicitation shall be attributed to the primary election or the GELAC, depending on the purpose of the solicitation. If the candidate solicits for both the primary election and the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC.²³

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.

The regulations at 11 CFR §9038.2(b)(2)(iii) state that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility.

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

During the Audit staff's review of contributions to the Primary Committee, it was noted that available solicitation devices contained appeals for contributions of up to \$1,000 each for both the Primary Committee and the Compliance Committee. The Audit staff reviewed approximately \$1,271,985 spent by the Primary

²³ The effective date of this regulation was August 16, 1995

Committee on fundraising, and identified 229 transactions amounting to \$699,098 that appeared to be incurred for fundraising appeals on behalf of both the Primary Committee and the Compliance Committee. Of this \$699,098, \$351,856 were expenditures by the Primary Committee to defray Compliance Committee fundraising costs.

Similarly, an invoice from a Primary Committee vendor dated May 1, 1996, contained a \$10,000 charge for "Compliance Committee Processing". This charge was paid by the Primary Committee on May 1, 1996.

These matters were presented to Primary Committee representatives at a conference at the conclusion of fieldwork along with copies of schedules and work papers detailing the Audit staff's determination. Primary Committee representatives indicated they were unhappy with the Commission's regulations regarding expenditures made by legal and accounting funds established before a candidate receives the party's nomination, and indicated they would pursue this matter further:

In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee submit evidence documenting that the above expenditures were qualified campaign expenses. Absent such a demonstration, the Exit Conference Memorandum stated that the Audit staff would recommend that the Commission make an initial determination that the Primary Committee make a pro-rata repayment of \$83,387 ($\$351,856 - \$10,000 \times .230443$)²⁴ to the United States Treasury pursuant to section 9038(b)(2) of Title 26 of the United States Code.

In its response to the Exit Conference Memorandum, the Primary Committee did not submit evidence demonstrating that the expenditures were qualified campaign expenses. Instead, it stated that the Audit staff's recommendation "must be rejected for several reasons" and centered its arguments on the Audit staff's application of 11 C.F.R. §9034.4(e)(6)(i) to apportion the joint fundraising costs. The response does not address the \$10,000 expenditure for Compliance Committee processing costs.

The Regulations Are Contradictory

The Primary Committee's response states that:

"The current Regulations are internally contradictory and place a committee which simply exercises its rights granted by the Regulations automatically in violation for following the Regulations. Specifically, 11 C.F.R. §9003.3(a)(1) states that a

²⁴ This figure (.230443) represents the Primary Committee's repayment ratio, as calculated pursuant to 11 C.F.R. §9038.2(b)(2)(iii).

committees. The test is whether funds were solicited for both committees. The solicitations reviewed by the Audit staff contained an appeal for the Compliance Committee which, with a few minor variations, read as follows:

Also, enclosed is my/our contribution in the amount of \$ _____ to "Pete Wilson for President Compliance Fund". (The maximum contribution of \$1,000 per person may be made in addition to your contribution to the Presidential Committee).

The Audit staff views the above as a direct solicitation of funds for the Compliance Committee.

The response also argues that the Compliance Committee did not receive enough money, compared to the Primary Committee, to justify the contention that the solicitations were "joint". The argument read as follows:

".. of 627 Compliance Committee contributors only \$2, or 8.3 percent, did not give to the Primary Committee. With that 8.3 percent exception, all funds that were placed in the Compliance Committee accounts were done so by contributors who had already given the legal maximum to the Primary Committee, and wished to help further. The results conclusively demonstrate this. The Primary Committee raised about \$5,767,000. The Compliance Committee raised about \$598,000²⁵ ... If these were really the joint solicitations as the Memorandum contends, these numbers would have been much more even. To show the illogic of the Memorandum's result, the Compliance Committee raised \$598,000, yet the audit staff now argues that its fundraising costs were \$351,856. This amounts to an unheard of cost of about 59 percent."

The mere fact that \$589,005 in contributions was generated proves that a solicitation occurred. While it is true that the major focus of the solicitation was the Primary Committee, as noted above, the relevant regulation doesn't cite a primary focus test. Rather, it requires the cost of a communication which solicits for both a primary committee and a general committee be allocated equally between the two. Further, based on the experience of the Audit staff, it is not at all unusual to encounter fundraising programs which yield poor response rates. Indeed, the Audit staff has frequently seen fundraising programs that actually generate losses for political committees. Thus, the numerical data cited by the Primary Committee above do not

²⁴ Based on the Audit staff's review, the Compliance Committee received \$589,005 in contributions.

reflect results that are "unheard of" or otherwise especially remarkable. Indeed, the data reinforces that the solicitations were effective in generating contributions for the Compliance Committee.

3. Effective Date of Regulation

The Primary Committee also presented the following argument:

"The Regulation upon which the Memorandum bases its repayment determination went into effect on August 16, 1995. This was well after most of the fundraising solicitations by the Wilson committees that are the subject of the \$83,387 repayment amount. The Committees dispute that the Memorandum correctly uses 11 C.F.R. §9034.4(e)(6)(i) to determine the repayment in this situation. But even if mathematically correct, the Regulation cannot be applied to any solicitation before August 16, 1995 because the Regulation was not in effect ... Furthermore, a review of the invitations sent after August 16, 1995 shows that, with only one exception, the solicitation for the Compliance Committee was dropped entirely from the Committee's solicitations."

It should be noted that 11 CFR §9034.4(e)(6)(i) stipulates only the method for apportioning costs of fundraising devices which solicit for both a candidate's Primary and GELAC committees. The Regulation does not state that such expenditures become qualified campaign expenses of the primary committee should the candidate fail to receive the party nomination. Thus, the effective date of 11 CFR §9034.4(e)(6)(i) is irrelevant in arguing that the joint solicitation costs paid by the Primary Committee prior to August 16, 1995 should be considered qualified campaign expenses. In addition, based on documentation made available to the Audit staff by the Primary Committee, there appears to have been more than "one" joint solicitation subsequent to the effective date of this regulation.

The response continues by arguing that the joint solicitation costs should be allocated on the "funds received" basis, as described at 11 CFR §106.5(f). This allocation method was developed for use by party committees engaged in both federal and non-federal activity. The Primary Committee states that allocation should be "...on the bases of: (1) amounts received (\$5,767,000 for the Primary Committee and \$598,000 for the Compliance Committee) or (2) space used for each committee in the solicitations themselves." The Primary Committee contends that, based on the funds received by each committee "[t]he Compliance Committee raised about \$598,000, or 10.37 percent as much [as the Primary Committee]." In a footnote to its response, the Primary Committee further calculates

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If the Commission really believed that this fundraising requires some sort of a repayment, then it would have to be based on the 10.37 percent figure. In other words, even under the Memorandum's own logic, (as opposed to its vindictive conclusion), the repayment amount should be \$16,706.30 (10.37 percent of \$699,098 times .230443).

The Audit staff agrees that prior to the effective date of the regulation a funds received allocation would be permissible. However, the Primary Committee's calculation is flawed. The figure supplied for Primary Committee receipts includes contributions solicited solely for that committee and not as a result of the joint solicitations addressed by the Audit staff. To apply a ratio based on total funds received to only those expenditures identified by the Audit staff which were in connection with the joint solicitations would result in a flawed comparison. To accurately apply the "funds received" method in this situation, only Primary contributions received directly as a result of the joint solicitation should be considered. Further, in calculating the 10.37 percent, the Primary Committee simply divides \$598,000 by \$5,767,000. This calculation does not accurately reflect the relative funds received by each committee.

Using the fundraising event codes contained on the computer file provided by the Primary Committee, the Audit staff determined that the Primary Committee received \$2,794,975 as a direct result of the joint fundraising solicitations; the Compliance Committee received \$576,905. The Audit staff also determined that \$767,619 was the maximum matching funds which could have been received from the \$2,794,975 raised by the Primary Committee, bringing its total to \$3,562,594. Based on these amounts, a funds received ratio of 13.94 percent was calculated.²⁶

The Audit staff revised its analysis to reflect the effective date of 45 CFR §9034.4(e)(6)(1) and to determine the Compliance Committee portion of joint fundraising expenses using the funds received ratio (13.94%). Only those expenditures associated with a jointly-solicited fundraising event held subsequent to the effective date are allocated on a 50/50 basis. For those expenditures incurred with respect to jointly-solicited fundraising events held prior to the effective date, the Audit staff used the funds received method.

The Audit staff's revised analysis identifies non-qualified campaign expenses totaling \$130,577 which are subject to pro-rata repayment. This amount includes the \$10,000 payment for Compliance Committee processing not addressed in the Compliance Committee's response.

²⁶ The calculation for this ratio is $\$576,905 - (\$576,905 - \$2,794,975 - \$767,619)$

Recommendation # 1

The Audit staff recommends that the Commission determine that \$29,861 is payable to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2)(A).²⁷

3. Stale-dated Checks

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

The Audit staff performed bank reconciliations through April 1996. From these reconciliations, 49 checks we identified totaling \$37,470, which had not been negotiated. Of these, 33 totaling \$28,950, were for contribution refunds. Of the 33 contribution refunds, it appears that 28 represented refunds of excessive contributions.

At a conference held at the end of fieldwork, the Audit staff provided representatives of the Primary Committee with copies of schedules of the stale-dated checks. Committee representatives agreed to review their records and provide the Audit staff with additional information which may resolve the items.

In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee provide evidence that either the checks are not outstanding by providing copies of the front and back of the negotiated checks along with bank statements, or that the outstanding checks are void by providing either copies of the voided checks with evidence that no obligation exists, or copies of negotiated replacement checks. Absent such evidence, the Exit Conference Memorandum explained that the Audit staff would recommend that the Commission determine that stale-dated checks totaling \$37,470 are payable to the United States Treasury.

In its response to the Exit Conference Memorandum, the Primary Committee provided copies of four checks totaling \$4,541, which had been negotiated by the payees. The Audit staff concludes that, based on the documentation submitted stale-dated checks totaling \$32,929 (\$37,470-\$4,541) remain

²⁷ The payment amount is calculated as \$130,577 x .230443

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Recommendation #2

The Audit staff recommends that the Commission determine that the Primary Committee is required to pay \$32,929 to the United States Treasury pursuant to Section 9038.6 of Title 11 of the Code of Federal Regulations.

**IV. PETE WILSON FOR PRESIDENT COMPLIANCE COMMITTEE, INC.
(COMPLIANCE COMMITTEE)**

A. AUDIT FINDINGS AND RECOMMENDATIONS : NON-REPAYMENT MATTERS

1. Misstatement of Financial Activity

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

The Audit staff's reconciliation of the Compliance Committee's reported financial activity to bank activity for the first four months of 1996 revealed a material misstatement in the Compliance Committee's reported disbursements and ending-cash-on-hand balance. During the first four months of 1996, the Compliance Committee reported total disbursements of \$360,916, and an ending-cash-on-hand balance of \$8,180. The Audit staff determined that the Compliance Committee should have reported total disbursements of \$367,827 and an ending-cash-on-hand balance of \$1,269. Therefore, the Audit staff concluded that disbursements were understated by \$6,911, and that ending-cash-on-hand balance was overstated by \$6,911.

The Audit staff determined these misstatements were due to the Compliance Committee's failure to report three contribution refunds during the April 1996 Monthly reporting period (March 1 to March 31, 1996), and the failure to report two disbursements for income taxes during the May 1996 Monthly reporting period (April 1 to Apr. 30, 1996).

On June 24, 1996, during the course of fieldwork, the Compliance Committee filed amended reports for the April and May 1996 reporting periods, correcting the errors noted above.

In the Memorandum to the Compliance Committee, the Audit staff recommended no further action regarding this matter. In its response, the Compliance Committee noted its agreement with the Audit staff's recommendation.

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2. Disclosure of Occupation/Name of Employer

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

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

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

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

The Audit staff reviewed contributions from individuals to the Compliance Committee on a sample basis. The sample results revealed that for a significant number of such contributions the disclosure of occupation and name of employer was inadequate. All the errors resulted from either a lack of evidence of the Treasurer's best efforts to obtain occupation and name of employer information, or from the occupation and name of employer information being available, but not disclosed.

During the course of audit field work, the assistant treasurer stated that the Compliance Committee did not send follow-up letters to contributors requesting the occupation and name of employer information. Rather, the Compliance Committee relied on the Primary Committee's records and efforts to provide the required information.²⁸ All contributions received by the Compliance Committee were either

²⁸ Since the Primary Committee and the Compliance Committee had the same treasurer for most of the audit period, and operated out of the same address, the Audit staff determined that it was reasonable to assume that the information maintained by the Primary Committee was readily accessible and available for use by the Compliance Committee.

transferred by the Primary Committee in accordance with 11 CFR §9003(a)(1), or solicited in conjunction with the Primary Committee (see Finding III.B.2.). Thus, the Audit staff examined the Primary Committee contributor records for occupation and name of employer information and for evidence of the Treasurer's best efforts in order to incorporate the information contained in those records into the review. As a result of this review, the number of errors was reduced; however, a material problem remained.

At a conference held at the conclusion of fieldwork, the Compliance Committee was advised of this matter. Compliance Committee officials agreed to file amended Schedules A-P disclosing the missing occupation and name of employer data; and, where the information could not be obtained, to maintain and submit records of all efforts to acquire it.

In the Memorandum, the Audit staff recommended that the Compliance Committee submit documentation to demonstrate that best efforts were utilized and file amended Schedules A-P to disclose occupation and name of employer information contained in either the Primary Committee or Compliance Committee records but not previously disclosed.

Amended Schedules A-P were provided with the Compliance Committee's August 1996 (September Monthly) filing with the Commission. Based on our review of the amendments, the Audit staff determined that the Compliance Committee's reports had been materially corrected to disclose the required occupation and name of employer information.

B. FINDING AND RECOMMENDATION: AMOUNT DUE TO THE U.S. TREASURY

State-dated Checks

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission of its efforts to locate the payees, if such efforts are necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff performed bank reconciliations through April 1996 for the Compliance Committee. From these reconciliations, the Audit staff determined that the Compliance Committee had 80 state-dated contribution refund checks totaling \$66,450.

At a conference held at the end of fieldwork, the Audit staff provided representatives of the Compliance Committee with copies of schedules of the state-dated checks. The Audit staff discussed this matter with the Compliance Committee

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representatives, who agreed to review their records and provide the Audit staff with additional and ongoing information which may resolve the items.

In the Exit Conference Memorandum, the Audit staff recommended that the Compliance Committee provide evidence that either the checks were not outstanding by providing copies of the front and back of the negotiated checks along with bank statements, or that the outstanding checks are void by providing either copies of the voided checks with evidence that no obligation exists, or copies of negotiated replacement checks. Absent such evidence, the Audit staff would recommend the Commission determine that stale-dated checks totaling \$66,450 are payable to the United States Treasury.

In response to the Exit Conference Memorandum, the Compliance Committee provided evidence which resolved three items totaling \$3,000. Therefore, the Audit staff reduced the amount of unresolved, stale-dated checks to \$63,450 (\$66,450-\$3,000)

Recommendation # 3

The Audit staff recommends that the Commission determine that the Compliance Committee make a payment of \$63,450 to the United States Treasury pursuant to Section 9007.6 of Title 11 of the Code of Federal Regulations.

1. PETE WILSON FOR PRESIDENT AUDIT FINES AND PENALTIES ACCOUNT, INC. (FINES COMMITTEE)

The Audit staff did not detect any material non-compliance matters resulting from the audit of the Audit Fines Committee. This fact was stated in the Exit Conference Memorandum. In its response, the Audit Fines Committee concurred with the Audit staff's conclusion.

If residual moneys exist in the Audit Fines Committee account(s) after payment of all fines and civil penalties, the Audit Fines Committee must take the following action with respect to such moneys:

- a. Return any residual moneys to contributors on either a pro-rata basis or first-in, first-out basis.
- b. Disgorge any residual moneys to the United States Treasury;
- c. Contribute any residual moneys to any organization described in section 170(c) of Title 26 of the United States Code, or

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AUDIT DIVISION

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

May 13, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Sumner
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J Vosdingh
Assistant General Counsel

Andre G. Pineas
Attorney

SUBJECT: Proposed Audit Report on the Pete Wilson for President
Committee, Inc., Pete Wilson for President Compliance
Committee, Inc., and Pete Wilson for President Audit Fines and
Penalties Account, Inc (LRA #478)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Audit Report on the Pete Wilson for President Committee, Inc ("Primary Committee"); Pete Wilson for President Compliance Committee, Inc ("Compliance Committee"); and Pete Wilson for President Audit Fines and Penalties Account, Inc ("Fines Committee") submitted to this Office on March 18, 1997. The following memorandum summarizes our comments on

Because the proposed Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 24, this Office recommends that the Commission's discussion of this document be conducted in open session.

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the proposed report. This Office concurs with findings in the proposed report which are not discussed separately in the following memorandum. If you have any questions concerning our comments, please contact Andre Pineda, the attorney assigned to this audit.

II. APPARENT EXCESSIVE CONTRIBUTION (SECTION III.A.1.a)

The proposed report notes that on May 1, 1995, the Primary Committee entered into a contract with The Fuller Company, a corporation owned by Craig Fuller. Pursuant to the contract, Mr. Fuller was to serve as the Primary Committee's campaign chairman, and he was to receive a \$22,000 retainer fee each month beginning May 1, 1995. The proposed report notes that the Primary Committee owes Craig Fuller \$51,185, an amount which includes an unpaid August 1995 monthly retainer fee for campaign chairman services rendered (\$22,000), as well as expenses that Mr. Fuller incurred while providing campaign chairman services, such as taxi fares, meals, and hotel lodging (\$29,193). The proposed report concludes that the unreimbursed expenses constitute an excessive contribution of \$28,193 from Mr. Fuller to the Primary Committee pursuant to 11 C.F.R. § 116.5. The proposed report rejects the Primary Committee's arguments that Mr. Fuller is a commercial vendor and his expenses, therefore, are properly analyzed under 11 C.F.R. § 116.3.

This Office concurs with the Audit Division's opinion that Mr. Fuller's expenses are problematic. However, the information provided by the Primary Committee in response to the Exit Conference Memorandum suggests that Mr. Fuller may be a commercial vendor. Thus, his expenses are better analyzed under 11 C.F.R. § 116.3 than 11 C.F.R. § 116.5.

The Primary Committee entered into a contract with The Fuller Company pursuant to which Mr. Fuller would provide campaign chairman services to the Primary Committee. In response to the Exit Conference Memorandum, the Primary Committee submitted an affidavit from Mr. Fuller stating that he is president of The Fuller Company, a sole proprietorship. His affidavit also states that he considered himself to be an independent contractor with the Primary Committee, rather than a Primary Committee employee. Mr. Fuller's affidavit further states that his 1995 federal tax return reflected his status as an independent contractor. Specifically, he received a Form 1099 from the

In its contract with the Primary Committee, The Fuller Company refers to itself as a corporation. However, Mr. Fuller's affidavit states that The Fuller Company is a sole proprietorship. See Affidavit of Craig Fuller dated January 17, 1997.

The proposed report notes that all but one Primary Committee check related to Mr. Fuller's campaign chairman services was made payable to Craig Fuller, not The Fuller Company.

Primary Committee for compensation earned in 1995 and reported this compensation on Schedule C on his 1995 tax return. Thus, Mr. Fuller's affidavit states the Primary Committee treated him as a vendor.

It appears that Mr. Fuller was not acting as an individual when he provided campaign chairman services to the Primary Committee. See 11 C.F.R. § 116.5 (provision applies to committee staff and other individuals). However, it is not entirely clear he was acting as a commercial vendor because there is no evidence that his usual and normal course of business involves the provision of campaign chairman services. 11 C.F.R. § 116.1(c). Nonetheless, this Office believes that the balance of available information at this point weighs in favor of treating Mr. Fuller as a commercial vendor pursuant to 11 C.F.R. § 116.3(c).⁴ Although Mr. Fuller did not provide copies of his 1995 federal tax return, the statements contained in his affidavit are consistent with the 1995 Internal Revenue Service ("IRS") tax year sole proprietorship requirements.⁵ Moreover, it appears that the Primary Committee did not consider Mr. Fuller an employee because it reported Mr. Fuller's earnings on IRS Form 1099, a form specifically used for nonemployees. See Instructions to 1995 IRS Form 1040 at 10 (nonemployee compensation reported on IRS Form 1099-MISC).

Nonetheless, this Office notes that the Primary Committee has failed to demonstrate that The Fuller Company's ordinary course of business was to extend credit

Because Mr. Fuller made inquiries to the Primary Committee concerning payment of his \$22,000 August 1995 retainer fee, this Office does not believe that Mr. Fuller extended credit to the Committee totaling \$22,000 under 11 C.F.R. § 116.3. See Affidavit of Craig Fuller dated January 17, 1997. This Office also notes that Mr. Fuller's August 1995 retainer fee is not properly included under 11 C.F.R.

16.5 because the retainer fee is money owed by the Primary Committee to Mr. Fuller; it is not the payment or advance of monies by Mr. Fuller to the Primary Committee for the costs incurred to provide goods and services to the Primary Committee. In limited circumstances, the Commission has permitted entities to pay upfront costs that are incurred in connection with providing goods or services to a political committee without such costs constituting a contribution to the political committee. See generally Advisory Opinions 1991-18 and 1991-20.

A sole proprietorship is "a business usually unincorporated, owned and controlled exclusively by one person." *Black's Law Dictionary* 1220 (6th Ed. 1991). For tax year 1995, the IRS required individuals who received a profit or loss from a sole proprietorship to report the gross receipts or sales from their respective businesses on IRS Schedule C, an attachment to IRS Form 1040 1995 IRS Form 1040 line 12 and 1995 IRS Form Schedule C Part 1 No. 1. Individuals determine the amount of the gross receipts or sales from their respective businesses by examining box 7 on IRS Form 1099-MISC. 1995 IRS Form Schedule C Instructions at C-2, see also Instructions to 1995 IRS Form 1040 at 10 (nonemployee compensation reported on IRS Form 1099-MISC). Thus, for tax year 1995, individuals with sole proprietorships received IRS Form 1099-MISC and reported the amount of gross receipts or sales from their respective businesses on IRS Form 1040 and Schedule C. Schedule C requires a description of the filer's business, including the general field or activity, the type of product or service, and the type of customer or client. Schedule C Instructions at C-1.

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for expenses, such as taxi fares, meals, and hotel lodging, in the course of performing work for other clients.⁶ 11 C.F.R. § 116.3(c). Mr. Fuller's affidavit only discusses the existence of The Fuller Company and his filings for the 1995 tax year; it does not discuss the business practices of The Fuller Company, and the Primary Committee has not submitted any other documentation addressing The Fuller Company's usual and normal course of business. As a result, this Office believes The Fuller Company extended credit totaling \$29,193 to the Primary Committee outside of its ordinary course of business.⁷

III. NON-QUALIFIED CAMPAIGN EXPENSES - COMPLIANCE COMMITTEE EXPENSES PAID FOR BY THE PRIMARY COMMITTEE (SECTION III.B.3.3)

The proposed report notes that the Primary Committee spent \$699,098 on joint fundraising appeals with the Compliance Committee. The Primary Committee paid the Compliance Committee's share of the joint fundraising appeals, in addition to \$10,000 for "Compliance Committee Processing."⁸

The proposed report states that Compliance Committee fundraising costs paid for by the Primary Committee are non-qualified campaign expenses. The proposed report applies a funds-received allocation method to determine the allocable costs of joint solicitations which occurred prior to August 16, 1995, the effective date of the 11 C.F.R. § 9034.4(e)(6)(i). As a result, the proposed report determined that the costs associated with the joint solicitations prior to August 16, 1995 should be allocated 85.86% to the Primary Committee and 14.14% to the Compliance Committee. Therefore, the proposed report states that the Primary Committee incurred non-qualified campaign expenses totaling \$130,854 for Compliance Committee solicitation costs.⁹

⁶ Because this Office believes Mr. Fuller's expenses are better analyzed under 11 C.F.R. § 116.3, it is immaterial whether Mr. Fuller paid for his expenses by cash or personal credit card. Compare 11 C.F.R. § 116.3(b)(2) with 116.3(b)(2).

⁷ As a commercial vendor, Mr. Fuller is not entitled to the travel exemption for individuals pursuant to 11 C.F.R. § 116.3(b). See 11 C.F.R. § 100.7(b)(8). Therefore, the amount of the contribution increases.

⁸ The Primary Committee was not required to pay such costs. The Primary Committee could have paid Compliance Committee costs without incurring non-qualified campaign expenses if it used surplus monies that may have existed once it fulfilled all of its repayment obligations. See 11 C.F.R. § 113.2(d). Alternatively, these costs could have been paid with the personal funds of Pete Wilson or they could have been paid with any remaining residual funds from a Pete Wilson committee that was authorized for a different election cycle. See 11 C.F.R. §§ 110.3(c)(5), 9003.2(c)(8), and 9035.2(b)(1).

⁹ This Office recommends that the proposed report be revised to include a discussion describing how this number was derived.

This Office does not agree that a funds-received allocation method is appropriate to determine the allocable costs of joint solicitations which occurred prior to August 16, 1995.¹⁰ Such a method contradicts prior Commission practice with respect to joint solicitation costs between a primary committee and a compliance committee. Prior to the 1992 election cycle, it does not appear the Commission specifically addressed whether costs incurred between a primary committee and a compliance committee could be allocated, and if so, what allocation method should be used. See Explanation and Justification for 11 C.F.R. § 9034.4(e), 60 Fed. Reg. 31866-68 (June 16, 1995); see generally, Financial Control and Compliance Manuals for Presidential Primary Candidates and General Election Candidates Receiving Public Financing for 1984, 1988, and 1992. However, the Commission discussed joint primary committee and compliance committee expenses in the Clinton for President Committee, Inc. ("Clinton Committee") audit. In 1992, the Clinton Committee hired a vendor to conduct two joint mailings for the Clinton/Gore '92 General Election Compliance Fund ("Clinton GELAC") and its Final Audit Report on the Clinton for President Committee, Inc. at 51 (December 20, 1994). The Clinton Committee allocated the cost of these mailings 85% to the Clinton Committee and 15% to the Clinton GELAC according to "the benefit reasonably expected to be derived [by each committee]." *Id.* at 52; see also, 11 C.F.R. § 106.1(a). The Commission rejected this method, and the joint mailing costs were allocated 50% to the Clinton Committee and 50% to the Clinton GELAC. *Id.* at 52 and 63.

In addition to this audit, the Commission promulgated a joint solicitation regulation for the 1996 election cycle, which applied to candidates who receive public funding in both the primary and the general election. 11 C.F.R. § 9034.4(e). This regulation specifically requires the costs of a solicitation to be attributed to the primary election or to the GELAC depending on the purpose of the solicitation. 11 C.F.R. § 9034.4(e)(6)(i). If a candidate solicits funds for both the primary election and for the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC. *Id.* The Commission promulgated this provision to clarify past questions "[that] have arisen as to whether a p[re] DOI communication was intended to influence the general election, or vice versa." See Explanation and Justification for 11 C.F.R. § 9034.4(e), 60 Fed. Reg. 31866-68 (June 16, 1995). Apparently, the Commission assumed that GELAC accounts would only be established by primary candidates who were assured of obtaining their party's nomination to become general election candidates. See 11 C.F.R. § 9003.3(a)(1) (GELAC may be established by a major party candidate prior to being nominated or selected as the candidate of a political party for the office of President) and § 9003.3(a)(2)(ii)(A) (compliance related costs shall initially be paid from the federal fund account of a major

¹⁰ On October 29, 1996, the Commission determined that General Election Legal and Accounting Compliance Funds ("GELAC") expenses paid by presidential primary committees are non-qualified campaign expenses. However, the Commission did not make a determination with respect to the method of allocating costs of joint fundraising between a GELAC and a primary committee.

party candidate seeking the office of the President in the general election: the GELAC may later reimburse the federal fund account for these costs).

Although 11 C.F.R. § 9034.4(e)(6)(i) does not directly apply to the Primary Committee because Governor Wilson did not receive public funding in both the primary and general elections, this regulation provides additional guidance concerning the proper allocation method for joint primary/GELAC solicitations, irrespective of whether a GELAC was established by a publicly funded candidate who failed to be nominated or selected as the candidate of a political party for President. Accordingly, this Office believes that 11 C.F.R. § 9034.4(e)(6)(i) can be used, by analogy, as support for the proposition that a 50%/50% allocation method should be used to determine the Compliance Committee's share of joint solicitation costs incurred prior to August 16, 1995.

Based on the Clinton Committee audit and 11 C.F.R. § 9034.4(e)(6)(i), by analogy, this Office believes that use of a funds received method to allocate the costs of joint solicitations between the Primary Committee and the Compliance Committee prior to August 16, 1995 is inconsistent with the Commission's past and present treatment of such costs. Accordingly, this Office believes that the Audit Division should allocate these costs on a 50%/50% basis. Therefore, this Office recommends that the Audit Division revise the proposed report to reflect this allocation percentage in the amount of non-qualified campaign expenses subject to a pro-rata repayment to be paid by the Primary Committee.

Because 11 C.F.R. § 9034.4(e)(6)(i) applies to candidates who receive public funding in both the primary and general election, it does not appear that this provision specifically applies to joint solicitations undertaken by an unsuccessful publicly funded primary candidate for President and its GELAC after August 16, 1995. However, for the above-stated reasons, this Office believes that this regulation applies by analogy to such joint solicitations. Therefore, this Office concurs with the proposed report's conclusion that joint solicitations between the Primary Committee and the Compliance Committee which occurred after August 16, 1995 should be allocated on a 50%/50% basis.

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FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20541

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May 28, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Sunna
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda Vosdingh
Assistant General Counsel

Andre C. Pineas
Attorney

SUBJECT: Proposed Audit Report on the Pete Wilson for President
Committee, Inc. Pete Wilson for President Compliance
Committee, Inc. and Pete Wilson for President Audit Fines and
Penalties Account, Inc. (LRA #478) - Supplemental Comments

I INTRODUCTION

This memorandum is written pursuant to an informal request by the Audit Division on May 16, 1997 to reconsider the conclusions contained in our memorandum dated May 13, 1997 concerning the proposed audit report on the Pete Wilson for President Committee, Inc. ("Primary Committee"), Pete Wilson for President Compliance Committee, Inc. ("Compliance Committee"), and Pete Wilson for President Audit Fines and Penalties Account, Inc. If you have any questions concerning these supplemental comments please contact Andre C. Pineas, the attorney assigned to this audit.

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II. APPARENT EXCESSIVE CONTRIBUTION (SECTION III.A.1.a)

The Audit Division requested that this Office reconsider its conclusion that Craig Fuller is most likely a commercial vendor whose transactions with the Primary Committee should be analyzed under 11 C.F.R. § 116.3. Specifically, the Audit Division informed this Office of its belief that Mr. Fuller was acting more like a Primary Committee employee, than a commercial vendor. In support of its position, the Audit Division noted the following: (1) Mr. Fuller lacked other business clients; (2) he paid for expenses via a personal credit card; (3) his business and personal address were the same; (4) his current resume does not refer to The Fuller Company; and (5) a search of The Fuller Company revealed that it was not an incorporated entity in either California, the District of Columbia, or Virginia.

Based on this request, this Office examined Internal Revenue Service Ruling 1987-41, which sets forth guidelines for determining whether a person is an employee or independent contractor for tax purposes. This ruling states that an individual is an employee for federal tax purposes if the individual has the status of an employee under the "usual common law rules applicable in determining the employer-employee relationship." Rev. Rul. 87-41, 1987-1 C.B. 296, 298. In general, an employer/employee relationship exists when the person or persons for whom the services are performed have the right to control and direct the individual who performs the services." *Id.* Thus, an individual is an employee when he or she "is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done." *Id.* The designation or description of the relationship between parties is immaterial. *Id.* However, individuals who are engaged in an independent trade, business, or profession, in which they offer their services to the public, are generally not employees. *Id.*

The Internal Revenue Service examines 20 factors to determine whether sufficient control is present to establish an employer-employee relationship. *Id.* These factors include: (1) instructions; (2) training; (3) integration; (4) services rendered personally; (5) hiring, supervising, and paying assistants; (6) continuing relationship; (7) set hours of work; (8) full time required; (9) doing work on employer's premises; (10) order or sequence set; (11) oral or written reports; (12) payment by hour, week, or month; (13) payment of business and/or traveling expenses; (14) furnishing of tools or materials; (15) significant investment; (16) realization of profit or loss; (17) working for more than one firm at a time; (18) making service available to general public; (19) right to discharge; and (20) right to terminate. *Id.* at 296-299 (explaining each factor in greater detail). No specific weight is given to a particular factor; "the degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed." *Id.* at 298. Each determination is analyzed on a case-by-case basis.

IRS rulings are not binding on controlling or Commission determinations. However, such rulings provide guidance as to how the Commission can analyze particular circumstances or situations.

At this point, this Office believes that there is insufficient information regarding Craig Fuller's relationship to the Primary Committee to definitively conclude that Mr. Fuller was a Primary Committee employee. Many of the listed factors require detailed knowledge of the relationship that Mr. Fuller and The Fuller Company had with the Committee, details which were not available during the audit. For example, it is not clear whether Mr. Fuller was required to submit oral or written reports (factor #11) or whether he was required to work a set amount of hours (factor #7). The only information obtained during the audit that provides substantive details concerning the relationship between Mr. Fuller and the Primary Committee is a contract dated May 1, 1995. This contract, however, provides little assistance in ascertaining Mr. Fuller's duties. See Article 3 ("Duties of Vendor"). Nonetheless, it appears that parts of this contract support either conclusion: that he is a Primary Committee employee or a commercial vendor. Compare factor #12 (contract provision specifying payment of monthly retainer suggests employer/employee relationship) with factor #17 (contract provision permitting the ability to contract with other parties suggests independent contractor relationship).

III. NON-QUALIFIED CAMPAIGN EXPENSES - COMPLIANCE COMMITTEE EXPENSES PAID FOR BY THE PRIMARY COMMITTEE (SECTION III.B.3.3)

The Audit Division also requested that this Office reconsider its conclusion that use of a funds-received allocation method is not appropriate to determine the allocable costs of joint solicitations incurred by the Primary Committee and the Compliance Committee prior to August 16, 1995. In short, the Audit Division informed this Office of its belief that the 1992 audit of The Clinton for President Committee, Inc. ("Clinton '92 Committee") does not constitute prior Commission practice with respect to the allocation of joint solicitation costs between a primary committee and a compliance committee. Accordingly, the Audit Division believes that no Commission precedence exists with respect to the allocation of joint primary/compliance solicitation costs prior to August 16, 1995 and as a result, use of a funds-received allocation ratio by the Commission is permissible.

This Office maintains its position that the costs incurred prior to August 16, 1995 for joint fundraising of the Primary Committee and Compliance Committee should be allocated 50%/50% to each committee. The Clinton '92 Committee audit constitutes precedent with respect to the allocation of joint primary/compliance solicitation costs incurred prior to August 16, 1995. In the Clinton '92 Committee audit, the Commission allocated the cost of the joint solicitations 50% to the Clinton '92 Committee, and 50% to the Clinton/Gore '92 General Election Compliance Fund. Therefore, it is clear that past

The factors cited by the Audit Division regarding Mr. Fuller's apparent lack of other business clients provide some evidence that Mr. Fuller is an employee of the Primary Committee. However, these factors are not dispositive.

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Commission practice was to allocate joint primary/compliance solicitation costs on a 50%/50% basis. Accordingly, this Office advises the Audit Division to apply a 50%/50% allocation percentage for Primary Committee/Compliance Committee joint solicitation costs incurred prior to August 16, 1995

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FEDERAL ELECTION COMMISSION

WASHINGTON DC 20541

August 28, 1997

Ms. Renee Croce, Treasurer
Pete Wilson for President Committee, Inc.
Pete Wilson for President Compliance Committee, Inc.
Pete Wilson for President Audit Fines and Penalties Account, Inc.
228 South Washington Street, Suite 200
Alexandria, VA 22314

Dear Ms. Croce:

Attached please find the Audit Report on Pete Wilson for President Committee, Inc., Pete Wilson for President Compliance Committee, Inc. and Pete Wilson for President Audit Fines and Penalties Account, Inc. The Commission approved the report on August 27, 1997. As noted on page 5, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9038.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$126,240 is required within 90 calendar days after service of this report (December 1, 1997).

Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (September 30, 1997), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 30 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the repayment determination, please contact Kim L. Brighi-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 30 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on September 5, 1997. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20541

August 28, 1997

Governor Pete Wilson
c/o Ms. Renee Croce, Treasurer
Pete Wilson for President Committee, Inc.
Pete Wilson for President Compliance Committee, Inc.
Pete Wilson for President Audit Fines and Penalties Account, Inc.
228 South Washington Street, Suite 200
Alexandria, VA 22314

Dear Ms. Croce:

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Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (September 30, 1997), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(2)(ii) permits a candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

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The Commission approved Audit Report will be placed on the public record on September 5, 1997. Should you have any questions regarding the public release of this report, please contact Ron Harns of the Commission's Press Office at (202) 219-4155.

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

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

WINNERS WINNERS WINNERS

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PATTON BOGGS, L.L.P.
2550 M STREET, N.W.
WASHINGTON, D.C. 20037-1350
(202) 457-6000
FACSIMILE (202) 457-6319

WRITER'S DIRECT DIAL

(202) 457-6405

October 29, 1997

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

RE: Dispute of Repayment Determination Finding for the Pete Wilson for President
Committee, Inc.

Dear Mr. McGarry:

By this submission, filed pursuant to 11 C.F.R. § 9038.2(c)(2), the Pete Wilson for
President Committee, Inc. ("Committee") disputes the amount that the Commission determined
should be repaid to the United States Treasury. Specifically, the Committee disputes strenuously
the repayment for expenditures by the Primary Committee for fundraising and administrative
costs which the Commission maintains were expenses of the Compliance Committee.¹ The
Committee does not dispute the repayment findings for stale dated checks for either the

This issue is muddled at present because the Committee's entitlement to additional matching funds is still
under Commission consideration. As such, the outcome of that decision could impact on the above NOCO
presentation. Report of the FEC Audit Division at 28. Pending the outcome of this consideration by the
Commission and the release of a Statement of Reasons, the Committee reserves the right to dispute the
determination of net outstanding campaign obligations, and, specifically, the issue of the Committee's
agreement with AT&T regarding the telephone system the Committee used while Governor Wilson was an
active candidate for President. Because the Audit Report does not call for any repayment based on the AT&T
arrangement, that issue and any impact that may have on the NOCO, is not ripe for discussion until the
Commission determines the Committee's request for additional matching funds and releases a Statement of
Reasons.

ATTACHMENT B
PAGE 1 OF 9

PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry

October 29, 1997

Page 2

Committee or the Pete Wilson for President Compliance Committee, Inc.² Checks from each committee representing the repayment amounts are attached.

This letter also constitutes a request for an opportunity to address the Commission, as provided under 11 C.F.R. § 9038.2(c)(2)(ii). We further understand that under the Commission's regulations, this will suspend the repayment date for the Committee until the Commission completes its administrative review.

The Audit Report contends that the Committee did not submit evidence demonstrating that the expenditures at issues were qualified campaign expenses. The Committee did, and this statement crystallizes the problem with the Audit Report's position. The expenses involved were all qualified campaign expenses for the simple reason that all the expenses involved were legitimate fundraising expenses of the Primary Committee. The truth that the Audit Report seeks to avoid addressing is that all the solicitation costs incurred were done to benefit the Primary Committee. These solicitations were for the Primary Committee. Any mention of the Compliance Committee was incidental. Each and every one of these solicitations would have been undertaken if the Compliance Committee had not been mentioned or did not exist. Not mentioning the Compliance Committee in the letters would not have changed their cost one cent.

Any mention of the Compliance Committee in the Primary Committee solicitations came about because of the Regulation's plain wording that a candidate may establish a general election

² On February 21, 1997, check number 1369 (attached) cleared the Pete Wilson for President Compliance Committee, Inc. account. The Compliance Committee repayment amount is adjusted accordingly.

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REPAYMENT 6
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PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry
October 29, 1997
Page 3

legal and accounting committee ("GELAC") "prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States."

11 C.F.R. § 9003.3(a)(1). The mailings were paid for solely by the Committee because

11 C.F.R. § 102.9(e)(2) also requires any candidate who raises GELAC funds pursuant to the Regulation, but does not receive the Presidential or Vice Presidential nomination, to return (or have redesignated) all of the funds collected by the GELAC. Thus, the Committee followed the directives of the Regulations, and is now being penalized by the Commission for it.

If the Compliance Committee had paid for any of these costs, the Commission would now be charging that the Compliance Committee improperly underwrote the costs of the Primary Committee. And it would be requiring repayment of all the Compliance Committee funds spent on the mailings. Faced with Regulations permitting the raising of compliance funds before the nomination and requiring a losing candidate to repay all monies raised, the Wilson Committee obviously had the Primary Committee pay the entire costs. By its interpretation, the Commission has left no way for a Committee to do what the Regulations permit it to do. The Commission voted to continue GELACs, but here, adopts a position that effectively undercuts that decision.

Despite the attempts of the Audit Report, there is no denying that this ruling has created a conflict between the Regulations. It cannot be correct that exercising a right permitted by one regulation causes a violation of another. It does not suffice to maintain, as the Audit Report does, that following a regulation "may hold potential hazards". The Audit Report's citation to

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PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry

October 29, 1997

Page 4

11 C.F.R. § 9034.4(b)(3) is misplaced for two reasons. First, the Regulation applies to a very different context -- a primary committee which improperly reduces the expenses of a general election committee -- which is not applicable here.² Secondly, the regulation refers specifically to "expenses incurred ... for property, services, or facilities". But the issue here concerns the costs of mailing out a solicitation, and not "property, services or facilities". Accordingly, the regulation cited by the Audit Report is misplaced.

SOLICITATIONS

The Committee urges the Commission to actually look at what the Audit Report calls a "solicitation". See Exhibit 6, Wilson Committees Response to Exit Conference Memorandum, Jan. 21, 1997. There is no solicitation for the Compliance Committee. The only words about the Compliance Committee are

Also, enclosed is my/our contribution in the amount of \$_____ to "Pete Wilson for President Compliance Fund" (The maximum contribution of \$1,000 per person may be made in addition to your contribution to the Presidential Committee).

This fleeting reference is not a "solicitation" within any generally accepted meaning of the word. The dictionary defines a "solicitation" as "a try to obtain by entreaty or persuasion; petitioning persistently." Only in a game of "gotcha" by the Commission could the words in the Primary Committee mailing be called a "direct solicitation of funds".

² It also cannot be correct to invoke 11 C.F.R. § 9034.4(b)(3) to argue that these were expenses used to "benefit the candidate's general election campaign". The Wilson committee did not have a general election campaign, so this could not "benefit" it.

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PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry
October 29, 1997
Page 5

In the multi-page mailings at issue, the only reference to the Compliance Committee is on one line of an accompanying response device.

The only language referring to the Compliance Committee in any of the Primary Committee's mailings comes in the context of solicitations for the Primary Committee. The events are all for the Primary Committee. The description in the materials is about the Primary Committee, not the Compliance Committee.

The Audit Report also mistakenly argues that the fact of receiving funds into the Compliance Committee demonstrates that there was a solicitation. In addition to not being able to show the plain language of a solicitation, this argument is flawed. That only 8.3 percent of the people who gave to the Compliance Committee did not give to the Primary Committee indicates that there was not a separate solicitation, or any solicitation, for the Compliance Committee within any plain meaning of that word. What it does show is that individuals who knew the law knew they could give to a GELAC, and they did. It is similarly misplaced to explain this plain fact by maintaining that a "poor response rate" is responsible. If this had been a "solicitation", then logic would dictate that the response rate for the Primary and Compliance Committees should have been roughly the same. Instead, they were off by a factor of 10, indicating that there was no "solicitation" for the Compliance Committee that would trigger the disqualification of any expenses by the Primary Committee.

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7-11-97

PETE WILSON FOR PRESIDENT COMPLIANCE
COMMITTEE, INC. (CONTRIBUTIONS)

1417
10 194500

PAY TO THE ORDER OF U.S. Treasury

October 29 19 97
\$ 62,450.00

Sixty-Two Thousand Four-Hundred Fifty and 00/100*****

DOLLARS (B)

FRANKLIN
NATIONAL BANK
1727 17th Street NW
Washington DC 20006

FOR Repayment for State Dated Checks

#001417# :054001547# 101367362#

Alan K. Fisher
Alan K. Fisher

PETE WILSON FOR PRESIDENT
COMMITTEE INC

October 29 19 97

PAY TO THE ORDER OF U.S. Treasury

\$ 22,929.00

Fifty-Two Thousand Nine-Hundred Twenty-Nine and 00/100*****

DOLLARS (B)

FRANKLIN
NATIONAL BANK
1727 17th Street NW
Washington DC 20006

FOR Repayment for State Dated Checks

#002186# :0156111617# 111161117982#

Alan K. Fisher
Alan K. Fisher

OFFICIAL COPY

FRANKLIN NATIONAL BANK

1722 Eye Street N W
Washington DC 20006

Last statement: January 31, 1997
This statement: February 28, 1997

Page 1 of 1
1013673512
(1)

PETE WILSON FOR PRESIDENT
COMPLIANCE COMMITTEE INC
20 S QUAKER LN SUITE 20
ALEXANDRIA VA 22314

Direct inquiries to:
202-331-2737

Franklin National Bank
1722 Eye Street N W
Washington DC 20006

Business Checking Account

Account number	1013673512	Beginning balance	\$67,563.93
Tax ID number	68-0353701	Total additions	.00
Enclosures	1	Total subtractions	1,000.00
Avg collected balance	\$67,278.00	Ending balance	\$66,563.93

CHECKS

<u>Number</u>	<u>Date</u>	<u>Amount</u>	<u>Number</u>	<u>Date</u>	<u>Amount</u>
1369	02-21	1,000.00			

DAILY BALANCES

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
01-31	67,563.93	02-21	66,563.93		

Thank you for banking with Franklin National Bank

9 - F 9



FEDERAL ELECTION COMMISSION

WASHINGTON DC 20461

November 14, 1997

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: RESPONSE OF THE PETE WILSON FOR PRESIDENT COMMITTEE,
INC. (WILSON COMMITTEE) TO THE COMMISSION AUDIT
REPORT

By memorandum dated November 4, 1997 you requested the Audit Division's analysis of the Wilson Committee's response to the Commission's audit report approved on August 27, 1997. The Wilson Committee makes only two arguments in the response: 1) There is a conflict in the Commission's regulations with respect to a Presidential primary candidate who elects to establish a General Election Legal and Accounting Compliance Fund (GELAC) and is not nominated by his party; and, 2) The reference to contributions to the GELAC in the Wilson Committee's solicitations is not sufficient to be defined as a solicitation and therefore, no cost should be allocated to the GELAC.

Both of these arguments were put forward in response to the Exit Conference Memorandum and are discussed in the audit report at page 29 to 32. No new information has been provided and the Audit Division's opinion has not changed.

With respect to definition of a solicitation it is noted that if the Wilson Committee's position should prevail, it will be necessary to re-evaluate which solicitations constitute a "joint solicitation" in the ongoing audits of the Dole and Clinton campaigns.

ATTACHMENT: C
Part: 1 of 2

11-11-97 10:10 AM

TRANSCRIPT OF PROCEEDINGS

In the Matter of:)
) No.: 98-16
 PETE WILSON FOR PRESIDENT)
 COMMITTEE, INC.)
 (LRA #478))

CORRECTED COPY

Oral Hearing

Pages: 1 through 39
 Place: Washington, D.C.
 Date: February 25, 1998

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 Washington, D.C.
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ATTACHMENT D
 Page 1 of 40

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FEDERAL ELECTION COMMISSION

ORAL HEARING

WEDNESDAY, FEBRUARY 25, 1998

10:05 a.m.

AGENDA

PETE WILSON FOR PRESIDENT COMMITTEE, INC.
(LRA #478)

Agenda Docket No. 98-16

HELD AT: FEDERAL ELECTIONS COMMISSION
999 E Street, N.W.
9th Floor Conference Room
Washington, D.C.

BEFORE: JOAN D. AIKENS,
Chairman

APPEARANCES:

For the Commission:

SCOTT THOMAS, Vice Chairman
JOE STOLTZ, Asst. Staff Director
ROBERT J. COSTA, Asst. Staff Director
LEE ANN ELLIOTT, Commissioner
DANNY McDONALD, Commissioner
JOHN W. MCGARRY, Commissioner
JOHN SURINA, Staff Director
LAWRENCE NOBLE, General Counsel
JOEL ROESSNER, Staff Attorney

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ATTACHMENT D
Page 2 of 40

1 PROCEEDINGS

2 (10:05 a.m.)

3 CHAIRMAN AIKENS: Good morning. This special open
4 meeting of the Federal Election Commission will please come
5 to order. On our agenda today is an oral hearing on behalf
6 of the Pete Wilson for President Committee, Inc. The
7 Committee has requested this opportunity to address the
8 Commission in open session concerning a repayment
9 determination, which is contained in the Audit Report
10 through August 27, 1997.

11 In the audit report, the Commission identified
12 expenditures totalling \$1,271,985 that the committee spent
13 on fundraising. Of this amount, the audit report concluded
14 that \$699,098 appears to have been incurred on behalf of
15 both the Committee and the Pete Wilson for President
16 Compliance Committee. The audit report further noted that
17 the Committee apparently paid an additional \$10,000 on
18 behalf of the Compliance Committee for Compliance Committee
19 processing.

20 Based on these expenditures, the Commission made a
21 determination that the Committee must repay \$29,861 to the
22 United States Treasury for non-qualified campaign expenses
23 pursuant to 11 C.F.R. 9038.6.

24 The sole purpose of this meeting is to give the
25 Committee an opportunity to address the Commission and to

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ATTENDANT D
PAGE 3 40

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1 demonstrate that no repayment or a lesser repayment is
2 required. This is not an adversarial or trial-like hearing.
3 Counsel for the Committee will have 30 minutes to make their
4 remarks. At the conclusion of the Committee's presentation,
5 each Commissioner will have an opportunity to ask questions,
6 as will the General Counsel and the Audit Division Chief.

7 After this hearing, the Committee will have five
8 days in which to submit additional material for the
9 Commission's consideration. The Commission will then make a
10 repayment determination following administrative review and
11 issue a statement and reasons in support of that
12 determination.

13 Representing the Wilson Committee today is
14 Benjamin L. Ginsberg, Esquire. I would ask Mr. Ginsberg to
15 try to keep his remarks to about 30 minutes so that we will
16 have plenty of time for questions and answers and to limit
17 it to those matters raised in the written response to the
18 Commission's initial repayment determination.

19 Good morning, Ben, and welcome.

20 MR. GINSBERG: Good morning, Madam Chairman.
21 Thank you. It's a pleasure to be here today. I am relieved
22 to hear it's not an adversarial proceeding and I look
23 forward to having the give and take of ideas. I can promise
24 you that I will be significantly shorter than 30 minutes
25 because I think there really is one main issue for our

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1 purposes today, but it is an issue of principle which is why
2 the Committee felt it important to address it.

3 The matter involves a candidate, Governor Wilson,
4 who ran into some unfortunate medical problems in the course
5 of the campaign that forced him to drop out prematurely in
6 September of 1995 from the last presidential contest. That
7 led to the somewhat unusual situation of the candidate not
8 appearing on any presidential ballots for actual purposes of
9 voting, yet being eligible for matching funds under the
10 statute and the regulations.

11 As a follower of the Commission, I certainly note
12 that this is a situation you don't like particularly and I
13 can promise you that Governor Wilson didn't much like being
14 without a candidate's most valued asset, namely his voice.
15 Nonetheless, despite some unfortunate twists of fate,
16 Governor Wilson should not be prejudiced as to repayment
17 determinations, and, similarly, the statute and
18 regulations are clear that a candidate in Governor Wilson's
19 situation is still entitled to matching funds, and he should
20 receive due and timely consideration on those issues.

21 What seems to have thrust the Wilson for President
22 Committee into this repayment dispute was, first of all,
23 what is really a catch-22 in the regs and, secondly, an
24 incidental, rather fleeting mention of the General Election
25 Legal and Accounting Committee tucked into the solicitations

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2025 RELEASE UNDER E.O. 14176

1 by Governor Wilson's Primary Committee, and I'll discuss in
2 a moment whether this mention really even constitutes a
3 solicitation for the GELAC.

4 But there are two essential points on the
5 repayment issue. Number one, nearly all of the costs for
6 the mailings at issue occurred before the Commission's Regs
7 directing the split of costs that went into effect on August
8 16, 1995. And, indeed, the cost of only one mailing at
9 issue came after the August 16th date. But, more
10 importantly, Wilson for President Committee did only what
11 your regulations permit. 9003.3.3(a)(1)(i) states that a
12 candidate may establish a GELAC, "prior to being nominated
13 or selected as a party's nominee."

14 Despite this clear wording, the regs are still
15 contradictory. As I mentioned, other regulations hold that
16 a joint solicitation must be split between the Primary
17 Committee and the GELAC. And despite this clear directive,
18 102.9(e)(2) holds that any unsuccessful candidate must
19 return all funds raised for a campaign for which he or she
20 did not receive the nomination.

21 So what's a campaign which exercises the right
22 given by 9003.3 to do? It's irrelevant whether or not the
23 GELAC is required, as the Office of General Counsel argued,
24 since it is clearly something that a candidate is allowed to
25 do under the regs. The GELAC is something that a candidate

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1 can form, and the point is that GELACs are permitted before
2 a candidate is nominated.

3 So, it's fundamentally unfair to penalize a
4 candidate for forming one. Yet that's precisely what's
5 happened here to the Wilson Committee. As a practical
6 matter, a campaign doing what's permitted by 9003.3 must
7 spend all Primary Committee funds for its solicitations in
8 order to be in full compliance, and that's what the Wilson
9 Committee did.

10 The reasons are really dictated by the regulatory
11 scheme. First, all the solicitations were, in fact, for
12 primary funds. If the GELAC did not exist, there would
13 still, of course, be solicitations by the Primary Committee,
14 yet the opposite is not true. In other words, since the
15 GELAC would not solicit on its own, there would be no reason
16 to form a GELAC on its own as an independent committee. And
17 so, all the expenses involved here would be by the Primary
18 Committee because it's only the Primary Committee that has
19 the real necessity to go out and raise funds.

20 Second, given the nature of GELACs, if the GELAC
21 had paid for any of the expenses, which you wish us to do
22 for purposes of this proceeding, the Commission would
23 rightfully be arguing to us right now that a general
24 election committee can't underwrite the cost of a Primary
25 Committee. And it's certain that if the GELAC had paid any

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EXHIBIT _____ D _____
PAGE 7 OF 40

1 portion of the cost of the mailing, the Commission would now
2 be seeking repayment for that amount.

3 Third, since 102.9 requires all successful primary
4 candidates to return -- I'm sorry -- 102.9 requires all
5 unsuccessful primary candidates to return all GELAC funds
6 raised, it's impossible to use GELAC funds for any expenses
7 before a general election, which is why the Wilson Committee
8 didn't. Basically, you're providing no way out.

9 Here's an example of what would happen if the
10 Committee did what I think you're telling us we should have
11 done in this situation. All right, a Primary Committee and
12 the GELAC, do split the cost of the mailing that generated a
13 hypothetical \$100,000 for the GELAC and then some other
14 amount for the Primary Committee. The overall cost of the
15 mailing was, say, \$40,000. Under the regs, the GELAC would
16 have to pay \$20,000 in costs for the mailing.

17 The GELAC would then have a balance of \$80,000,
18 \$100,000 raised minus the \$20,000 in fundraising costs.
19 However, should the candidate not be the nominee, under
20 102.9 then the GELAC would have to refund the full \$100,000,
21 the full amount that it raised. So how is the candidate
22 supposed to do that? He or she could go out and raise the
23 \$20,000 to make up the difference, but then there's going to
24 be a cost of fundraising to actually raise that other
25 \$20,000. So then, you'll have to raise that amount of

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1 fundraising costs.

2 And then, to raise that additional money, you'll
3 have to raise more money to pay the costs and so on and so
4 on, so that there's no physically possible way to ever catch
5 up. In other words, it's the ultimate regulatory catch-22.
6 Now, some may not like GELACs, and I can appreciate that,
7 but they are on the books, and it's fundamentally flawed to
8 punish the Committee for doing what the regulations permit
9 it to do, at the same time.

10 There's clearly a conflict between the regs, which
11 the Commission is empowered to change, and the plain
12 language of what the regs permit. In short, the Committee
13 is caught in a game of gottcha in which it can follow the
14 plain wording the regulations, but still be subject to
15 repayment determinations.

16 Secondly, let me address briefly the question of
17 whether the documents at issue actually constitute a
18 solicitation for the GELAC at all. I believe that there is
19 an example, a representative example, the one that I passed
20 out to you, and these are -- this one is part of the
21 complete set of documents which is attachment six to our
22 submission on January 19, 1997 in response to the exit
23 conference memorandum.

24 The example I have here is an invitation to a
25 primary event. The Committee didn't send much mail at all.

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1 by way of background, but when we did they were generally
2 four-page letters that included a response devise similar to
3 the one that you see here. As you can tell in the
4 solicitations itself, in the invitation, there's absolutely
5 no mention of a compliance committee or a GELAC. And, in
6 fact, there's only one small line in the response device,
7 the second box down on the bottom. And, that does not say
8 "Please send us money." It merely notes the fact that there
9 is another vehicle in which funds can be deposited. In any
10 fair reading of this invitation, it is not a solicitation
11 for the GELAC. It is but a fleeting reference to the GELAC
12 at all.

13 I think that the documents speak for themselves,
14 and I hope you do take the time to look at the full
15 attachment. The tab sits on the January 19, 1997 submission
16 where we really show that there is nothing more than a
17 fleeting reference. It says, in full, "Also enclosed is
18 my/our contribution in the amount of 'blank' dollars for the
19 Pete Wilson for President Compliance Fund ("Maximum
20 contribution of \$1,000 per person may be made in addition to
21 a contribution to the Primary Committee)." And that's all
22 there is. There's nothing in the text anywhere that says
23 "Please contribute to the GELAC, please contribute to the
24 Committee." That's just not there. This is merely showing
25 that there's a box to check for the GELAC. GELACs are

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1 permitted by 9003.3 for a candidate in Governor Wilson's
 2 position. The OGC analysis wonders how this fleeting
 3 mention of a Compliance Committee could in any way be in
 4 connection with Governor Wilson's nomination campaign. To
 5 the extent that argument is relevant, the reason is really a
 6 political decision more than anything else. And the reason
 7 was whether we needed this publicity. If this is viewed as
 8 a tactical matter, it was thought that to put in the mention
 9 of a GELAC, which is the General Election Committee,
 10 enhanced Governor Wilson's status. And it even -- pardon
 11 this expression -- showed the inevitability of his
 12 nomination. That was the reason it was in. And that did
 13 have a political calculation in that it would somehow
 14 benefit the Primary Committee.

15 If at the time that these response devices had
 16 gone out anyone had realized that 9003.3 could be construed
 17 to mean something other than what it clearly says, that "a
 18 candidate may establish a GELAC before being nominated" the
 19 Committee most certainly would not have included this
 20 fleeting reference. Given the facial contradictions in the
 21 regulations themselves and the very fleeting reference to
 22 the Compliance Committee's in the Primary Committee's
 23 solicitations, we do ask the Commission to reconsider the
 24 repayment decision and, in fact, to not require a repayment
 25 here.

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1 Wilson dropped from the race. So far we have heard
 2 absolutely nothing from the Commission about our properly
 3 filed requests for a hearing on the matching fund denial. If
 4 you have any sense of fairness, you would at least allow us
 5 to pursue that in a hearing, which is permitted under the
 6 Regs.

7 It's especially troubling since the telephone
 8 system really involves a very simple issue. We say there
 9 was a contract in May of 1995. AT&T says there was a
 10 contract in May of 1995. But still, the funds are being
 11 denied and we haven't even been afforded a hearing to
 12 express this to you. The only people who say there wasn't a
 13 meeting of the minds in that contract are all of you, and we
 14 would like the opportunity to address those issues, along
 15 with representatives of AT&T.

16 In summation, the medical difficulties of Governor
 17 Wilson, did put his presidential committee in an unusual
 18 situation regarding the receipt of matching funds. This is
 19 an issue over which we at least would appreciate a hearing.
 20 Thank you very much, and I would be happy to entertain any
 21 questions that there are.

22 CHAIRMAN AIKENS: Thank you, Mr. Ginsberg. I'm
 23 sure there are. I'd like to ask just one simple question,
 24 and I may come back to it later, but I just wanted to get a
 25 date established. You state in your -- somewhere in your

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1 report I saw it, the one solicitation mentioning a GELAC was
2 made after the effective date of the regulations --

3 MR. GINSBERG: The cost of -- I'm sorry --

4 CHAIRMAN AIKENS: What was the date of that
5 solicitation?

6 MR. GINSBERG: The -- I'm sorry. If I said that,
7 I misspoke slightly. The costs of the solicitation were all
8 before August 16th. In other words, Governor Wilson dropped
9 September 30th, all the solicitations -- but one that I
10 believe is a September 30th event is in your packages.

11 CHAIRMAN AIKENS: Yes, sir. That's the one I --

12 MR. GINSBERG: That's still before August 16th.
13 Not all the events took place before August 16th --

14 CHAIRMAN AIKENS: No.

15 MR. GINSBERG: -- but the costs were.

16 CHAIRMAN AIKENS: But it's the September 30th one
17 that's --

18 MR. GINSBERG: Yes.

19 CHAIRMAN AIKENS: Commissioner McGarry.

20 COMMISSIONER MCGARRY: Thank you, Madam Chairman.
21 Good morning, Ben.

22 MR. GINSBERG: Good morning, sir.

23 COMMISSIONER MCGARRY: Ben, I'm curious why the
24 Wilson GELAC was mentioned in the solicitation, at all.
25 Wasn't the notation (inaudible) as you point out in the

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1 comments, was it actually generated by your reading of the
2 Commission's regulations?

3 MR. GINSBERG: The political people in the
4 Committee believed that it would be helpful to note the
5 existence of the general election committee. To show it was
6 helpful to the effort to show that Governor Wilson would win
7 this. The fundraisers said, "Hey, you know, why not? It's
8 not going to hurt us in raising primary money." So there
9 was never any intent, desire or thought about diluting the
10 Primary Committee's fundraising message. All these
11 solicitations were done for the Primary Committee, but in
12 the minds of the finance people and the political committee
13 people it was helpful. In the minds of the legal people,
14 there was the ability to do it under the regs, so it was
15 done.

16 In other words, there was nothing in any letters
17 that were sent out, there's nothing in any invitations that
18 says, "Come to an event for the GELAC." It merely says,
19 "There's a box. Check it."

20 COMMISSIONER MCGARRY: I'm certainly --
21 (inaudible) and I thank you, Madam Chairman.

22 CHAIRMAN AIKENS: Commissioner Elliott.

23 COMMISSIONER ELLIOTT: Ben, I noted that in your
24 report you say that 8.3 percent of the mailings generated
25 donations solely to the GELAC. Now, does that mean you sent

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1 out 100 mailings and 8.3 percent generated donations, or
2 does that mean the number of the people that responded to
3 the language that you indicated gave -- 8.3 percent of the
4 people responded? That way it --

5 MR. GINSBERG: What it means is that if 100 people
6 responded -- math was never my strong suit, but I think 91.7
7 would have given to the Primary Committee and the GELAC --
8 I'm sorry -- would have given to the Primary Committee and
9 then 8.3 percent of the people did not give to the Primary
10 Committee but merely gave to the GELAC.

11 COMMISSIONER ELLIOTT: Okay. So we're talking
12 about people. That's very helpful.

13 MR. GINSBERG: I'm sorry. We are -- we're talking
14 about dollars, not people. My mistake.

15 COMMISSIONER ELLIOTT: The dollars were generated
16 from the people? That's the base?

17 MR. GINSBERG: Yes. It's dollars and not people.

18 COMMISSIONER ELLIOTT: Did you have any other
19 solicitations only for the GELAC?

20 MR. GINSBERG: No.

21 COMMISSIONER ELLIOTT: Okay. If you had solicited
22 only from GELAC, would it have gone to the same place that
23 the primary checks would have gone through?

24 MR. GINSBERG: The primary checks? You mean,
25 location-wise?

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1 COMMISSIONER ELLIOTT: Yes. The address where you
2 send the check?

3 MR. GINSBERG: Yes. It would have gone to the --
4 it was never a separate response device we're dealing with.

5 COMMISSIONER ELLIOTT: I see. Okay. Was any
6 money raised for the GELAC fund in any way outside of these
7 mailings?

8 MR. GINSBERG: No. Well, everything -- no. It
9 was simply putting another box on there. There was never a
10 separate GELAC solicitation. There was never a separate
11 GELAC event. It really was --

12 COMMISSIONER ELLIOTT: Or a luncheon where it was
13 done orally or something like that?

14 MR. GINSBERG: No.

15 COMMISSIONER ELLIOTT: So we're really just saying
16 that the GELAC, in total, came from the 8.3 percent of the
17 respondents to the mailing and that was it?

18 MR. GINSBERG: Yes.

19 COMMISSIONER ELLIOTT: Thank you very much.

20 CHAIRMAN AIKENS: Okay. Vice Chairman Thomas.

21 VICE CHAIRMAN THOMAS: Thank you, Madam Chairman.
22 Good morning, Ben, and thank you for coming. I first want
23 to scratch a little bit more into your interpretation of
24 what is a solicitation. You probably are fully aware of our
25 precedents in other contexts for what we consider to be a

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1 solicitation and it becomes relevant in several areas. But
2 I am just wondering how you would interpret a solicitation
3 piece that had the kind of language you're talking about,
4 where they have simply substituted the GELAC with the
5 Primary Campaign Committee.

6 Important in their (inaudible) was the state-by-
7 state spending money. As you know, we revised the
8 regulations substantially (inaudible) to greater streamline
9 and simplify the state-by-state spending limits, and one of
10 the things we did was, we said "You can attribute a
11 significant amount of (inaudible) expense, subject to the
12 overall 20 percent exemption."

13 (Inaudible by what was part of the state-by-state
14 spending limit amounts, and they considered that a
15 fundraising expense. So, what I'm curious about is if the
16 solicitation piece in that context had the exact same
17 language that you're talking about here, saying we ought not
18 consider it a solicitation piece, would you be comfortable
19 with us saying, even though you have that language at the
20 end of one of your letters you were sending in the course of
21 the primary, "We're not going to give you the benefit of
22 treating it as a fundraising expense. And, in fact, you are
23 going to have to allocate that to the communications as if
24 it were an expense subject to one of the state-by-state
25 ceiling. Do you follow?"

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1 MR. GINSBERG: No. I think it would be helpful if
2 you took the fundraising piece here and sort of marked it up
3 with the language you have suggested.

4 VICE CHAIRMAN THOMAS: And this is putting the
5 word "Primary Committee" instead of GELAC. "Also enclosed
6 is our contribution in the amount of X dollars to Pete
7 Wilson for President Primary Committee. A maximum
8 contribution of \$1,000 may be made in addition to your
9 contribution." Does it say that the maximum contribution of
10 \$1,000 per person applies, something like that? The basic
11 pitch would be "Also enclosed is our contribution in the
12 amount of X dollars to the Wilson for President Primary
13 Committee."

14 This is some mailing that you do in the context of
15 the primary, would you say that that's a solicitation
16 piece ..

17 MR. GINSBERG: We don't have the underlying
18 conflict that we've here with the regs, which allow you to
19 have a GELAC before the nomination.

20 VICE CHAIRMAN THOMAS: I just am trying to express
21 to you, we will have .. we (inaudible) try to deal with what
22 looks like a solicitation ought to be treated as a
23 solicitation when the various Federal rules apply and it
24 would be kind of hard for us I think in the context you're
25 suggesting to say that this kind of language is not a

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1 solicitation. Then to go into the state by the state
2 allocation rules and see the exact same kind of language in
3 a primary campaign and say "No, no. We can't consider that
4 a solicitation. It's not clear enough as a solicitation.
5 Therefore, the Committee can't avail itself of the
6 opportunity to consider that a fund raising expense and then
7 something that's not subject to the state by state spending
8 limits.

9 MR. GINSBERG: Well, I'm not sure the analogy
10 works. Simply because of the different regulatory schemes
11 behind the two different types of solicitations. But,
12 beyond that into what specifically you consider a
13 solicitation, while I appreciate the efforts the Commission
14 has put into trying to hone down those definitions, I'd
15 suggest that this conversation shows that there is still a
16 lot of room for confusion. I would still maintain that this
17 from the Wilson Committee was purely a solicitation for the
18 Primary Committee and merely a fleeting reference to the
19 Compliance Committee that ought not to count as a
20 solicitation in any context.

21 VICE CHAIRMAN THOMAS: Let me move on then. The
22 hypothetical you raised was intriguing for me. I too am
23 sort of trying to sort through what other ways this kind of
24 a situation might have been dealt with and, to be honest, I
25 guess I had always sort of assumed that it would be in

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1 occurring of how do you prefer to handle all of that.

2 MR. GINSBERG: Well, I think it's indicated in
3 part and some of the confusion is the fact that new regs
4 went in on August 16th that said 50/50. I think that if
5 there's anything resembling sort of a (inaudible) would
6 attribute to the cost, that makes some sense. All right, in
7 one context, in other words, 8.3 percent of the costs to be
8 paid for by the GELAC but then you're going to have to
9 refund 100 percent. And to analogize that and I don't think
10 this gets you into (inaudible.)

11 The next question with public financing, the
12 situation would really be analogous to that of an incumbent
13 member of Congress who opens up an election committee but
14 never gets on the primary ballot. In that context, it would
15 require them to refund 100 percent of the amount raised for
16 the primary ballot. The regs don't do that.

17 It seems to me that there's another way to at
18 least intellectually approach the situation here. Just to
19 follow up, my last thought was I just wanted to give you a
20 little perception into the contradictions within the
21 regulations. (Inaudible) we do recommend that you revert
22 back with (inaudible) for purposes of resolving this GELAC.
23 I think we can do one of two things. You can either revert
24 back to funds received method which I think is probably the
25 most logical or you can pass the regs that say you can't do

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1 GELAC until you're nominated. That would be (inaudible.)

2 But we find ourselves in the position of dealing
3 with contradictory regs and obviously not having a way out.

4 CHAIRMAN AIKENS: I appreciate your catch-22
5 situation. I think when we went into the regs to uncover a
6 problem that occurred in the '92 elections, we didn't think
7 long and hard enough about it. Because this would have been
8 anticipated if we did. So, I appreciate your suggestions,
9 but to change (inaudible) consider that.

10 Mr. Noble?

11 MR. NOBLE: Thank you

12 MR. NOBLE: Ben, I'd like to go back to when this
13 solicitation occurs, not having actually the solicitation in
14 front of us. Your position that -- I'd like to follow up on
15 Vice Chairman Thomas' questions. You're saying that this is
16 not a solicitation for the GELAC?

17 MR. GINSBERG: Yes.

18 MR. NOBLE: Can you show me where this is a
19 solicitation? It is for the Primary Committee.

20 MR. GINSBERG: It basically says paid for by --
21 (inaudible) -- support the Governor and Mrs. Wilson in
22 support of his candidacy for President of the United States.
23 Do you see on here where it says -- I think your objection
24 was in the way it said "give to the GELAC".

25 MR. NOBLE: Do you see anywhere on there that says

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1 give to the primary campaign?

2 MR. GINSBERG: In the sense that is says
3 (inaudible) payment (inaudible) president of the United
4 States and adding to it's thousand dollars for the Primary
5 Committee.

6 MR. NOBLE: (Inaudible) the contributions to the
7 GELAC are in support of those candidates for the primary?

8 MR. GINSBERG: Well, they obviously can't be in
9 the primary. It's a general election committee, but the
10 answer is no.

11 MR. NOBLE: So you're agreeing that they are now
12 primary expenses.

13 MR. GINSBERG: I'm sorry?

14 MR. NOBLE: So you are agreeing they're not
15 primary expenses?

16 MR. GINSBERG: This whole solicitation is a
17 Primary Committee expense.

18 MR. NOBLE: So I'm trying to just figure out if I
19 look at that card, see there are three boxes there. At the
20 minimum one-third of those boxes is (inaudible) Primary
21 Committee and one -- actually one that doesn't say Primary
22 Committee. It says "Yes, (inaudible) enclosed is my check
23 in the amount of blank for blank people."

24 Interesting though, the only box that actually
25 mentions what account it's going to go into is the one that

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1 says "(inaudible) compliance fund," which is the next box.
 2 So I'm just having a hard time visualizing what the concept
 3 of the solicitation is if you think this is a solicitation
 4 for the Primary Committee but in fact does not mention the
 5 Primary Committee but does mention the compliance fund but
 6 is not a solicitation of the compliance fund.

7 MR. GINSBERG: The support is for the Primary
 8 Committee, that's the first box to be checked. I mean, I'm
 9 not sure -- how would you rewrite the solicitation to read
 10 whatever standard it is you think should be met here?

11 MR. NOBLE: I wouldn't rewrite it. I think it's
 12 not a solicitation for the GELAC and it's a solicitation for
 13 the Primary Committee.

14 MR. GINSBERG: I have to disagree with you simply
 15 because you only have to look at the results to show that
 16 people who saw this realized it is not a solicitation for
 17 anything but GELAC Committee, with the exception of the 8.3
 18 percent.

19 MR. NOBLE: So those people were mistaken?

20 MR. GINSBERG: No, those people realized that
 21 there was a second option for them. The fact that they were
 22 certainly not part of the Primary Committee and certainly
 23 nobody thought that the GELAC was everything, and that it
 24 could solicit everything on its own independently. There
 25 never was a solicitation that said, "Please give to the

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1 catch 22 seems to me to mean that there's no way out. But
2 no matter what you do -- (inaudible) taxpayer funds for that
3 portion of the solicitation.

4 MR. GINSBERG: But if the Committee wanted to use
5 just Primary Committee money on the sense of the theory that
6 the GELAC is a general election committee and that you
7 rightfully -- for example, if I had used GELAC funds to pay
8 for this, you would be saying you need to repay that amount
9 to the GELAC. That, to me, is sort of a catch-22 situation,
10 especially when 9003.3 says you may start a GELAC before
11 you're nominated.

12 You've got to at least concede that there's
13 ambiguity there.

14 MR. NOBLE: No. I'm trying to figure out what you
15 mean is a catch-22. Because we're not saying the Primary
16 Committee -- that surplus Primary Committee funds can't be
17 used to pay for this.

18 MR. GINSBERG: That's a hypothetical that isn't
19 present in any rational scenario. There are no surplus
20 primary funds.

21 MR. NOBLE: But I'm just not getting an answer to
22 the question, what you're saying is -- you're asking for the
23 portion of funds in the GELAC that comes from the taxpayer
24 funds.

25 MR. GINSBERG: What I'm saying is that there is no

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1 GELAC solicitation here. This is a fleeting mention, this
 2 is a Primary Committee solicitation and we're caught in the
 3 catch 22 where no matter what we'd have done, somebody would
 4 have been after us for something to repay. But there is no
 5 practical way out of this situation for us, or, in fact for
 6 several other committees this cycle, who chose not to take
 7 this up with you.

8 We are not the only people who got confused by the
 9 regulatory scheme. We may be the only ones who are foolish
 10 enough to put ourselves against the weight of the Commission
 11 on this subject, but we are not the only ones who got caught
 12 in this.

13 MR. NOBLE: Again, (inaudible), what the
 14 difference would be that taxpayer funds can be used to pay
 15 for that -- if you fund the solicitation and say you have to
 16 make a payment based on the solicitation. What we are
 17 asking to be repaid is the portion of the money that would have
 18 come out of the taxpayer fund.

19 MR. GINSBERG: Ultimately you can posture this
 20 hypothetical in any way including the use of taxpayer
 21 funding so that there is an avenue to go down and possibly
 22 say, yeah, you're right. But I don't think that's what
 23 happened here.

24 MR. NOBLE: Then you are suggesting that we not
 25 have use of taxpayer funds?

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1 MR. GINSBERG: I suppose given the amounts of
2 money involved, if Governor Wilson had, which he does,
3 personal money to pay for it, that would have involved
4 taxpayer funds.

5 MR. NOBLE: But you're asking the Commission --

6 MR. GINSBERG: I think this should all be a
7 qualified campaign expense, but because it's a solicitation
8 for the Primary Committee.

9 MR. NOBLE: It's not that hard to say that you're
10 asking for taxpayer funds (inaudible.)

11 CHAIRMAN AIKENS: Joe Stoltz.

12 MR. STOLTZ: Again, if I may, going back to the
13 8.3 percent. They are the folks that gave to GELAC only?

14 MR. GINSBERG: Yes.

15 MR. STOLTZ: Do you have a similar number for
16 those who gave to both?

17 False.

18 CHAIRMAN AIKENS: He's asking the Huckaby Davis
19 Associates.

20 MR. GINSBERG: They're not afraid of math.

21 CHAIRMAN AIKENS: No. Would Mr. Huckaby or Mr.
22 Davis like to come to the table and --

23 MR. HUCKABY: I suspect they wouldn't.

24 Laughter

25 UNIDENTIFIED VOICE: You've got to invite

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1 council's help. (Laughter.)

2 CHAIRMAN AIKENS: Joe, you had to ask a hard
3 question.

4 (Laughter.)

5 UNIDENTIFIED VOICE: (inaudible.)

6 CHAIRMAN AIKENS: Excuse me, please. Would you
7 please stand and come up so we can get it on tape and on the
8 video.

9 MR. HICKYARD: I think I'm going to have to respond
10 that we would like to get back to you on that. It was my
11 understanding that the 6.3 percent although it seems to say
12 (inaudible) the 8.3 percent was the total dollar
13 percentage of the response to the solicitations. For
14 example, out of the 10 that you presented to the GELAC
15 (inaudible)

16 Well, regardless of what we had in the two
17 responses I will repeat these to you. I have some concerns
18 that maybe will answer your question. Number one is stated
19 in our initial response that 1.37 percent of the total
20 dollars raised went to the compliance fund, and the response
21 to the October 29, 1997 there is a reference that 6.3 percent
22 of the people who gave to the compliance committee did not
23 get into primary, so I think that that is the answer to your
24 question of the 8.3 percent

25 MR. STOLTE: The 8.3 percent -- (inaudible.)

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1 MR. HUCKABY: (Inaudible) we do not have that.

2 MR. STOLTZ: One other question, --

3 CHAIRMAN AIKENS: Can you supply that?

4 MR. HUCKABY: We'd be happy to.

5 CHAIRMAN AIKENS: Is the base of the percent the
6 same for that? So if you had 8.3 percent that they have
7 (inaudible) and we have 10.3 percent who gave totally, if
8 it's on the same base, the difference is 2 percent.

9 MR. HUCKABY: But they are different bases,
10 according to this. It says 8.3 percent of the people --

11 CHAIRMAN AIKENS: (Inaudible) the base yet.

12 MR. HUCKABY: Where the end response is completely
13 set on the 8 percent of the dollars it's getting. But we
14 could supply that.

15 MR. STOLTZ: And that dollar figure was GELAC
16 contribution versus total primary contributions irrespective
17 of whether they were inaudible by one being the
18 solicitation requested?

19 MR. HUCKABY: Right. It would be the total -- the
20 GELAC dollars versus the total dollars raised, yes.

21 MR. STOLTZ: The second question --

22 MR. HUCKABY: Excuse me. (Inaudible.)

23 MR. STOLTZ: In a hypothetical situation where
24 this response device (inaudible) a similar invitation of the
25 (inaudible) say, Senator Dole or President Clinton to raise

1 money and the contribution of expenses relating to that had
 2 been split 50/50 with the compliance fund during the
 3 primary, would it be your opinion that that's part paid
 4 through the compliance fund which would constitute a
 5 contribution from compliance to the Primary Committee given
 6 the same response device, the same solicitation?

7 MR. HUCKABY: Let me make sure I understand what
 8 you're saying. This is a presidential candidate who does
 9 become a general election nominee?

10 MR. STOLTZ: Correct.

11 MR. HUCKABY: Has a compliance fund --

12 MR. HUCKABY: And that fund paid 50 percent of the
 13 fund-raising costs, as provided in the regulations?

14 MR. STOLTZ: And this was done in a finite period
 15 for nomination when (inaudible) August 16 -- split it 50/50?

16 MR. GINSBERG: Well, I think we would have
 17 concerns about splitting the costs before the person had the
 18 nomination. But I think what you have to do it again under
 19 your scenario, we would still pay for it all in the primary
 20 period out of primary funds, given the regulatory scheme at
 21 the time.

22 MR. HUCKABY: Also, having been through this
 23 situation, and this is just from a practical standpoint. It
 24 doesn't cover your hypothetical. But practically what
 25 happens is most of the money raised for GELAC is raised post

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1 nomination, post (inaudible) candidacy. And if you have a
 2 little problem with the August 16th date of deciding where
 3 the 50 percent would come into play and where it would not.
 4 I think, of course, any candidate that's raising money in
 5 September, October, November and even after that, needs to
 6 read the regulations. It's states very clear to be 50/50.

7 MR. STOLTZ: See, the real question though is,
 8 whether that would constitute a solicitation. And, in order
 9 for the 50/50 to come into play, there has to be a
 10 solicitation, money solicited for vote.

11 MR. GINSBERG: So you're talking about something
 12 different from what he's got there in front of him.

13 MR. STOLTZ: No. Same thing. Same thing.
 14 Different candidate, and the candidate splits it 50/50.
 15 That was February of '86.

16 MR. GINSBERG: We never would have written a
 17 solicitation -- I mean, suppose Pete Wilson is the
 18 inevitable nominee and it was August 15th before the regs
 19 -- involves. Suppose Pete Wilson was the obviously going
 20 to be the nominee, but we were sure of his nomination so
 21 that we felt comfortable in sending out a solicitation for
 22 both the Primary Committee and GELAC and splitting the cost
 23 because we knew he was going to be the inevitable nominee.
 24 I can assure you that the fund-raisers would never let us
 25 send out something like this, if the real goal is to raise

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1 despite the objective that the (inaudible) primary is that
2 to send out solicitations directed for primary funds, that
3 it was nonetheless review the box, not unlike the box that
4 (inaudible) for the Wilson committee that gave you the
5 opportunity to contribute to the compliance committee.
6 (inaudible) paid by the Primary Committee. (Inaudible) --
7 review that as a primary solicitation, and you have done
8 nothing other than put a box on a standard response that the
9 GELAC appears.

10 I understand in the primary period, at least in
11 '93, it was treated as both primary -- (inaudible) primary
12 expense.

13 MR. STOLTZ: So that wouldn't seem to suggest then
14 that say in '96 a candidate who has done solicitation and
15 split it, that we were in a situation where at least in your
16 opinion we would have GELAC paying primary expenses.

17 MR. DAVIS: Because the regulations -- it's a hard
18 hypothetical because the '96 -- we knew that the Commission
19 would not allow a GELAC fund to pay for expenditures that --
20 let me put it this way, we knew that if the candidate did
21 not become the nominee then this is what we are dealing with
22 today, an expenditure of this type really is not qualified.
23 Speaking on behalf of the (inaudible) it's been exactly the
24 same thing that the rest of the people did, and it's also in
25 its audit report cited an amount of money due to the

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1 unqualified expenditure based on exactly what the situation
2 would be. That committee chose not to argue the point
3 before the Commission because it was a small amount. It was
4 a couple thousand dollars and it wasn't going to be worth
5 it.

6 But we propose to do exactly the same way,
7 basically we can't pay for it out of GELAC, on the funds
8 raised on the 50/50 ratio so we paid that out of primary.
9 To that extent, the operational aspect of how do you deal
10 was unfinished from '92 to '96, in our view, anyway.

11 MR. DAVIS: You have a (inaudible) but just
12 hanging over me is the realization that the Commissioners
13 are going to come back and say if you do not become the
14 nominee that you can't take anything out of the GELAC.
15 That's inaudible because you've got within in the
16 regulations they are supposed to point that you can set this
17 committee up, but no real practical way for it to pay for
18 the expenses that it's related to it, (inaudible) if you do
19 not become the nominee.

20 (Inaudible)

21 MR. STOLTZ Thank you. (Inaudible.)

22 CHAIRMAN AIKENS: Anymore questions?

23 MR. NOBLE: As you can tell, the two of us are
24 having a little trouble with the concept that this is not a
25 solicitation for the GELAC. You did receive money in

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1 response to the solicitation?

2 MR. GINSBERG: In response to this -- (inaudible).

3 MR. NOBLE: The GELAC box?

4 MR. GINSBERG: The GELAC box.

5 CHAIRMAN AIKENS: Ben, could you come to the
6 microphone?

7 MR. NOBLE: Do you track when you send out a
8 solicitation and get money back, do you track what
9 solicitation that money is coming back in response to?

10 MR. GINSBERG: Yeah.

11 MR. NOBLE: Would the checks that came in response
12 to this piece of paper, however you want to -- whatever you
13 want to call it, it was a direct contribution tracked back
14 to this document? (Inaudible) coming from this document?

15 MR. GINSBERG: From the GELAC contribution?

16 MR. NOBLE: Yes. So, in your view (inaudible) --
17 distributed to the GELAC? Do you know why they would
18 contribute to the GELAC in response to this document?

19 MR. GINSBERG: No.

20 MR. NOBLE: Did they check off that box?

21 MR. GINSBERG: I haven't reviewed all the
22 solicitations, but I'm sure somebody somewhere did.

23 MR. NOBLE: Is it a fair interpretation that they
24 contributed to the -- (inaudible) -- statement on that box?

25 MR. GINSBERG: Not necessarily. I mean, I think

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1 that there are other reasons they might have chosen to do
2 something like that.

3 MR. NOBLE: So the issue is that you don't think
4 that this statement in the box generated contributions for
5 GELAC?

6 MR. GINSBERG: I'm just saying, I don't know. I
7 wasn't one of the group. I understand where you're coming
8 from with the hypothetical --

9 MR. NOBLE: I'll take it out of hypothetical. Was
10 it the intent of the committee that that box generate
11 contributions to the GELAC?

12 MR. GINSBERG: The intent of the committee was to
13 send out a primary solicitation for primary dollars, and if
14 there is another option to start to educate people about
15 GELAC for the general election in order to help Governor
16 Wilson be perceived positively about a general election,
17 that's why you would put the box.

18 MR. NOBLE: So the box said it was my or our
19 contribution for the Pete Wilson for President compliance
20 fund, but it did not ask for a contribution?

21 MR. GINSBERG: If they wanted to give, that's
22 great.

23 CHAIRMAN AIDENS: Anyone else?

24 (No response)

25 CHAIRMAN AIDENS: All right. We thank you then.

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1 Ben, Stan and Keith.

2 MR. GINSBERG: Thank you.

3 CHAIRMAN AIKENS: And if you will submit any
4 additional materials within five days and we will take the
5 matter under consideration, and we thank you very much for
6 coming today.

7 The meeting is adjourned.

8 (Whereupon, at 10:59 a.m., the meeting was
9 adjourned.)

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DOCKET NO.: 98-16
CASE TITLE: Pete Wilson for President Committee
HEARING DATE: February 25, 1998
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: February 25, 1998

Judith Ernstes
Judith Ernstes

Official Reporter
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FOR SENATOR WILSON

**PETE WILSON FOR PRESIDENT EXPLORATORY COMMITTEE, INC.
CONTRIBUTOR RESPONSIBILITY FORM**

ALL CONTRIBUTORS PLEASE COMPLETE

The Pete Wilson for President Exploratory Committee, Inc. may be able to receive Federal Matching Funds for your contribution if you complete and sign the statement below. Note that if you and your spouse are contributing an amount greater than \$250, you should complete and sign the form below so that we can double the Federal Matching Funds.

The contribution drawn on Check # _____ of the account named as _____ represents my/our personal funds and is not drawn on an account maintained by an incorporated entity.

Signature of Original Contributor: _____

Signature of Spouse: _____

(date spouse died sign)

Checks should be made payable to: Pete Wilson for President Exploratory Committee, Inc.
Contributions to the Pete Wilson for President Exploratory Committee are not tax deductible as charitable contributions.

Paid for by The Pete Wilson for President Exploratory Committee, Inc.

Denle A. Boyin
Stanley C. Gale
George R. Gilmore, Esq.
Mr. and Mrs. Lowell Harwood
Hersh Kozlov, Esq.
Hon. William "Pat" Schubert

Judy Shaw
Steven E. Some
Candace L. Stralight
Peter D. Sudler, Esq.
John M. Torok
Robert M. Wallach

RECEPTION CO-CHAIRPERSONS

HONORARY CHAIRPERSON

Hon. Jim Courter

CHAIRPERSON

Hazel Frank Gluck

The Pleasure of Your Company

is Requested
for a Reception
Honoring

Governor Pete Wilson

Monday, May 15, 1995
5:30 p.m.

Pete Wilson for President Exploratory Committee, Inc.
c/o The Alexander Company

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UNION • UNION • UNION



100 lbs. Net Weight

S/13 5/11/11

3 of 11 E



**PETE WILSON FOR PRESIDENT EXPLORATORY COMMITTEE, INC
CONTRIBUTOR RESPONSE FORM**

ALL CONTRIBUTORS PLEASE COMPLETE:

The Pete Wilson for President Exploratory Committee, Inc. may be able to receive Federal Matching Funds for your contribution if you complete and sign the statement below. Note that if you and your spouse are contributing an amount greater than \$250, you should complete and sign the form below so that we can double the Federal Matching Funds.

The contribution drawn on Check # _____ of the account named as _____ represents my/our personal funds and is not drawn on an account maintained by an incorporated entity.

Signature of Original Contributor _____

Signature of Spouse _____
(Both spouses should sign)

Checks should be made payable to Pete Wilson for President Exploratory Committee, Inc. Contributions to the Pete Wilson for President Exploratory Committee are not tax deductible as charitable contributions.

Paid for by The Pete Wilson for President Exploratory Committee, Inc

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I We are planning to attend the Dinner with Governor and Mrs. Pete Wilson on Monday, May 1, 1995. Enclosed is my/our check in the amount of \$ _____ for _____ people.

Also, enclosed is my/our contribution in the amount of \$ _____ to the "Pete Wilson Compliance Fund" (This contribution can be made in addition to the Exploratory Committee.) Total combined contribution not to exceed \$2,000 per person.

I/We will not be able to attend the Dinner with Governor and Mrs. Pete Wilson, but have enclosed a contribution in the amount of \$ _____ to show my/our support for Pete's Presidential campaign.

Name _____

Address _____

Phone _____ (C) _____ (H)

Employer _____

Occupation _____

Checks should be made payable to Pete Wilson for President Exploratory Committee, Inc. Contributions to the Pete Wilson for President Exploratory Committee are not tax deductible as charitable contributions. (Please see reverse)

Cullamire

Pete Wilson for President Exploratory Committee, Inc.
c/o The Alexander Company
1016 1/2 Ontario Street
Alexandria, VA 22304

Dinner Co-Chairmen

- Wilma and Stuart Bernstein
- Kate and Fred Bush
- Alexandra and Arnaud de Borchgrave
- Suellen Estrin
- Sydney McNiff Ferguson
- Alma and Joseph Gildenhorn
- Benjamin L. Ginsberg

- Constance B. Harriman
- Lynne and Shelly Kamins
- Jacqueline and Marc Leland
- Mark C. Lowham
- Mary M. Ourisman
- Diane and Peter Terpeluk

Dinner Vice-Chairmen

- Carol A. Anderson
- Susan Hurley Bennett
- J. Patrick Boyle
- Gahl Hodges Burt
- Judy R. Cohen
- Marlene M. Colucci
- Ann Costello
- Mark and Laura Cowan

- Howard L. Hills
- R. Edward Ingle
- Franmarie Kennedy-Keel
- Norma Kline
- Karen Lewis
- Francline S. Linde
- Robert J. Monahan, Jr.
- Robert C. ...

Willard Inter-Continental
Ballroom
1401 Pennsylvania Avenue, NW
Washington, D.C.

6 (H) p.m. Reception
7:15 p.m. Dinner

Monday, May 1, 1995

GOVERNOR AND MRS. PETE WILSON

10-11

**PETE WILSON FOR PRESIDENT EXPLORATORY COMMITTEE INC
CONTRIBUTOR RESPONSE FORM**

ALL CONTRIBUTORS PLEASE COMPLETE

The Pete Wilson for President Exploratory Committee, Inc. may be able to receive Federal Matching Funds for your contribution if you complete and sign the statement below. Note that if you and your spouse are contributing an amount greater than \$250, you should complete and sign the form below so that we can double the Federal Matching Funds.

The contribution drawn on Check # _____ of the account named as _____ represents my/our personal funds and is not drawn on an account maintained by an incorporated entity.

Signature of Original Contributor _____

Signature of Spouse _____
(Both spouses should sign)

Federal law requires political committees to report the name, mailing address, occupation and employer for each individual whose contribution aggregate in excess of \$200 in a calendar year.

Paid for by The Pete Wilson for President Exploratory Committee, Inc.

11
E
11

UNIVERSITY OF MICHIGAN LIBRARY

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)	(P)	(Q)	(R)	(S)	(T)	(U)	(V)	(W)	(X)	(Y)	(Z)
Vendor	Chg #	Chg Date	Chg Amt																						
Other ABCZ																									
231 Mackay's Automobile	0001	22 May 68	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00	540 000 00

REPAYMENT DUE U.S. TREASURY FROM OF BONDHOLDERS U.S.B. and B. (above)

Source: WFP
Prepared by WFP

1968



Wilson for President

Schedule of NOCE

Attachment 1 (Revised)

Wilson for President

Schedule of Non Qualified Campaign Disbursements
By Cost Centers/Groupings
Modified A Boniewicz 10-20-98

	Postage, Direct Mail Printing	Consulting & Expenses	Other Event Costs	TOTAL	TOTAL	TOTAL
I Expenditures Subject to 11 CFR 9034 4(e)(8)(7) (Effective Date 8-18-95)						
Gross Cost	\$29,892 86	\$15,157 61	\$16,189 50	\$61,239 97		
Gross Cost Times 50	\$14,946 47	\$7,578 81	\$8,094 75		\$30,620 03	
Repayment @ .230443	\$3,444 31	\$1,746 48	\$1,865 38			\$7,056.17
II Expenditures NOT Subject to 11 CFR 9034 4(e)(8)(1)						
Gross Cost	\$98,551 37	\$278,562 78	\$261,029 85	\$638,143 98		
Gross Cost Times 1384	\$13,738 06	\$38,831 85	\$36,387 56		\$88,957 27	
Repayment @ .230443	\$3,165 84	\$8,948 48	\$8,385 26			\$20,499 58
			Subtotal	\$699,383 95	\$119,577 30	\$27,555.75
III Other NOCE:						
Compliance Processing	\$10,000 00			\$10,000 00	\$10,000 00	\$2,304.43
			Totals	\$709,383 95	\$129,577 30	\$29,860 18
Total Gross Cost Sections I & II	\$128,444 23	\$293,720 37	\$277,219 35	\$699,383 95	Crossfoot	
Total Repayment Sections I & II.	\$6,610 15	\$10,694 96	\$10,250 64	\$27,555 75	Crossfoot	

Page 1
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U.S.
 11/1/98
 11/1/98
 11/1/98
 11/1/98



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

MEMORANDUM

TO: The Commissioners
Acting Staff Director
General Counsel's Noble
Press Officer Harris

FROM: *MCD* Marjorie W. Emmons/Lisa R. Davis *(Signature)*
Secretary of the Commission

DATE: December 4, 1998

SUBJECT: Statement of Reasons for Pete Wilson for
President, Petition for Rehearing.

Attached is copy of the Statement of Reasons in Pete
Wilson for President, Petition for Rehearing signed by Acting
Chairman Scott E. Thomas and Commissioner Danny L. McDonald.
This was received in the Commission Secretary's Office on
Friday, December 4, 1998 at 12:35 p.m.

Attachment

c: V. Convery, OGC

UNCLASSIFIED



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

In the Matter of)
)
Governor Pete Wilson's and the)
Pete Wilson for President Committee,) Agenda Document #98-66
Inc.'s Request for Additional Matching)
Funds - Proposed Statement of Reasons)
Denying Petition for Rehearing)

STATEMENT OF REASONS

**ACTING CHAIRMAN SCOTT E. THOMAS
COMMISSIONER DANNY LEE. MCDONALD**

On July 31, 1997 and August 21, 1997, the Federal Election Commission considered a request for \$149,435 in additional matching funds made by Governor Pete Wilson and the Pete Wilson for President Committee, Inc. ("the Wilson Committee"). Since the Commission failed to approve by four affirmative votes the Wilson Committee's request for additional matching funds, *see* 11 C.F.R. § 9033.10(c), the Wilson Committee's request was not granted. *See* 2 U.S.C. § 437c(c). On November 5, 1997, the three Commissioners who voted against granting the Wilson Committee's request for additional matching funds issued a Statement of Reasons explaining the basis for their votes. This Statement of Reasons was sent to the Wilson Committee on November 13, 1997. Thereafter, on November 17, 1997, the Wilson Committee submitted a Petition for Rehearing in response to the November 5, 1997 Statement of Reasons.

On October 22, 1998, the Commission considered, and we voted for, a proposed Statement of Reasons and a recommendation denying the Petition for Rehearing filed by the Wilson Committee. The Commission's Office of General Counsel, in accord with the Commission's Audit Division, had recommended that the Commission deny the Wilson Committee's Petition for Rehearing. *See* Agenda Document #98-66, attached. Commissioners Elliott, Mason and Wold disagreed and would have granted the Petition for Rehearing. Commissioner Sandstrom recused in the matter. Since a majority of the Commission did not approve the Wilson Committee's Petition for Rehearing, it was denied. *See* 2 U.S.C. § 437c(c).

1998 OCT 22 10 59 AM

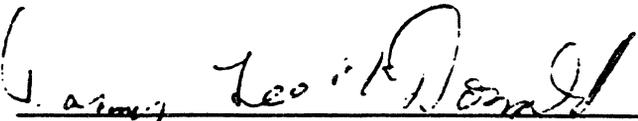
In denying the Wilson Committee's Petition for Rehearing, we specifically support and adopt the proposed Statement of Reasons drafted by the Office of General Counsel and contained in Agenda Document #98-66. See Attachment. Based upon a careful and thorough review of the law and factual record pertaining to this request, this Document clearly and fully explains our reasons for voting to deny the Wilson Committee's Petition for Rehearing.

12/3/98
Date



Scott E. Thomas
Acting Chairman

12/3/98
Date



Danny Lee McDonald
Commissioner

ATTACHMENT:

Agenda Document #98-66, Governor Pete Wilson's and the Pete Wilson for President Committee, Inc.'s Request for Additional Matching Funds - Proposed Statement of Reasons on Petition for Rehearing (LRA #478)

WILSON'S PETITION FOR REHEARING



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEB 27 11 11 AM '98

February 27, 1998

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman *KBC*
Associate General Counsel

Rhonda J. Vosdingh *RJV*
Assistant General Counsel

Andre G. Pineda
Attorney *AGP*

SUBJECT: Pete Wilson for President Committee, Inc. -
Procedures Regarding Petitions for Rehearing
(LRA #478)

On February 25, 1998, Benjamin L. Ginsberg, on behalf of his clients, the Honorable Pete Wilson and the Pete Wilson for President Committee, Inc. (collectively "the Committee"), made an oral presentation before the Commission with respect to a Commission determination that the Committee repay \$29,861 to the United States Treasury. The Committee requested the oral presentation to elaborate upon the matters discussed in its response to the Commission's audit report on the Committee dated October 29, 1997.

During the oral hearing, Mr. Ginsberg stated that the Committee's Petition for Rehearing dated November 17, 1997 ("the Petition") made in connection with the Committee's request for additional matching funds had not yet been considered by the Commission. He further informed the Commission that the Committee desires an oral hearing with respect to its Petition.¹

¹ The Office of General Counsel is currently drafting a statement of reasons analyzing the Committee's Petition, which this Office anticipates will be circulated to the Commission shortly.

6-96-1198-529-99

Oral hearings are part of the Commission's procedures with respect to repayment determination disputes. 11 C.F.R. § 9038.2(c)(2)(ii). The Commission's regulations do not, however, provide for oral hearings regarding the Commission's determinations of committee's entitlement to matching funds. 11 C.F.R. §§ 9034.5(g) and 9038.5(a). Accordingly, the Committee does not have a right to make an oral presentation with respect to its Petition.

This memorandum is being sent on an informational basis. If you have any questions, please contact Andre G. Pineda at (202) 219-3690. As of March 2, 1998, the telephone number will change to (202) 694-1650.

✓ J. G. Pineda ✓

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the request of the Pete Wilson for President Committee, Inc. to make an oral presentation as provided at 11 C.F.R. § 9038.2(c)(2)(ii);
2. Schedule the oral presentation for the end of January or early February 1998; and
3. Approve the appropriate letter.

Attachment

Pete Wilson for President Committee, Inc. response dated October 29, 1997

0030711 5755 755 555



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Nov 20 1997

November 20, 1997

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman *KBC*
Associate General Counsel

SUBJECT: Pete Wilson for President Committee, Inc. - LRA #478
Withdraw Report and Resubmit

This Office is withdrawing the Pete Wilson for President Committee, Inc. - Request for Oral Presentation Report dated November 18, 1997, which was inadvertently circulated on 72 hour tally vote. Our intention was to place this document on the Open Meeting Agenda for December 4, 1997.

2025 RELEASE UNDER E.O. 14176



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Nov 18 1997

November 18, 1997

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

By: Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdinger
Assistant General Counsel

Andre G. Pineda
Attorney

SUBJECT: Pete Wilson for President Committee, Inc. -
Request for Oral Presentation (LRA #478)

On October 29, 1997, the Pete Wilson for President Committee, Inc. ("the Committee") requested the opportunity to address the Commission in open session in connection with its written response to the audit report and the initial repayment determination as provided in the Commission's regulations at 11 C.F.R. § 9038.2(c)(2)(ii) (1997). See Attachment. The Office of General Counsel recommends that the Commission grant the Committee's request for an oral presentation and schedule the presentation for the end of January or early February 1998.

The Commission's regulations provide publicly funded candidates with the opportunity to respond to an initial repayment determination by submitting written legal and factual materials to demonstrate that no repayment, or a lesser repayment, is appropriate. 11 C.F.R. § 9038.2(c)(2). A candidate may request an opportunity to address the Commission in open session. 11 C.F.R. § 9038.2(c)(2)(ii). The candidate should identify in his legal and factual materials the repayment issues he or she wants to

address at the oral hearing. *Id.* The Commission may grant this request by an affirmative vote of four of its members, and inform the candidate of the date and time set for the oral presentation. *Id.*

The Committee has requested an opportunity to make an oral presentation to elaborate upon its position with respect to the Commission's initial repayment determination made pursuant to 26 U.S.C. § 9038(b). Specifically, the Committee "disputes strenuously the repayment for expenditures by the [] Committee for fundraising and administrative costs which the Commission maintains were expenses of the Compliance Committee."¹ Attachment at 1.

The Office of General Counsel believes that an oral presentation may assist the Commission to reach a final repayment determination. Accordingly, this Office recommends that the Commission grant the Committee's request. Should the Commission approve our recommendation, the Office of General Counsel proposes that procedures similar to those used for previous presentations in past election cycles be followed. Pursuant to these past procedures, the Office of General Counsel will prepare an analysis of the issues presented prior to the date of the presentation. This analysis will be provided to the Commission and to the Committee. In addition, this Office will prepare an agenda document containing materials relevant to the Committee's oral presentation.

At the presentation, the Chairman will make an opening statement. The Committee will then be allocated an amount of time in which to make an a presentation on the issues raised in the legal and factual materials submitted by the Committee. 11 C.F.R. § 9038.2(c)(2)(ii). Consistent with oral presentations in the 1992 election cycle, this Office recommends that the Committee be given 30 minutes for its presentation. *See* Memorandum to Commission dated August 8, 1994 on Wilder for President Committee, Inc. - Request for Oral Presentation. Following the presentation, individual Commissioners, the General Counsel, and the Audit Division may ask questions. 11 C.F.R. § 9038.2(c)(2)(ii). The letter to the Committee will inform the Committee of these procedures and also state that any additional materials the Committee may wish to have the Commission consider should be submitted to the Office of General Counsel within five (5) days following the presentation.

¹ The Committee does not dispute, however, the stale dated check findings pertaining to it or the Pete Wilson for President Compliance Committee, Inc. As a result, the Committee included checks with its written response made payable to the United States Treasury for the amounts specified in the Audit Report. *Id.*

Public Records



FEDERAL ELECTION COMMISSION

Washington, DC 20463

DATE & TIME OF TRANSMITTAL: Tuesday, November 18, 1997 4:00

BALLOT DEADLINE: Friday, November 21, 1997 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, THOMAS

SUBJECT: **Pete Wilson for President Committee, Inc. --
Request for Oral Presentation (LRA #485).
Memorandum to the Commission dated
November 18, 1997.**

() I approve the recommendation(s)

() I object to the recommendation(s)

COMMENTS: _____

DATE: _____

SIGNATURE: _____

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

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

2025 RELEASE UNDER E.O. 14176

PATTON BOGGS, L.L.P.
2550 M STREET N W
WASHINGTON D C 20037-1350
202 457-6000
FACSIMILE 202 457 6315

WRITER'S DIRECT DIAL

(202) 457-6405

October 29, 1997

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

RE: Dispute of Repayment Determination Finding for the Pete Wilson for President Committee, Inc.

Dear Mr. McGarry:

By this submission, filed pursuant to 11 C.F.R. § 9038.2(c)(2), the Pete Wilson for President Committee, Inc. ("Committee") disputes the amount that the Commission determined should be repaid to the United States Treasury. Specifically, the Committee disputes strenuously the repayment for expenditures by the Primary Committee for fundraising and administrative costs which the Commission maintains were expenses of the Compliance Committee.¹ The Committee does not dispute the repayment findings for stale dated checks for either the

- This issue is muddled at present because the Committee's "entitlement to additional matching funds is still under Commission consideration. As such, the outcome of that decision could impact on the above NOCO presentation." Report of the FEC Audit Division at 28. Pending the outcome of this consideration by the Commission and the release of a Statement of Reasons, the Committee reserves the right to dispute the determination of net outstanding campaign obligations, and, specifically, the issue of the Committee's agreement with AT&T regarding the telephone system the Committee used while Governor Wilson was an active candidate for President. Because the Audit Report does not call for any repayment based on the AT&T arrangement, that issue and any impact that may have on the NOCO, is not ripe for discussion until the Commission determines the Committee's request for additional matching funds and releases a Statement of Reasons.

08/18

ATTACHMENT 1

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PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry
October 29, 1997
Page 2

Committee or the Pete Wilson for President Compliance Committee, Inc.² Checks from each committee representing the repayment amounts are attached.

This letter also constitutes a request for an opportunity to address the Commission, as provided under 11 C.F.R. § 9038.2(c)(2)(ii). We further understand that under the Commission's regulations, this will suspend the repayment date for the Committee until the Commission completes its administrative review.

The Audit Report contends that the Committee did not submit evidence demonstrating that the expenditures at issues were qualified campaign expenses. The Committee did, and this statement crystallizes the problem with the Audit Report's position. The expenses involved were all qualified campaign expenses for the simple reason that all the expenses involved were legitimate fundraising expenses of the Primary Committee. The truth that the Audit Report seeks to avoid addressing is that all the solicitation costs incurred were done to benefit the Primary Committee. These solicitations were for the Primary Committee. Any mention of the Compliance Committee was incidental. Each and every one of these solicitations would have been undertaken if the Compliance Committee had not been mentioned or did not exist. Not mentioning the Compliance Committee in the letters would not have changed their cost one cent.

Any mention of the Compliance Committee in the Primary Committee solicitations came about because of the Regulation's plain wording that a candidate may establish a general election

² On February 21, 1997, check number 1369 (attached) cleared the Pete Wilson for President Compliance Committee, Inc. account. The Compliance Committee repayment amount is adjusted accordingly.

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ATTACHMENT 1

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PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry
October 29, 1997
Page 3

legal and accounting committee ("GELAC") "prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States."

11 C.F.R. § 9003.3(a)(1). The mailings were paid for solely by the Committee because 11 C.F.R. § 102.9(e)(2) also requires any candidate who raises GELAC funds pursuant to the Regulation, but does not receive the Presidential or Vice Presidential nomination, to return (or have redesignated) all of the funds collected by the GELAC. Thus, the Committee followed the directives of the Regulations, and is now being penalized by the Commission for it.

If the Compliance Committee had paid for any of these costs, the Commission would now be charging that the Compliance Committee improperly underwrote the costs of the Primary Committee. And it would be requiring repayment of all the Compliance Committee funds spent on the mailings. Faced with Regulations permitting the raising of compliance funds before the nomination and requiring a losing candidate to repay all monies raised, the Wilson Committee obviously had the Primary Committee pay the entire costs. By its interpretation, the Commission has left no way for a Committee to do what the Regulations permit it to do. The Commission voted to continue GELACs, but here adopts a position that effectively undercuts that decision.

Despite the attempts of the Audit Report, there is no denying that this ruling has created a conflict between the Regulations. It cannot be correct that exercising a right permitted by one regulation causes a violation of another. It does not suffice to maintain, as the Audit Report does, that following a regulation "may hold potential hazards". The Audit Report's citation to

PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry

October 29, 1997

Page 4

11 C.F.R. § 9034.4(b)(3) is misplaced for two reasons. First, the Regulation applies to a very different context -- a primary committee which improperly reduces the expenses of a general election committee -- which is not applicable here.² Secondly, the regulation refers specifically to "expenses incurred ... for property, services, or facilities". But the issue here concerns the costs of mailing out a solicitation, and not "property, services or facilities". Accordingly, the regulation cited by the Audit Report is misplaced.

SOLICITATIONS

The Committee urges the Commission to actually look at what the Audit Report calls a "solicitation". See Exhibit 6, Wilson Committees Response to Exit Conference Memorandum, Jan. 21, 1997. There is no solicitation for the Compliance Committee. The only words about the Compliance Committee are:

Also, enclosed is my/our contribution in the amount of \$_____ to "Pete Wilson for President Compliance Fund." (The maximum contribution of \$1,000 per person may be made in addition to your contribution to the Presidential Committee).

This fleeting reference is not a "solicitation" within any generally accepted meaning of the word. The dictionary defines a "solicitation" as "a try to obtain by entreaty or persuasion; petitioning persistently." Only in a game of "gottcha" by the Commission could the words in the Primary Committee mailing be called a "direct solicitation of funds".

² It also cannot be correct to invoke 11 C.F.R. § 9034.4(b)(3) to argue that these were expenses used to "benefit the candidate's general election campaign". The Wilson committee did not have a general election campaign, so this could not "benefit" it.

PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry
October 29, 1997
Page 5

In the multi-page mailings at issue, the only reference to the Compliance Committee is on one line of an accompanying response device.

The only language referring to the Compliance Committee in any of the Primary Committee's mailings comes in the context of solicitations for the Primary Committee. The events are all for the Primary Committee. The description in the materials is about the Primary Committee, not the Compliance Committee.

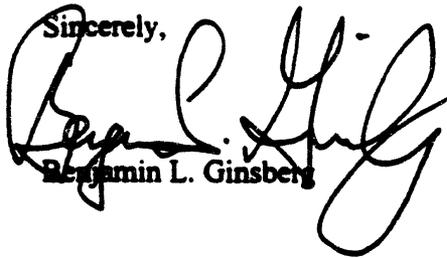
The Audit Report also mistakenly argues that the fact of receiving funds into the Compliance Committee demonstrates that there was a solicitation. In addition to not being able to show the plain language of a solicitation, this argument is flawed. That only 8.3 percent of the people who gave to the Compliance Committee did not give to the Primary Committee indicates that there was not a separate solicitation, or any solicitation, for the Compliance Committee within any plain meaning of that word. What it does show is that individuals who knew the law knew they could give to a GELAC, and they did. It is similarly misplaced to explain this plain fact by maintaining that a "poor response rate" is responsible. If this had been a "solicitation", then logic would dictate that the response rate for the Primary and Compliance Committees should have been roughly the same. Instead, they were off by a factor of 10, indicating that there was no "solicitation" for the Compliance Committee that would trigger the disqualification of any expenses by the Primary Committee.

PATTON BOGGS, L.L.P.

The Honorable John Warren McGarry
October 29, 1997
Page 6

As this argument demonstrates, the Committee disputes the 13.94 percent repayment figure used in the Audit Report.

For the reasons set forth above, the Wilson for President Primary Committee requests that the Commission determine a lesser repayment as set forth above.

Sincerely,

Benjamin L. Ginsberg

BLG/jmt

1 of 1
10/29/97

PETE WILSON FOR PRESIDENT COMPLIANCE
COMMITTEE, INC. (CONTRIBUTIONS)

1417
15-154/540

October 29 19 97

PAY TO THE ORDER OF U.S. Treasury

\$ 62,450.00

Sixty-Two Thousand Four-Hundred Fifty and 00/100*****

DOLLARS

FRANKLIN
NATIONAL BANK
1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006

Lisa R. Fisher
Jane Chapman

FOR Repayment for State Dated Checks

⑆001417⑆ ⑆054001547⑆ 1013673612⑆

PETE WILSON FOR PRESIDENT
COMMITTEE INC.

7186
15-154/540

October 29 19 97

PAY TO THE ORDER OF U.S. Treasury

\$ 32,929.00

Thirty-Two Thousand Nine-Hundred Twenty-Nine and 00/100*****

DOLLARS

FRANKLIN
NATIONAL BANK
1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006

Lisa R. Fisher
Jane Chapman

FOR Repayment for State Dated Checks

⑆007186⑆ ⑆054001547⑆ 1014381112⑆

FRANKLIN NATIONAL BANK

1722 Eye Street N W
Washington DC 20006

Last statement: January 31, 1997
This statement: February 28, 1997

Page 1 of 1
1013673512
(1)

PETE WILSON FOR PRESIDENT
COMPLIANCE COMMITTEE INC
20 S QUAKER LN SUITE 20
ALEXANDRIA VA 22314

Direct inquiries to:
202-331-2737

Franklin National Bank
1722 Eye Street N W
Washington DC 20006

011711526793

Business Checking Account

Account number	1013673512	Beginning balance	\$67,563.93
Tax ID number	68-0353701	Total additions	.00
Enclosures	1	Total subtractions	1,000.00
Avg collected balance	\$67,278.00	Ending balance	\$66,563.93

CHECKS

<u>Number</u>	<u>Date</u>	<u>Amount</u>	<u>Number</u>	<u>Date</u>	<u>Amount</u>
1369	02-21	1,000.00			

DAILY BALANCES

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
01-31	67,563.93	02-21	66,563.93		

Thank you for banking with Franklin National Bank

ATTACHMENT 1
Page 1 of 1



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 5, 1997

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA 
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE REPORT OF THE AUDIT DIVISION ON
THE PETE WILSON FOR PRESIDENT COMMITTEE, INC.; PETE
WILSON FOR PRESIDENT COMPLIANCE COMMITTEE, INC. AND
PETE WILSON FOR PRESIDENT AUDIT FINES AND PENALTIES
ACCOUNT, INC.

Attached please find a copy of the report and related documents on the Pete Wilson for President Committee, Inc.; Pete Wilson for President Compliance Committee, Inc. and Pete Wilson for President Audit Fines and Penalties Account, Inc. which was approved by the Commission on August 27, 1997.

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

99-76525-1713

REPORT OF THE AUDIT DIVISION

ON THE

Pete Wilson for President Committee, Inc
Pete Wilson for President
Compliance Committee, Inc.
and
Pete Wilson for President
Audit Fines and Penalties Account, Inc.

Approved August 27, 1997



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

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REPORT OF THE AUDIT DIVISION
ON THE
Pete Wilson for President Committee, Inc
Pete Wilson for President
Compliance Committee, Inc.
and
Pete Wilson for President
Audit Fines and Penalties Account, Inc.

Approved August 27, 1997



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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON
PETE WILSON FOR PRESIDENT COMMITTEE, INC.;
PETE WILSON FOR PRESIDENT COMPLIANCE COMMITTEE, INC.;
AND
PETE WILSON FOR PRESIDENT AUDIT FINES AND PENALTY ACCOUNT, INC.;**

EXECUTIVE SUMMARY

The Pete Wilson for President Committee, Inc. (the Primary Committee) registered with the Federal Election Commission on April 3, 1995. In addition, the Pete Wilson for President Compliance Committee, Inc. (the Compliance Committee) registered with the Commission on April 20, 1995. Finally, the Pete Wilson for President Audit Fines and Penalty Account, Inc. (the Audit Fines Committee) registered with the Commission on January 23, 1996.

The audit was conducted pursuant to 26 U.S.C. §9038(a) which requires the Commission to audit committees that receive matching funds. The Candidate received \$1.7 million in matching funds.

The findings of the audit were presented to the Committees at a conference held at the end of fieldwork and were addressed in the Exit Conference Memorandum presented on November 4, 1996. The Committees' responses to those findings are contained in the audit report.

The following is an overview of the findings contained in the audit report.

APPARENT EXCESSIVE CONTRIBUTIONS RESULTING FROM STAFF ADVANCE AND EXTENSION OF CREDIT BY A COMMERCIAL VENDOR — 2 U.S.C. §§441a(a)(1)(A) and (b); 11 CFR §§ 116.5 and 116.3. The exit conference memorandum questioned whether a staff advance constituted a \$28,193 excessive contribution and whether an extension of credit by a commercial vendor constituted a \$213,365 prohibited contribution. In response, the Primary Committee argued that the staff advance should be considered an ordinary course extension of credit by a vendor rather than as a staff advance. The report concludes that a contribution occurred under either analysis. With respect to the commercial vendor, the Primary Committee contends that no extraordinary extension of credit occurred. After considering the information and explanations provided, the report concludes that the contribution did occur.

MISSTATEMENT OF FINANCIAL ACTIVITY — 2 U.S.C. §434(b)(1), (2) and (4). The exit conference memorandum noted that both the Primary Committee and Compliance Committee misstated financial activity on disclosure reports filed for the first four months of 1996. Both Committees filed adequate amended reports during the course of audit fieldwork.

DISCLOSURE OF DEBTS/OBLIGATIONS AND OCCUPATION/NAME OF EMPLOYER — 2 U.S.C. §§434(b)(3) and (8). The exit conference memorandum found that Primary Committee reports inadequately disclosed debts/obligations. The Primary Committee filed the necessary amended reports. In addition, the Compliance Committee was found not to demonstrated best efforts to obtain, maintain and disclose occupation/name of employer. The Compliance Committee has filed the necessary amended reports.

DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS — 11 CFR §§9034.5(a) and 9034.1(b). The exit conference memo noted that the Primary Committee had not received matching funds in excess of its entitlement. The Primary Committee argued that an AT&T phone system, which was valued at its purchase price in this analysis, should have been valued at a lesser amount. The determining factor was whether the telephone system became a Primary Committee asset when it was installed, prior to the Candidate's date of ineligibility, or when the Primary Committee purchased it, well after the date of ineligibility. During its discussion of this matter, the Commission could not garner sufficient votes to adopt either position. As a result, no further matching fund payments are anticipated and the valuation of the telephone system on the NOCO is unchanged.

APPARENT NON-QUALIFIED CAMPAIGN EXPENSES — COMPLIANCE COMMITTEE EXPENSES PAID FOR BY THE PRIMARY COMMITTEE — 11 CFR §§9032.9(a), 9034.4(b)(3) and 2 U.S.C. §9038(b)(2)(A). The exit conference memorandum noted apparent non-qualified campaign expenses in the form of payments by the Primary Committee for fundraising and administrative costs incurred by the Compliance Committee. After evaluation of the General Committee's response, the Commission determined that a repayment to the U.S. Treasury totaling \$29,861 is required.

STALE-DATED COMMITTEE CHECKS — 11 CFR §9038.6. The report states that the Primary Committee and the Compliance Committee are required to pay to the U.S. Treasury \$32,929 and \$63,450, respectively, for unnegotiated, stale-dated checks.



FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

**REPORT OF THE AUDIT DIVISION
ON THE
PETE WILSON FOR PRESIDENT COMMITTEE, INC.
PETE WILSON FOR PRESIDENT
COMPLIANCE COMMITTEE, INC.
AND
PETE WILSON FOR PRESIDENT AUDIT FINES
AND PENALTIES ACCOUNT, INC.**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the Pete Wilson for President Committee, Inc. ("the Primary Committee") the Pete Wilson for President Compliance Committee, Inc. ("the Compliance Committee") and the Pete Wilson for President Audit Fines and Penalties Account, Inc. ("the Audit Fines Committee"). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

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

B. AUDIT COVERAGE

The audit of the Primary Committee covered the period from its inception April 3, 1995, through April 30, 1996. The Primary Committee reported an opening cash balance of \$-0-; total receipts of \$8,079,187; total disbursements of \$7,597,838; and a

closing cash balance of \$481,349.¹ In addition, a limited review was conducted through December 31, 1996, for purposes of determining the Primary Committee's remaining matching fund entitlement based on its financial position.

The audit of the Compliance Committee covered the period from its inception April 20, 1995, through April 30, 1996. The Compliance Committee reported an opening cash balance of \$-0-; total receipts of \$598,635; total disbursements of \$590,455; and a closing cash balance of \$8,180.

The audit of the Audit Fines Committee covered the period from the its first bank transaction, November 30, 1995, through April 30, 1996.² The Audit Fines Committee reported an opening cash balance of \$-0-; total receipts of \$234,540; total disbursements of \$-0- and a closing cash balance of \$234,540.

C. CAMPAIGN ORGANIZATION

The Primary Committee, the Compliance Committee and the Audit Fines Committee maintained their headquarters in Sacramento, California until April 21, 1996. As of April 22, 1996, all Committee offices were relocated to Alexandria, Virginia.

1. Primary Committee

The Primary Committee registered with the Federal Election Commission on April 3, 1995. The Treasurer of the Primary Committee from its inception through July 5, 1995 was Charles H. Bell, Jr.. He was succeeded by Mary H. Hayes, who served through August 10, 1995. The Treasurer from August 11, 1995 through January 30, 1996 was Mark Hoglund. He was succeeded by Courtney Sakai, who acted as Treasurer through June 23, 1996. The current Primary Committee Treasurer, as of June 24, 1996, is Renee Croce.

To handle its financial activity, the Primary Committee utilized a total of eight bank accounts during various times throughout the audit period. From these accounts the campaign made approximately 3,500 disbursements. Approximately 10,500 contributions from 10,200 persons were received. These contributions totaled \$5,474,333.

¹ All figures in this report have been rounded to the nearest dollar.

² Although the Audit Fines Committee filed a Year End Report disclosing its financial activity during that period, its Statement of Organization was not received by the Federal Election Commission until January 23, 1996.

In addition to contributions, the Primary Committee received \$1,724,257 in matching funds from the United States Treasury. This amount represents 11% of the \$15,455,000 maximum entitlement that any candidate could receive. Governor Wilson was determined eligible to receive matching funds on August 30, 1995. The Primary Committee made a total of seven matching fund requests totaling \$1,725,013. The Commission certified 99.9% of the requested amount. For matching fund purposes, the Commission determined that Governor Wilson's candidacy ended September 29, 1995. This determination was based on the date the candidate publicly announced he was withdrawing from the campaign. The Commission's regulation at 11 CFR §9033.5(a)(1) states that the candidate's ineligibility date shall be the date the candidate publicly announces that he or she is not actively conducting campaigns in more than one State. On August 1, 1996, the Primary Committee received its final matching fund payment to defray expenses incurred through September 29, 1995 and to help defray the cost of winding down the campaign. The Primary Committee submitted an eighth matching fund request on March 3, 1997.

2. Compliance Committee

The Compliance Committee registered with the Federal Election Commission on April 20, 1995. The Treasurer of the Compliance Committee from its inception through July 5, 1995 was Charles H. Bell, Jr. He was succeeded by Mary H. Hayes, who served through January 30, 1996. Courtney Sakai became Treasurer on January 31, 1996 and served as Treasurer through June 23, 1996. The current Compliance Committee Treasurer is Renee Croce.

The Compliance Committee used two depositories, one in California and one in the District of Columbia, and maintained a total of three bank accounts at various times throughout the audit period. From these accounts the Compliance Committee received contributions totaling about \$589,000 from approximately 630 persons and political committees. The Compliance Committee also received approximately \$9,600 in interest earned on its bank accounts. The Compliance Committee made nominal disbursements for bank account fees and corporate taxes. The Compliance Committee also transferred approximately 230 contributions to the Fines Committee and refunded approximately 430 contributions to contributors.³

3. Audit Fines Committee

The Audit Fines Committee registered with the Federal Election Commission on January 23, 1996 and designated Courtney Sakai as its

³ The number of contributions received (630) does not agree with the total number of contributions redesignated or refunded (650) because in some instances a contributor would redesignate a portion of his or her contribution to the Audit Fines Committee and have the balance refunded.

Treasurer. Ms. Sakai served as Treasurer until June 24, 1996, at which time the Audit Fines Committee appointed its current Treasurer, Renee Croce.

The Audit Fines Committee used one bank account throughout the audit period. From this account, the Fines Committee received contributions totaling approximately \$234,500, from about 265 persons. Of these contributions, about 230 had been redesignated from the Compliance Committee, and 35 were received directly by the Audit Fines Committee. The Audit Fines Committee has made no disbursements to date.

II. AUDIT SCOPE AND PROCEDURES

In addition to a review of the Primary Committee's expenditures to determine the qualified and non-qualified campaign expenses incurred, the audit covered the following general categories:

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

10. other audit procedures that were deemed necessary in the situation.

As part of the Commission's standard audit process, an inventory of campaign records is normally conducted prior to the audit fieldwork. This inventory is conducted to determine if the auditee's records are materially complete and in an auditable state. Based on our review it was determined that the Committees' records were materially complete. Therefore, the audit fieldwork was commenced immediately upon conclusion of the inventory.

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

**III. PETE WILSON FOR PRESIDENT COMMITTEE, INC.
(PRIMARY COMMITTEE)**

A. AUDIT FINDINGS AND RECOMMENDATIONS: NON-REPAYMENT MATTERS

1. **Apparent Excessive Contributions Resulting from Staff Advance and Extension of Credit by a Commercial Vendor.**

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

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation to make a contribution in connection with any election to any political office.

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, that the payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of a contribution under 11 CFR §100.7(b)(8).

Further, if the payment is not exempted, it shall be considered a contribution by the individual unless it is for the individual's transportation expenses or for usual and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate; and, the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first

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appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. "Subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

Sections 116.3(a) and (b) of Title 11 of the Code of Federal Regulations state, in relevant part, that a commercial vendor that is not a corporation, and a corporation in its capacity as a commercial vendor may extend credit to a candidate, or political committee. An extension of credit will not be considered a contribution to the candidate or political committee provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

Finally, 11 CFR §116.3(c) states that in determining whether credit was extended in the ordinary course of business, the Commission will consider:

- Whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;
- whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee, and
- whether the extension of credit conformed to the usual and normal practice in the commercial vendor's industry or trade.

a. Staff Advance

During our review of the Primary Committee's reported debt at May 31, 1996, the Audit staff noted an outstanding debt of \$51,185 owed to Craig Fuller. On May 1, 1995, the Primary Committee contracted with The Fuller Company, which, according to the contract, is a corporation whose sole representative is Craig Fuller.⁴ The contract specified that Craig Fuller was to serve as the Primary Committee's Campaign Chairman and that the Primary Committee was to pay a monthly retainer fee of \$22,000 beginning May 1, 1995. The contract also contained the following clause:

"Vendor agrees to obtain prior approval from the Committee for all travel and other expenses incurred in the performance of this Agreement. The Committee will reimburse Vendor for all travel and

⁴ The contract stated that The Fuller Company's principal place of business was McLean, Virginia. Committee records also revealed that the business address for the Fuller Company was the same as Craig Fuller's personal address.

other expenses incurred under this agreement. The Committee will not reimburse Vendor for first class or business class air travel.

Authorized expenses shall be invoiced at cost and without markup to the Committee. All expenses incurred by Vendor will be reimbursed within thirty (30) days of receipt by the Committee".

Although the contract was with The Fuller Company, the Primary Committee disclosed all its transactions and wrote all but one of its checks payable to Craig Fuller. Since the contract specified that The Fuller Company was a corporation, the Audit staff attempted to verify its corporate status. The Audit staff was unable to locate a Fuller Company incorporated in either California, Washington D.C., or Virginia. A representative from the Corporate Division for the State of Virginia also stated that regardless whether a business was incorporated in Virginia, if its principal place of business was Virginia, the Corporate Division would have a record of its existence. Finally, the Audit staff located a professional biography for Craig Fuller on the Internet which made no mention of a Fuller Company. It stated that he had worked for Philip Morris until he was invited to be the chairman for Governor Wilson's Presidential campaign. Therefore, the Audit staff considered this matter under 11 CFR §116.5 rather than 11 CFR §116.3.

The Audit staff's review confirmed that the Primary Committee paid the specified monthly retainer fees from May 1995 through July 1995. The Primary Committee also maintained a record in its accounts payable file detailing that as of May 1996, the Primary Committee still owed Craig Fuller his August 1995 retainer fee (\$22,000).

The Primary Committee reimbursed Craig Fuller \$6,555 for various expenses incurred through June 1. The Primary Committee also maintained in its accounts payable file expense reimbursement requests from Mr. Fuller submitted on October 31, 1995 for expenses incurred and paid by him between May 4, 1995 and September 28, 1995. The expense reimbursement requests were signed by Mr. Fuller and submitted with supporting documentation for expenditures such as taxi fares, and meals and hotel lodging paid for on his personal credit card. The Audit staff determined the total amount of unreimbursed expenses submitted was \$29,193. This amount, plus the August retainer fee, comprise the \$51,185 reported as owed by the Primary Committee to Craig Fuller at May 31, 1996.⁵

⁵ The \$8 difference between the \$51,185 reported by the Primary Committee and the sum of the \$22,000 retainer fee and \$29,193 in unreimbursed expenses is immaterial.

As a result of these unreimbursed expenses, the Audit staff determined that Mr. Fuller had made an excessive contribution totaling \$28,193. The Audit staff's analysis considered Mr. Fuller's \$1,000 contribution limitation; a \$1,000 contribution made by him to the Primary Committee on September 1, 1995 and, the \$1,000 that an individual is permitted to incur for transportation pursuant to 11 CFR §100.7(b)(8).

This matter was discussed with Primary Committee officials at a conference held at the end of fieldwork. At that time, a copy of a schedule was also provided detailing the Audit staff's determination of the excessive amount. A Primary Committee representative expressed surprise that such an exorbitant amount of expenses had been submitted to the Primary Committee for reimbursement, and stated that he doubted the Primary Committee would be inclined to pay it. He added that there may have been a dispute between Mr. Fuller and the Primary Committee concerning the expenses claimed. He also stated that the Primary Committee would provide the Audit staff with more information; however, no additional information or documentation addressing this matter was submitted.

In the Exit Conference Memorandum (the Memorandum), the Audit staff recommended that the Primary Committee demonstrate that Craig Fuller did not exceed the contribution limitation of 2 U.S.C. §441a(a)(1)(A), or was reimbursed in a timely manner as defined under 11 CFR §116.5(b)(2), or submit any other comments or documentation it felt may be relevant.

In its response to the Audit staff's recommendation, the Primary Committee contended that the money owed to Craig Fuller is subject to the provisions of 11 CFR §116.3, which addresses extensions of credit by commercial vendors, rather than the Audit staff's treatment of the issue under 11 CFR §116.5(b). The Primary Committee argued that, as a commercial vendor, Craig Fuller was extending credit in the usual and normal course of his business. Considered under this regulation, the Primary Committee asserted, there was no excessive contribution. The Primary Committee concludes by stating that Mr. Fuller is not the only vendor still owed funds and it treated Mr. Fuller the same as every other commercial vendor to whom it owes money.

The response included an affidavit from Craig Fuller supporting the Primary Committee's statements. In addition, the Primary Committee's response states:

"The Memorandum recognizes that 11 CFR §116.3 permits commercial vendors, whether or not incorporated, to extend credit to a candidate as long as the credit is extended in the ordinary course of the commercial vendor's business and the terms are not established especially for the candidate or political committee".

“Craig Fuller, through The Fuller Company, a sole proprietorship established in 1989, was a vendor to the Primary Committee. As such, any monies still owed Mr. Fuller for his monthly fee and expenses under his contract are subject to 11 CFR §116.3. For unexplained reasons, the Memorandum incorrectly characterizes him as an employee subject to 11 CFR §116.5.”

“Indeed, the only indicia the Memorandum can site [sic] in arguing Mr. Fuller was an employee of the Primary Committee is that The Fuller Company is not incorporated. However, for a variety of business reasons and based on the recommendation of his financial advisor, Mr. Fuller opted not to incorporate the Fuller Company, and instead operate it as a sole proprietorship”.

“As the Commission is well aware, Mr. Fuller is not the only vendor still owed funds.... There is simply no money to pay in full Mr. Fuller or 56 other vendors. By contrast, the Primary Committee has paid all its employees and staff. Regrettably, slow payment is the Committee’s normal course of business towards vendors to whom it still owes money, including The Fuller Company.⁶ Likewise, the Fuller Company recognizes that in the normal course of business, clients may not be able to pay bills and, in such cases, credit has to be extended. The Fuller Company has extended payments and carried debt in other instances”.⁷

The Primary Committee’s response, and Craig Fuller’s affidavit, also mentioned that as a sole proprietor, he reported the income received from the Primary Committee to the Internal Revenue Service (IRS) on an IRS Form 1040C (Schedule C), and received an IRS Form 1099 from the Primary Committee rather than an IRS Form W-2. This tax treatment of his income, the Primary Committee concluded, supports the contention that he was not an employee of the Primary Committee, rather he was an independent contractor, subject to the provisions of a commercial vendor under 11 CFR §116.3.⁸

⁶ The Audit staff notes that money paid (Schedule B-P) and owed (Schedule D-P) for Mr. Fuller’s services was consistently disclosed to “Craig Fuller”, not “The Fuller Company”.

⁷ Both the Primary Committee and Craig Fuller failed to provide examples of situations where The Fuller Company had extended credit to nonpolitical clients of similar size and risk. (See 11 CFR §116.3(a)).

⁸ The response notes the Primary Committee intends to pay “the monies owed for Mr. Fuller’s services and expenses as soon as possible”. In his affidavit, Craig Fuller stated that he had “made periodic inquiries about when the Committee expected to have sufficient funds to pay (t)he Fuller Company”.

ii. Mr. Fuller as a Primary Committee Employee

The Primary Committee response contends that the Audit staff, in applying 11 CFR §116.5, erroneously concludes that Mr. Fuller is an employee of the Primary Committee. The Primary Committee fails to realize that the application of 11 CFR §116.5 is not limited to committee staff. Indeed, the title of the regulation itself reads "Advances by committee staff and other individuals". Subsection (a) of the regulation, which clearly defines its application, makes no reference to "employees". Rather, it states its scope is "to individuals who are not acting as commercial vendors". Since the Primary Committee is unable to provide conclusive evidence that Mr. Fuller meets the definition of a commercial vendor under 11 CFR §116.3, its argument that he was not an employee of the Primary Committee and, by default, not subject to 11 CFR §116.5, is misplaced.

iii. Personal Credit Card

Section 116.5 (b)(2) of Title 11 of the Code of Federal Regulations reads as follows:

"The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or a political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted under 11 CFR 100.7(b)(8), it shall be considered a contribution by the individual unless - (2) The individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used."

Based on the Audit staff's review of the expense documentation submitted to the Primary Committee by Craig Fuller, those expenditures which were not paid in cash were paid with his personal credit cards.¹⁰ Even if the Audit staff accepted The Fuller Company as a commercial vendor under 11 CFR §116.3, since

¹⁰ Documentation reviewed by the Audit staff indicates that at least two personal credit cards were used by Craig Fuller to pay for his expenses while serving as Campaign Chairman. The documentation included credit card statements which Craig Fuller had submitted to the Primary Committee to document his expenditures. Many of the charges itemized on the statements, and not submitted for reimbursement, appeared to be personal in nature, i.e., charges to retail jewelry stores, major department stores, and other businesses trading in consumer goods.

Mr. Fuller used his personal credit cards to pay for Primary Committee related travel, lodging, and meals, and because the expense billings did not appear to involve The Fuller Company, the contribution occurred.

The Primary Committee has failed to provide sufficient evidence to substantiate its argument that 11 CFR §116.5 was incorrectly applied in this matter. Even if consideration of this matter under 11 CFR §116.3 was contemplated, the Primary Committee failed to provide documentation demonstrating the credit extended was in the normal course of business for the Fuller Company and examples of other clients of similar size and risk for which similar services had been provided under similar billing arrangements. Additionally, consideration under 11 CFR §116.3 would preclude application of the exemption for personal travel and subsistence expenses provided under 11 CFR §100.7(b)(8) ; resulting in a prohibited contribution of \$29,193. Therefore, the Audit staff's conclusion that Craig Fuller made an excessive contribution, as defined under 11 CFR §116.5, in the amount of \$28,193, remains unchanged.

b. Extension of Credit by a Commercial Vendor

During the course of fieldwork, the Audit staff reviewed documentation associated with an arrangement between the Primary Committee and American Telephone and Telegraph Credit Corporation (ATT Credit). A document, titled "Master Equipment Lease Agreement Schedule" (Master Schedule) was dated June 1, 1995, and set the value of equipment to be leased, a PBX telephone system, at \$213,365.¹¹ This document specified that the Primary Committee was responsible for payment of advance rent of \$12,352, to be applied to the first month's rental payment, and monthly payments of \$12,352 thereafter. Other documents submitted after the Primary Committee's response to the Exit Conference Memorandum make it clear the Primary Committee was to provide a letter of credit to secure the lease. However, the only payment to ATT Credit ultimately made by the Primary Committee was on February 9, 1996 in the amount of \$213,365.

The Primary Committee records indicated it had also issued the following checks to "AT&T Credit Corp": check number 1328 dated May 28, 1995; check number 1509 dated June 27, 1995; and check number 1587 dated July 10, 1995. Each was in the amount of \$12,352. The checks dated May 28 and June 27 were reported on the Primary Committee's Schedules B-P for the July Quarterly 1995 reporting period. During the same reporting period, the Primary Committee also disclosed an outstanding debt to "AT&T Credit Corporation" on its Schedules D-P in the amount of \$201,013

¹¹ The value of the telephone equipment, per the Master Equipment Lease Agreement Schedule, was \$165,580. The difference between this amount and the \$213,365 is comprised of sales tax (\$12,832), installation (\$34,000), and shipping (\$952).

(\$225,716 less two \$12,352 payments).¹² In the October Quarterly 1995 reporting period, the Primary Committee reported the May and June checks as negative entries on its Schedules B-P. On its Schedules D-P, the Primary Committee reported a beginning period debt total of \$201,013, debt incurred during the period of \$12,352, and an outstanding balance at the end of the period of \$213,365. The Primary Committee reported this amount as a debt until the April 1996 Monthly (March 1 to March 31, 1996) reporting period.

The Audit staff located all three checks, un-negotiated, in the Primary Committee's void check file. According to available records, the checks had been voided on October 6, 1995. Each voided check was accompanied by a copy of a brief letter from Robert P. Wright of ATT Credit in Parsippany, New Jersey. The letter was addressed to a Primary Committee attorney, A. Peter Kezirian, Jr., and dated October 10, 1995. The letter read as follows:

"Dear Peter: Enclosed are three checks each in the amount of \$12,351.68 held in anticipation of a Letter of Credit¹³ to support funding of your lease of telecommunications equipment from AT&T. Sincerely, Robert P. Wright"

Documentation submitted by the Primary Committee on July 17, 1997, included an internal memorandum from A. Peter Kezirian, Jr. [Counsel for the Primary Committee] to Mark G. Hogland [Director of Administration for the Primary Committee]. According to this memorandum, dated August 21, 1995, discussions with an ATT Credit representative indicated that the letter of credit was an essential part of the lease and ATT Credit could not process any of the Primary Committee's payments until all the lease prerequisites were completed. The same memorandum stated that ATT Credit had been requested to consider "some variation of the letter of credit" so that the lease agreement could be executed between the parties, but had refused because it felt compelled to treat all campaigns equally.

On February 9, 1996, the Primary Committee issued check number 0101732 in the amount of \$213,365 to ATT Credit, approximately nine months after the Committee had signed the Master Schedule. Prior to February 9, 1996, the Primary Committee began negotiating for the sale of the telephone equipment to VariLease Corporation of Farmington Hills, Michigan. Based on the "Agreement of

¹² The Audit staff believes that the \$225,716 reported as the amount of debt incurred for the July Quarterly reporting period was derived by the Primary Committee to ensure that the outstanding debt reported on the October Quarterly Schedule D-P would balance to the actual value outlined in the Master Schedule (\$213,365).

¹³ Although no documentation with respect to a letter of credit was made available to the Audit staff, during November, 1995, the Primary Committee received a line of credit (\$500,000) which was used to make payments to various vendors other than AT&T.

Billing Information Sheet and (v) two checks, each in the amount of \$12,351.68 which reflects our May and June payments under the Agreement.

In light of my discussions with Phil Lozzano and Bob Wright, I am in the process of establishing a line of credit¹⁴ for the remaining payments due and owing [sic] under the Agreement. As I discussed earlier with Messers. Lozzano and Wright, the Committee is in its early stages of development and our bank will not issue a line of credit at this time. Once the Committee has qualified for federal matching funds, which will occur on June 30 and is contingent on the completion of our initial filing with the Federal Election Commission, the Committee will become immediately eligible for a line of credit. As soon as I have received such a financial instrument from our bank, I will provide AT&T with the necessary documents to complete our obligations under the Agreement.¹⁵

The Audit staff already had all the documents itemized in paragraph 1 of Mr. Kezirian's letter discussed above except for the "AT&T Master Equipment Lease Agreement, dated as of May 17, 1995".

In the Memorandum submitted to the Primary Committee, the Audit staff recommended that it provide an executed copy of the AT&T Master Equipment Lease Agreement dated May 17, 1995, as well as any other documentation from ATT Credit and/or Franklin National Bank, or any other source it deemed relevant, to demonstrate that the credit extended by ATT Credit was in the normal course of business and did not represent a contribution. The recommendation stressed that the information provided should include examples of other customers or clients of similar size and risk for which similar services have been provided and similar billing arrangements have been used. Information concerning billing policies for similar clients and work, advance payment policies, debt collection policies, and billing cycles was also requested.

In response to the Memorandum, the Primary Committee asserted that it had not "received some sort of sweetheart deal" from ATT Credit, and that "... the facts, the business reasons for ATT's actions as understood by the Primary Committee, and ATT's normal business practices in similar situations debunk the

¹⁴ All other references have been to a letter of credit.

¹⁵ Based on its threshold submission received August 11, 1995, the candidate established eligibility on August 30, 1995.

Memorandum's argument". The response stated that there were "three allegations" contained in the Memorandum, each of which was "factually untrue". The response also included ATT Credit documents already obtained by the Audit staff, an affidavit from A. Peter Kezirian, Jr., and documents regarding a "buy back" arrangement between AT&T¹⁶ and the Bush/Quayle '92 Presidential campaign. On July 17, 1997, the Primary Committee submitted additional documentation including internal Committee memoranda; letters and other documents from AT&T; and copies of telephone bills paid by the Primary Committee. The Primary Committee's arguments concerning each of the three allegations, and the Audit staff's conclusion about those arguments and the supporting evidence provided, are discussed below.

i. "Improper Extension of Credit"

The first issue addressed by the Primary Committee was the Audit staff's conclusion that "the Primary Committee received 'an extension of credit from ATT [Credit] outside the ordinary course of business'". The Primary Committee began by describing the basis on which ATT Credit forms customer relationships. While the affidavit from A. Peter Kezirian, Jr. supports these statements, no documentation from ATT or ATT Credit characterizing its business policies was provided.

"ATT Credit ... regularly provides leasing and credit services to facilitate the sale of equipment for ATT since, as the Primary Committee has come to learn, equipment sales are considered the best means of securing a business' overall telephone service. Therefore, while the equipment costs about which the Memorandum is concerned is a significant component, it is also a relatively small part of the entire business relationship between ATT and a customer... The Memorandum fails to recognize that in this context, it is the normal course of business for a telephone company to install a telecommunications system and secure the service contracts before finalizing all of the credit and contract terms of such a sale or lease... The monthly ATT billings to the Primary Committee for telephone service were often five or six times the equipment lease payments. The potential billings to ATT would continue to grow exponentially as the campaign moved closer to the primary elections. The total dollars flowing to ATT from the Primary Committee demonstrate conclusively that the service agreements are of significantly greater value to a telephone company than the equipment sales about which the Memorandum

¹⁶ The Audit staff notes that this arrangement did not involve ATT Credit. The parties involved were the Bush/Quayle 92 campaign and AT&T, the parent company of ATT Credit.

focuses. In other words, in order to obtain the lucrative business of providing the service itself, a telephone company may, as happened here, offer 'deals' and flexibility on payment for the equipment".

The Audit staff cannot rely on the Primary Committee's statements regarding what elements AT&T considers when evaluating its business relationships with its customers. All information about AT&T's business practices is provided by an attorney employed by the Primary Committee. No information from AT&T is supplied.¹⁷ Furthermore, the Audit staff has thoroughly examined a copy of the (unexecuted) lease agreement and nowhere does it require that AT&T be the telephone service provider for any period of time as a condition of the lease, nor does it contain a clause which offers "flexibility" to the lessee if it utilizes ATT's telephone service. Finally, the Audit staff finds no evidence to support the contention that it is an established business practice of ATT to install telecommunications equipment based on "potential billings", and "before finalizing all of the credit and contract terms of such a sale or lease".

The Primary Committee's response continued by describing how ATT Credit generates revenue for itself by discounting its leases and selling them in financial markets. It was this common practice, the response contends, that resulted in the Primary Committee's checks not being deposited by ATT Credit. However, the response fails to address how such a practice subsequently resulted in ATT Credit returning to the Primary Committee all three payments it had sent relative to the (unexecuted) lease.

"ATT Credit provides credit to the customers of ATT to help them afford more telephone service.¹⁸ However, ATT Credit cannot survive financially if it holds onto each of the loans extended to ATT customers. Therefore ... ATT Credit will 'bundle' these loans and sell them in the financial markets at a discount.... The Primary Committee did not understand why ATT Credit had not deposited the Primary Committee's lease payments until it learned the decision was based on ATT Credit's standard practice of bundling and reselling loans. Mr. Wright told Mr. Kezirian that any deposit without the closure of any element of the Master Lease Agreement

¹⁷ Materials submitted on July 17, 1997, by the Primary Committee indicate a letter of explanation has been requested from AT&T and is expected to be received soon. To date, no such letter has been provided.

¹⁸ The statement that "ATT Credit provides credit to customers of AT&T to help them afford more telephone services" is not clear. ATT Credit finances telecommunications equipment, not telephone services.

would have disqualified the loan for sale. ATT Credit was willing to hold deposits to maintain the option of reselling the loan ...Therefore, ATT Credit held payments until all steps were completed. The Committee believed this was a normal business decision by ATT Credit that had nothing to do with the operations of the Primary Committee.”

This section concludes by stating that ATT Credit never did sell the Primary Committee’s loan, “but [it] did receive full payment for the equipment in February 1996”. The response then argues that as a result of the Primary Committee’s purchase of the equipment at its full value, it “meant that ATT was certainly made whole and that the Primary Committee did not secure a benefit outside ATT’s normal business practices”.¹⁹

Given that no fully executed lease has been produced and that ATT Credit “could not process any of the payments” until the lease requirements were completed, which included a letter of credit, it appears that no lease contract existed. Without a completed (lease) contract, the sale of the instrument would seem to be impossible.

Further, the Primary Committee fails to address how ATT Credit is able to “survive financially” by returning the payments it receives relative to its leases. In the Primary Committee’s case, ATT Credit never sold the (unexecuted) lease, but, after the (unexecuted) lease was in arrears, and absent the requisite letter of credit, sent the undeposited checks back to the Primary Committee. The Primary Committee does not explain why it believes that it was a “normal business decision by ATT Credit” to not only return to it \$37,056 in payments made relative to the (unexecuted) lease, but to do so in October of 1995. By this time the candidate had dropped from the race, the campaign was publicly reported as bankrupt, and, under the terms of the (unexecuted) lease, was two payments in arrears.

Finally, the Audit staff notes with interest Mr. Wright’s explanation to Mr. Kezirian about why the Primary Committee checks were never deposited. As quoted previously in this report, the letter from Mr. Wright to Mr. Kezirian dated October 10, 1995, which accompanied the return of the un-negotiated checks, states that the checks were returned because they were “held in anticipation of a Letter of Credit to support funding of your lease...”. It is the Audit staff’s opinion that these checks were never cashed by ATT Credit to avoid any appearance of consummating the (unexecuted) lease prior to receiving a letter of credit.

¹⁹ Whether ATT Credit was or wasn’t “made whole” is not the thrust of 11 CFR §116.3. This regulation deals with extensions of credit made by commercial vendors.

ii. “Free Equipment’ for the Primary Committee”

The second issue presented by the Primary Committee was that “[t]he Primary Committee used the telecommunications equipment owned by ATT [Credit] ‘for nine months at no cost’”. In this portion of its response, the Primary Committee asserts that ATT Credit actually received more money than it was entitled because the Primary Committee bought the equipment at its full value in February 1996, rather than paying for the equipment over the “17 month[s]” term specified in the lease.²⁰ Indeed, the Primary Committee states in its response, “By selling the system outright in February 1996, ATT Credit received its funds sooner than anticipated, and therefore, received an economic benefit”.

The Audit staff, in applying 11 CFR §116.3, is concerned only with the nine month period which ATT Credit allowed the Primary Committee possession and use of equipment without requiring any compensation. Further, the assertion that ATT Credit received more money than entitled by foregoing its monthly lease payments due under the (unexecuted) lease agreement in lieu of a lump sum at the end of nine months, is untrue. If the telephone system had been purchased when installed in May 1995, the price would have been \$213,365. If the (unexecuted) lease had been paid to its conclusion, 19 months at \$12,352 per month, ATT Credit would have received \$234,688. The Audit staff fails to see how AT&T’s receipt of \$213,365 nine months after the system was installed provides a financial benefit over either the timely collection of payments throughout the specified term, or the outright purchase of the system when installed.

Additionally, the Primary Committee claims it was “.. penalized by ATT for withdrawing from the election” because “By mid-October, ATT had terminated its service arrangements with the Primary Committee”. The Primary Committee states that it had to stop using the equipment and store it “until a financial solution was found”. No explanation is provided as to why the service was disconnected and why the equipment had to be stored rather than used during the wind-down period. Further, the Audit staff finds these statements incompatible with previous assertions made in the Primary Committee’s response. In part i. above, the Primary Committee explained at length that AT&T’s usual course of business is to first, secure profitable service agreements, and second, tie them to flexible equipment leases. Based on this scenario, it would seem that once the service was disconnected, AT&T would cease to be flexible with its leased equipment, demand it be returned, and continue collection efforts for the outstanding lease payments. Indeed, it would seem that AT&T lost money in its dealings with the Primary Committee. AT&T failed to realize all of the

²⁰ The Primary Committee states in its response that “The lease required 17 months to pay the complete purchase price” resulting in total payments of \$213,682. According to the Master Lease Agreement its term was for 19 months.

“potential billings” it had supposedly anticipated from its service agreements, failed to collect the \$12,352 due in monthly payments for nine months under the (unexecuted) lease, and failed to regain control and possession of its equipment for four months after it had “penalized” the Primary Committee by terminating its telephone service in October 1995.

iii. “No Lease Payment”

The Primary Committee’s discussion in the third subsection of its response argued that the Audit staff’s conclusion that “the Primary Committee ‘never made a fully negotiated lease payment on the telephone equipment’.... ... is patently incorrect”. The response continues as follows:

“Three lease payments of \$12,351.68, each as required by the Master Lease Agreement, were made in a timely manner in May, June and July. The Primary Committee failed to make lease payments in August and September due to financial difficulties”.

The difference between the Primary Committee’s position on this issue and the Audit staff’s position is merely semantic. The Primary Committee argues that, from its perspective, the payments were fully negotiated because the Primary Committee issued the checks and recorded the payments in its records. It is argued that since these payments were so recorded, the funds were unavailable for other uses. The fact that ATT Credit never cashed the checks causing the funds to be removed from the Primary Committee’s accounts is not relevant to its position. In the Audit staff’s view of these same facts, ATT Credit’s failure to collect the funds represented by the checks, to return those checks after the (unexecuted) lease was in arrears, and not to pursue these delinquent payments represents an extension of credit beyond its ordinary course of business.

The Audit staff concludes that the Primary Committee has failed to demonstrate that ATT Credit did not extend credit outside of its normal course of business, as defined under 11 CFR §116.3, or that the Primary Committee did not receive a contribution from ATT Credit during the period from May 1995 through February 1996 in the amount of \$213,365.

2. Misstatement of Financial Activity

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

The Audit staff's reconciliation of the Primary Committee's reported financial activity to bank activity for the first four months of 1996 revealed a misstatement of the Primary Committee's reported disbursements as well as its reported ending-cash-on-hand balance at April 30, 1996.

The Primary Committee reported total disbursements of \$1,719,117 for the first four months of 1996. Utilizing the Primary Committee's financial records, the Audit staff determined that the Primary Committee should have reported total disbursements of \$1,805,347. Therefore, the Primary Committee's disbursements were understated \$86,230. Similarly, the Primary Committee's reported ending-cash-on-hand of \$481,350 at April 30, 1996 was overstated by \$86,224.²¹ The correct ending-cash-on-hand balance was \$395,126.

The understatement of disbursements and overstatement of ending-cash-on-hand resulted from the Primary Committee's failure to report three disbursements totaling \$78,950 on its April 1996 Monthly Schedules B-P (March 1 to March 31, 1996), and its failure to report one disbursement in the amount of \$3,638 on its May 1996 Monthly Schedules B-P (April 1 to April 30, 1996).

On June 24, 1996, during the course of audit field work, the Primary Committee filed amended reports which corrected the errors.

In the Exit Conference Memorandum to the Primary Committee, the Audit staff recommended no further action regarding this matter. In its response to the Exit Conference Memorandum, the Primary Committee concurred with the Audit staff's recommendation.

3. Failure to Properly Disclose Debts Outstanding

Section 434(b)(8) of Title 2 of the United States Code states that each report shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee; and where such debts and obligations are settled for less than their reported amount or value, a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the consideration therefore.

Section 104.11(a)(b) of Title 11 of the Code of Federal Regulations states, in part, that debts or obligations owed by a political committee which remain outstanding shall be continuously reported until extinguished. These debts and

²¹ The difference between the misstatement totals in disbursements (\$86,230) and ending-cash-on-hand (\$86,224) are the result of minor misstatements in reported receipts and minor, unresolved differences in disbursements and ending-cash-on-hand.

obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. A debt or obligation, the amount of which is \$500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation the amount of which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary, or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

In the course of verifying the Primary Committee's Statement of Net Outstanding Campaign Obligations, the Audit staff reviewed selected disbursement records and identified significant debt reporting errors. As a result, the Audit staff reconciled amounts invoiced by vendors and payments made by the Primary Committee for 64 vendors. Primary Committee vendor files, which included all invoices both paid and unpaid, were utilized along with all canceled and/or void checks. The 64 vendors for which reconciliations were prepared included those with outstanding balances reported at May 31, 1996.

Of the 64 vendors examined, the Primary Committee had incorrectly disclosed outstanding debt on Schedules D-P for 41 vendors, or 64% of the vendors reviewed. The Audit staff determined that debts and obligations disclosed by the Primary Committee were overstated by a net amount of \$614,622 of total reportable debt.²²

The total amount of reportable debt was calculated by summing the reported total of outstanding debts and obligations owed by the Primary Committee for each report period. Similarly, the total amount of disclosure errors was calculated by summing the differences between the amount disclosed as outstanding by the Primary Committee on its Schedules D-P and the amount determined as outstanding by the Audit staff's reconciliations for each vendor, for each reporting period covered by the audit. As a result, debts that were repeatedly misstated are included each time they required reporting.

At a conference held at the conclusion of fieldwork, the Audit staff provided the Primary Committee with a copy of a schedule detailing the differences between the Audit staff determinations and the amounts reported by the Primary Committee. Copies of schedules were also provided detailing the amounts of debt outstanding at December 31, 1995 and May 31, 1996, as determined by the Audit staff. The Primary Committee agreed to file the appropriate amended reports.

²²

Some debts were overstated (\$917,698) and other debts were understated (\$303,076); the sum of these errors would total \$1,604,793, which results in an error rate of 56% of correct reportable debt. The above amounts do not total \$1,604,793 due to understatements and overstatements occurring across reporting periods for certain vendors.

In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee file amended Schedules D-P for its 1995 Year End and 1996 June Monthly (covering the period May 1 to May 31, 1996) reports to correct the disclosure of its outstanding debts and obligations.

In its response to the Exit Conference Memorandum, the Primary Committee stated that it "...concur[s] with this recommendation and the relevant reports are being prepared and will be filed as promptly as possible." The Audit staff received the amended Schedules D-P on April 7, 1997, and, based upon an examination of them, concluded that they were materially correct.

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

1. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other things, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs. Subsection (b) of this section states, in part, that the total outstanding campaign obligations shall not include any accounts payable for non-qualified campaign expenses.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Governor Wilson's date of ineligibility was September 29, 1995. The Audit staff reviewed the Primary Committee's financial activity through April 30, 1996, and on a more limited basis, activity through December 31, 1996. The Audit staff also analyzed winding down costs and prepared the Statement of Net Outstanding Campaign Obligations (NOCO) which appears below:

PETE WILSON FOR PRESIDENT COMMITTEE, INC.
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
as of September 29, 1995
as determined December 31, 1996

ASSETS

Cash		\$404,283.00	
Accounts Receivable		84,309.00	
Capital Assets:			
Telephone System	213,365.00 (a)		
Other Capital Assets	<u>47,650.00 (b)</u>		
		261,015.00	
Total Assets			\$749,607.00

OBLIGATIONS

Accounts Payable for Qualified Campaign Expenses		\$2,390,483.00	
Amount Payable to U.S. Treasury:			
Stale-dated Checks		32,929.00 (c)	
Winding Down Costs:			
09/30/95 - 12/31/96: Actual	\$528,527.00 (d)		
1/1/97 and later: Estimated	<u>102,250.00</u>		
		630,777.00	
Total Obligations			<u>\$3,054,189.00</u>
Net Outstanding Campaign Obligations (Deficit)			<u>\$(2,304,582.00)</u>

FOOTNOTES TO NOCO

- (a) Under 11 CFR §9034.5(c)(1), the Audit staff valued the AT&T telephone system at its cost of \$213,365 when purchased on 2-9-96. See Finding III.A.1.b. On August 21, 1997, the Commission considered a Statement of Reasons related to the Primary Committee's request for additional matching funds. The central question was the valuation of this asset. If valued as presented here, the Candidate has no further matching fund entitlement. If valued at a depreciated amount, some entitlement remained. The Commission was unable to garner sufficient votes to adopt either position.
- (b) These assets are valued at 60% of cost as provided under 11 CFR §9034.5(c)(1) (effective date 8-16-95). The Audit staff has requested the Primary Committee provide documentation detailing the fair market value of capital assets purchased before August 16, 1995. Prior to this date, 11 CFR §9034.5(c)(1) allowed committees the option of valuing capital assets at fair market value, rather than at 60% of cost.
- (c) Cash was adjusted for stale-dated checks issued before the candidate's date of ineligibility and actual wind-down expenses were adjusted for stale-dated checks issued after that date (September 29, 1995).
- (d) Actual wind-down expenses were reduced by the following: \$18,746 for vendor refunds associated with post date of ineligibility disbursements; and, \$14,550 in Compliance Committee expenses paid by the Primary Committee subsequent to the candidate's date of ineligibility. See Finding III.B.2.

Shown below are adjustments for funds received after September 29, 1995, based on the most current financial information available:

Net Outstanding Campaign Obligations (Deficit) as of 9-29-95	(\$2,304,582)
Matching Funds Received 9-30-95 to 8-1-96	\$1,724,257
Net Private Contributions and Other Receipts Received 9-30-95 to 8-1-96	<u>\$ 367,344</u>
Remaining Net Outstanding Campaign Obligation at 8-1-96 (Deficit)	\$ (212,981)
Net Private Contributions Received 8-2-96 to 12-31-96	\$ 298,270

As shown above, the Primary Committee has received more than sufficient contributions to eliminate its deficit. As such, the Audit staff concludes that the Primary Committee has no further entitlement to matching funds.

The Primary Committee, in its response to the Exit Conference Memorandum, stated that it was "in agreement with the [A]udit staff's NOCO determination, with the exception of the AT&T lease issue". As discussed at Finding III.A.1.b. above, the Audit staff rejected the Primary Committee's arguments concerning the AT&T lease. Since the portion of 11 CFR §9034.5(b)(2) relevant to assets acquired after a candidate's date of ineligibility was not changed as of August 16, 1995, such items still must be valued at cost. Therefore, the Audit staff NOCO remains unchanged from the Exit Conference Memorandum.

On March 3, 1997, the Primary Committee made an eighth request for matching funds totaling \$149,435. With this request, the Primary Committee also submitted a NOCO Statement, prepared at February 15, 1997, which showed a remaining net outstanding deficit of \$150,104. Based on the Audit staff's review of this NOCO, it was determined the Primary Committee's deficit was mainly due to discrepancies in the following areas:

- The inclusion of estimated fundraising costs (\$40,635) not included in the Audit staff's NOCO since sufficient moneys had been raised to eliminate the deficit;

- the Primary Committee's estimates for legal and audit fees (\$114,884) are significantly higher than those estimates made by the Audit Staff (\$60,000); and
- the Audit staff valued the AT&T telephone system at cost (\$213,365), since it was purchased after the candidate's date of ineligibility. The Primary Committee continues to value it at 60% of cost (\$128,031).

The Primary Committee argues that the lease of the telephone system constitutes a "capital lease" and should, therefore, be considered an asset as of the date the lease was executed. The Primary Committee concludes that its valuation is correct and the Candidate has remaining matching fund entitlement. The Audit staff is not persuaded by the Primary Committee's argument. Notwithstanding whether capital leases are relevant to political campaigns, the Audit staff notes that a lease signed by both parties has not been provided for our review. As previously stated in Finding III.A.1.b., the lease payments made by the Primary Committee were not cashed by ATT Credit, rather, the Primary Committee purchased the telephone system nine months later for the full purchase price quoted (\$213,365). Further it is clear that ATT Credit did not cash any of the lease payments received awaiting a letter of credit from the Primary Committee to complete the requirements of the lease document. The letter of credit was not provided.

On August 21, 1997, the Commission also considered a Statement of Reasons and Final Determination (Commission Agenda Document #97-52-A) related to the Candidate's entitlement to all or a portion of the March 8, 1997 matching fund request. The Audit staff had recommended, and the Office of General Counsel agreed, that the Candidate had no further matching entitlement because when the telephone system is valued at cost, assets are sufficient to liquidate all Net Outstanding Campaign Obligations without the incurrence of further fundraising costs. If valued at a depreciated amount, some entitlement remains. The determining factor was whether the telephone system became a Primary Committee asset when it was installed, prior to the Candidate's date of ineligibility, or when the Primary Committee purchased it, well after the date of ineligibility. During its discussion of the Statement of Reasons the Commission could not garner sufficient votes to adopt either position. As a result, no further matching fund payments are anticipated and the valuation of the telephone system on the NOCO is unchanged.

2. Non-Qualified Campaign Expenses - Compliance Committee Expenses Paid for by the Primary Committee

Section 9032.9(a) of Title 11 of the Code of Federal Regulations, in part, defines a qualified campaign expense as one incurred by or on behalf of the candidate from the date the individual becomes a candidate through the last day of the

candidate's eligibility; made in connection with his campaign for nomination; and neither the incurrence nor the payment of which constitutes a violation of any law of the United States or the State in which the expense is incurred or paid.

Section 9034.4(b)(3) of Title 11 of the Code of Federal Regulations states, in relevant part, that any expenses incurred before the candidate's date of ineligibility for property, services, or facilities used to benefit the candidate's general election campaign are not qualified campaign expenses.

Section 9034.4(e)(6)(i) of Title 11 of the Code of Federal Regulations states that the costs of a solicitation shall be attributed to the primary election or the GELAC, depending on the purpose of the solicitation. If the candidate solicits for both the primary election and the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC.²³

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.

The regulations at 11 CFR §9038.2(b)(2)(iii) state that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility.

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

During the Audit staff's review of contributions to the Primary Committee, it was noted that available solicitation devices contained appeals for contributions of up to \$1,000 each for both the Primary Committee and the Compliance Committee. The Audit staff reviewed approximately \$1,271,985 spent by the Primary

²³

The effective date of this regulation was August 16, 1995.

Committee on fundraising, and identified 229 transactions amounting to \$699,098 that appeared to be incurred for fundraising appeals on behalf of both the Primary Committee and the Compliance Committee. Of this \$699,098, \$351,856 were expenditures by the Primary Committee to defray Compliance Committee fundraising costs.

Similarly, an invoice from a Primary Committee vendor dated May 1, 1996, contained a \$10,000 charge for "Compliance Committee Processing". This charge was paid by the Primary Committee on May 1, 1996.

These matters were presented to Primary Committee representatives at a conference at the conclusion of fieldwork along with copies of schedules and work papers detailing the Audit staff's determination. Primary Committee representatives indicated they were unhappy with the Commission's regulations regarding expenditures made by legal and accounting funds established before a candidate receives the party's nomination, and indicated they would pursue this matter further.

In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee submit evidence documenting that the above expenditures were qualified campaign expenses. Absent such a demonstration, the Exit Conference Memorandum stated that the Audit staff would recommend that the Commission make an initial determination that the Primary Committee make a pro-rata repayment of \$83,387 ($\$351,856 + \$10,000 \times .230443$)²⁴ to the United States Treasury pursuant to section 9038(b)(2) of Title 26 of the United States Code.

In its response to the Exit Conference Memorandum, the Primary Committee did not submit evidence demonstrating that the expenditures were qualified campaign expenses. Instead, it stated that the Audit staff's recommendation "must be rejected for several reasons" and centered its arguments on the Audit staff's application of 11 CFR §9034.4(e)(6)(i) to apportion the joint fundraising costs. The response does not address the \$10,000 expenditure for Compliance Committee processing costs.

1. The Regulations Are Contradictory

The Primary Committee's response states that:

"The current Regulations are internally contradictory and place a committee which simply exercises its rights granted by the Regulations automatically in violation for following the Regulations. Specifically, 11 C.F.R. §9003.3(a)(1) states that a

²⁴ This figure (.230443) represents the Primary Committee's repayment ratio, as calculated pursuant to 11 CFR §9038.2(b)(2)(iii).

GELAC 'may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States'. However, another Regulation requires a candidate who raises GELAC funds pursuant to the Regulation, but is not nominated or selected to be the Presidential or Vice Presidential candidate, to return (or have redesignated) all of the funds collected by the GELAC. 11 C.F.R. §102.9(e)(2). None of the funds raised may be attributed to any fundraising or overhead costs according to 11 C.F.R. §102.9(e)(2). Yet 11 C.F.R. §9034.4(e)(6)(i) requires that a joint solicitation be paid for by both the primary committee and the GELAC. It cannot be both ways."

The fact that these regulations appear "contradictory" to the Primary Committee does not mean that the expenditures are qualified campaign expenses of the Primary Committee. Indeed, the sum of the regulations surrounding a GELAC presents committees with several choices, some of which may hold potential hazards. However, the regulations also work to put the candidate on notice of the risks involved with establishing a GELAC prior to receiving his or her party's nomination. Thus, the regulations leave it up to the candidate to decide whether a proactive fundraising program between the Primary and Compliance Committee early in the campaign is wise. Accordingly, one section of the regulations in question unequivocally states that: "...any expenses incurred before the candidate's date of ineligibility for property, services, or facilities used to benefit the candidate's general election campaign are not qualified campaign expenses." (11 CFR §9034.4(b)(3)).

2. The Solicitations are Not Solicitations

The Primary Committee also contends the following:

"...an examination of the actual mailings and invitations shows that the reference to the Compliance Committee is fleeting, at most, and in reality a secondary, if not tertiary, consideration in the piece as a whole. As such they are not 'solicitations' and no repayment is required by the Regulations... A fair viewing of the invitations and letters themselves demonstrates that they are a clear attempt to solicit funds for the Primary Committee. The invitations are all for events benefiting the Primary Committee... In short, neither the invitations or the fundraising letters directly solicit funds for the Compliance Committee as defined by the Regulations".

The relevant regulations contain neither a "primary purpose" test for solicitations, nor allow for any sort of allocation based on space devoted to different

committees. The test is whether funds were solicited for both committees. The solicitations reviewed by the Audit staff contained an appeal for the Compliance Committee which, with a few minor variations, read as follows:

Also, enclosed is my/our contribution in the amount of \$ _____ to "Pete Wilson for President Compliance Fund". (The maximum contribution of \$1,000 per person may be made in addition to your contribution to the Presidential Committee).

The Audit staff views the above as a direct solicitation of funds for the Compliance Committee.

The response also argues that the Compliance Committee did not receive enough money, compared to the Primary Committee, to justify the contention that the solicitations were "joint". The argument read as follows:

".. of 627 Compliance Committee contributors only 52, or 8.3 percent, did not give to the Primary Committee. With that 8.3 percent exception, all funds that were placed in the Compliance Committee accounts were done so by contributors who had already given the legal maximum to the Primary Committee, and wished to help further. The results conclusively demonstrate this. The Primary Committee raised about \$5,767,000. The Compliance Committee raised about \$598,000²⁵... If these were really the joint solicitations as the Memorandum contends, these numbers would have been much more even. To show the illogic of the Memorandum's result, the Compliance Committee raised \$598,000, yet the audit staff now argues that its fundraising costs were \$351,856. This amounts to an unheard of cost of about 59 percent."

The mere fact that \$589,005 in contributions was generated proves that a solicitation occurred. While it is true that the major focus of the solicitation was the Primary Committee, as noted above, the relevant regulation doesn't cite a primary focus test. Rather, it requires the cost of a communication which solicits for both a primary committee and a general committee be allocated equally between the two. Further, based on the experience of the Audit staff, it is not at all unusual to encounter fundraising programs which yield poor response rates. Indeed, the Audit staff has frequently seen fundraising programs that actually generate losses for political committees. Thus, the numerical data cited by the Primary Committee above do not

²⁵

Based on the Audit staff's review, the Compliance Committee received \$589,005 in contributions.

reflect results that are "unheard of" or otherwise especially remarkable. Indeed, the data reinforces that the solicitations were effective in generating contributions for the Compliance Committee.

3. Effective Date of Regulation

The Primary Committee also presented the following argument:

"The Regulation upon which the Memorandum bases its repayment determination went into effect on August 16, 1995. This was well after most of the fundraising solicitations by the Wilson committees that are the subject of the \$83,387 repayment amount. The Committees dispute that the Memorandum correctly uses 11 C.F.R. §9034.4(e)(6)(i) to determine the repayment in this situation. But even if mathematically correct, the Regulation cannot be applied to any solicitation before August 16, 1995 because the Regulation was not in effect ... Furthermore, a review of the invitations sent after August 16, 1995 shows that, with only one exception, the solicitation for the Compliance Committee was dropped entirely from the Committee's solicitations."

It should be noted that 11 CFR §9034.4(e)(6)(i) stipulates only the method for apportioning costs of fundraising devices which solicit for both a candidate's Primary and GELAC committees. The Regulation does not state that such expenditures become qualified campaign expenses of the primary committee should the candidate fail to receive the party nomination. Thus, the effective date of 11 CFR §9034.4(e)(6)(i) is irrelevant in arguing that the joint solicitation costs paid by the Primary Committee prior to August 16, 1995 should be considered qualified campaign expenses. In addition, based on documentation made available to the Audit staff by the Primary Committee, there appears to have been more than "one" joint solicitation subsequent to the effective date of this regulation.

The response continues by arguing that the joint solicitation costs should be allocated on the "funds received" basis, as described at 11 CFR §106.5(f). This allocation method was developed for use by party committees engaged in both federal and non-federal activity. The Primary Committee states that allocation should be "...on the bases of: (1) amounts received (\$5,767,000 for the Primary Committee and \$598,000 for the Compliance Committee) or (2) space used for each committee in the solicitations themselves." The Primary Committee contends that, based on the funds received by each committee, "[t]he Compliance Committee raised about \$598,000, or 10.37 percent as much [as the Primary Committee]". In a footnote to its response, the Primary Committee further calculates:

If the Commission really believed that this fundraising requires some sort of a repayment, then it would have to be based on the 10.37 percent figure. In other words, even under the Memorandum's own logic, (as opposed to its vindictive conclusion), the repayment amount should be \$16,706.30 (10.37 percent of \$699,098 times .230443).

The Audit staff agrees that prior to the effective date of the regulation a funds received allocation would be permissible. However, the Primary Committee's calculation is flawed. The figure supplied for Primary Committee receipts includes contributions solicited solely for that committee and not as a result of the joint solicitations addressed by the Audit staff. To apply a ratio based on total funds received to only those expenditures identified by the Audit staff which were in connection with the joint solicitations would result in a flawed comparison. To accurately apply the "funds received" method in this situation, only Primary contributions received directly as a result of the joint solicitation should be considered. Further, in calculating the 10.37 percent, the Primary Committee simply divides \$598,000 by \$5,767,000. This calculation does not accurately reflect the relative funds received by each committee.

Using the fundraising event codes contained on the computer file provided by the Primary Committee, the Audit staff determined that the Primary Committee received \$2,794,975 as a direct result of the joint fundraising solicitations; the Compliance Committee received \$576,905. The Audit staff also determined that \$767,619 was the maximum matching funds which could have been received from the \$2,794,975 raised by the Primary Committee, bringing its total to \$3,562,594. Based on these amounts, a funds received ratio of 13.94 percent was calculated.²⁶

The Audit staff revised its analysis to reflect the effective date of 11 CFR §9034.4(e)(6)(l) and to determine the Compliance Committee portion of joint fundraising expenses using the funds received ratio (13.94%). Only those expenditures associated with a jointly-solicited fundraising event held subsequent to the effective date are allocated on a 50/50 basis. For those expenditures incurred with respect to jointly-solicited fundraising events held prior to the effective date, the Audit staff used the funds received method.

The Audit staff's revised analysis identifies non-qualified campaign expenses totaling \$130,577 which are subject to pro-rata repayment. This amount includes the \$10,000 payment for Compliance Committee processing not addressed in the Compliance Committee's response.

²⁶

The calculation for this ratio is: $\$576,905 \div (\$576,905 + \$2,794,975 + \$767,619)$.

Recommendation # 1

The Audit staff recommends that the Commission determine that \$29,861 is payable to the United States Treasury pursuant to 26 U.S.C. §9038(b)(2)(A).²⁷

3. **Stale-dated Checks**

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

The Audit staff performed bank reconciliations through April 1996. From these reconciliations, 49 checks we identified totaling \$37,470, which had not been negotiated. Of these, 33 totaling \$28,950, were for contribution refunds. Of the 33 contribution refunds, it appears that 28 represented refunds of excessive contributions.

At a conference held at the end of fieldwork, the Audit staff provided representatives of the Primary Committee with copies of schedules of the stale-dated checks. Committee representatives agreed to review their records and provide the Audit staff with additional information which may resolve the items.

In the Exit Conference Memorandum, the Audit staff recommended that the Primary Committee provide evidence that either the checks are not outstanding by providing copies of the front and back of the negotiated checks along with bank statements, or that the outstanding checks are void by providing either copies of the voided checks with evidence that no obligation exists, or copies of negotiated replacement checks. Absent such evidence, the Exit Conference Memorandum explained that the Audit staff would recommend that the Commission determine that stale-dated checks totaling \$37,470 are payable to the United States Treasury.

In its response to the Exit Conference Memorandum, the Primary Committee provided copies of four checks, totaling \$4,541, which had been negotiated by the payees. The Audit staff concludes that, based on the documentation submitted stale-dated checks totaling \$32,929 (\$37,470-\$4,541) remain.

²⁷ The payment amount is calculated as \$130,577 x .230443.

Recommendation #2

The Audit staff recommends that the Commission determine that the Primary Committee is required to pay \$32,929 to the United States Treasury pursuant to Section 9038.6 of Title 11 of the Code of Federal Regulations.

**IV. PETE WILSON FOR PRESIDENT COMPLIANCE COMMITTEE, INC.
(COMPLIANCE COMMITTEE)**

**A. AUDIT FINDINGS AND RECOMMENDATIONS : NON-REPAYMENT
MATTERS**

1. Misstatement of Financial Activity

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

The Audit staff's reconciliation of the Compliance Committee's reported financial activity to bank activity for the first four months of 1996 revealed a material misstatement in the Compliance Committee's reported disbursements and ending-cash-on-hand balance. During the first four months of 1996, the Compliance Committee reported total disbursements of \$360,916, and an ending-cash-on-hand balance of \$8,180. The Audit staff determined that the Compliance Committee should have reported total disbursements of \$367,827 and an ending-cash-on-hand balance of \$1,269. Therefore, the Audit staff concluded that disbursements were understated by \$6,911, and that ending-cash-on-hand balance was overstated by \$6,911.

The Audit staff determined these misstatements were due to the Compliance Committee's failure to report three contribution refunds during the April 1996 Monthly reporting period (March 1 to March 31, 1996), and the failure to report two disbursements for income taxes during the May 1996 Monthly reporting period (April 1 to April 30, 1996).

On June 24, 1996, during the course of fieldwork, the Compliance Committee filed amended reports for the April and May 1996 reporting periods, correcting the errors noted above.

In the Memorandum to the Compliance Committee, the Audit staff recommended no further action regarding this matter. In its response, the Compliance Committee noted its agreement with the Audit staff's recommendation.

2. Disclosure of Occupation/Name of Employer

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

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

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

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

The Audit staff reviewed contributions from individuals to the Compliance Committee on a sample basis. The sample results revealed that for a significant number of such contributions the disclosure of occupation and name of employer was inadequate. All the errors resulted from either a lack of evidence of the Treasurer's best efforts to obtain occupation and name of employer information, or from the occupation and name of employer information being available, but not disclosed.

During the course of audit field work, the assistant treasurer stated that the Compliance Committee did not send follow-up letters to contributors requesting the occupation and name of employer information. Rather, the Compliance Committee relied on the Primary Committee's records and efforts to provide the required information.²⁸ All contributions received by the Compliance Committee were either

²⁸

Since the Primary Committee and the Compliance Committee had the same treasurer for most of the audit period, and operated out of the same address, the Audit staff determined that it was reasonable to assume that the information maintained by the Primary Committee was readily accessible and available for use by the Compliance Committee.

transferred by the Primary Committee in accordance with 11 CFR §9003(a)(1), or solicited in conjunction with the Primary Committee (see Finding III.B.2.). Thus, the Audit staff examined the Primary Committee contributor records for occupation and name of employer information and for evidence of the Treasurer's best efforts in order to incorporate the information contained in those records into the review. As a result of this review, the number of errors was reduced; however, a material problem remained.

At a conference held at the conclusion of fieldwork, the Compliance Committee was advised of this matter. Compliance Committee officials agreed to file amended Schedules A-P disclosing the missing occupation and name of employer data; and, where the information could not be obtained, to maintain and submit records of all efforts to acquire it.

In the Memorandum, the Audit staff recommended that the Compliance Committee submit documentation to demonstrate that best efforts were utilized and file amended Schedules A-P to disclose occupation and name of employer information contained in either the Primary Committee or Compliance Committee records but not previously disclosed.

Amended Schedules A-P were provided with the Compliance Committee's August 1996 (September Monthly) filing with the Commission. Based on our review of the amendments, the Audit staff determined that the Compliance Committee's reports had been materially corrected to disclose the required occupation and name of employer information.

B. FINDING AND RECOMMENDATION: AMOUNT DUE TO THE U.S. TREASURY

Stale-dated Checks

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission of its efforts to locate the payees, if such efforts are necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff performed bank reconciliations through April 1996 for the Compliance Committee. From these reconciliations, the Audit staff determined that the Compliance Committee had 80 stale-dated contribution refund checks totaling \$66,450.

At a conference held at the end of fieldwork, the Audit staff provided representatives of the Compliance Committee with copies of schedules of the stale-dated checks. The Audit staff discussed this matter with the Compliance Committee

representatives, who agreed to review their records and provide the Audit staff with additional and ongoing information which may resolve the items.

In the Exit Conference Memorandum, the Audit staff recommended that the Compliance Committee provide evidence that either the checks were not outstanding by providing copies of the front and back of the negotiated checks along with bank statements, or that the outstanding checks are void by providing either copies of the voided checks with evidence that no obligation exists, or copies of negotiated replacement checks. Absent such evidence, the Audit staff would recommend the Commission determine that stale-dated checks totaling \$66,450 are payable to the United States Treasury.

In response to the Exit Conference Memorandum, the Compliance Committee provided evidence which resolved three items totaling \$3,000. Therefore, the Audit staff reduced the amount of unresolved, stale-dated checks to \$63,450 (\$66,450-\$3,000).

Recommendation # 3

The Audit staff recommends that the Commission determine that the Compliance Committee make a payment of \$63,450 to the United States Treasury pursuant to Section 9007.6 of Title 11 of the Code of Federal Regulations.

V. PETE WILSON FOR PRESIDENT AUDIT FINES AND PENALTIES ACCOUNT, INC. (FINES COMMITTEE)

The Audit staff did not detect any material non-compliance matters resulting from the audit of the Audit Fines Committee. This fact was stated in the Exit Conference Memorandum. In its response, the Audit Fines Committee concurred with the Audit staff's conclusion.

If residual moneys exist in the Audit Fines Committee account(s) after payment of all fines and civil penalties, the Audit Fines Committee must take the following action with respect to such moneys:

- a. Return any residual moneys to contributors on either a pro-rata basis or first-in, first-out basis;
- b. disgorge any residual moneys to the United States Treasury;
- c. contribute any residual moneys to any organization described in section 170(c) of Title 26 of the United States Code, or



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

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AUDIT DIVISION

MAY 13 4 14 PM '97

May 13, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Sumins
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdinger
Assistant General Counsel

Andre G. Pineda
Attorney

SUBJECT: Proposed Audit Report on the Pete Wilson for President
Committee, Inc.; Pete Wilson for President Compliance
Committee, Inc.; and Pete Wilson for President Audit Fines and
Penalties Account, Inc. (LRA #478)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Audit Report on the Pete Wilson for President Committee, Inc. ("Primary Committee"); Pete Wilson for President Compliance Committee, Inc. ("Compliance Committee"); and Pete Wilson for President Audit Fines and Penalties Account, Inc. ("Fines Committee") submitted to this Office on March 18, 1997.¹ The following memorandum summarizes our comments on

¹ Because the proposed Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 2.4, this Office recommends that the Commission's discussion of this document be conducted in open session.

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the proposed report. This Office concurs with findings in the proposed report which are not discussed separately in the following memorandum. If you have any questions concerning our comments, please contact Andre Pineda, the attorney assigned to this audit.

II. APPARENT EXCESSIVE CONTRIBUTION (SECTION III.A.1.a)

The proposed report notes that on May 1, 1995, the Primary Committee entered into a contract with The Fuller Company, a corporation owned by Craig Fuller.² Pursuant to the contract, Mr. Fuller was to serve as the Primary Committee's campaign chairman, and he was to receive a \$22,000 retainer fee each month beginning May 1, 1995. The proposed report notes that the Primary Committee owes Craig Fuller \$51,185, an amount which includes an unpaid August 1995 monthly retainer fee for campaign chairman services rendered (\$22,000), as well as expenses that Mr. Fuller incurred while providing campaign chairman services, such as taxi fares, meals, and hotel lodging (\$29,193). The proposed report concludes that the unreimbursed expenses constitute an excessive contribution of \$28,193 from Mr. Fuller to the Primary Committee pursuant to 11 C.F.R. § 116.5. The proposed report rejects the Primary Committee's arguments that Mr. Fuller is a commercial vendor and his expenses, therefore, are properly analyzed under 11 C.F.R. § 116.3.

This Office concurs with the Audit Division's opinion that Mr. Fuller's expenses are problematic. However, the information provided by the Primary Committee in response to the Exit Conference Memorandum suggests that Mr. Fuller may be a commercial vendor. Thus, his expenses are better analyzed under 11 C.F.R. § 116.3 than 11 C.F.R. § 116.5.

The Primary Committee entered into a contract with The Fuller Company pursuant to which Mr. Fuller would provide campaign chairman services to the Primary Committee.³ In response to the Exit Conference Memorandum, the Primary Committee submitted an affidavit from Mr. Fuller stating that he is president of The Fuller Company, a sole proprietorship. His affidavit also states that he considered himself to be an independent contractor with the Primary Committee, rather than a Primary Committee employee. Mr. Fuller's affidavit further states that his 1995 federal tax return reflected his status as an independent contractor. Specifically, he received a Form 1099 from the

² In its contract with the Primary Committee, The Fuller Company refers to itself as a corporation. However, Mr. Fuller's affidavit states that The Fuller Company is a sole proprietorship. See Affidavit of Craig Fuller dated January 17, 1997.

³ The proposed report notes that all but one Primary Committee check related to Mr. Fuller's campaign chairman services was made payable to Craig Fuller, not The Fuller Company.

Primary Committee for compensation earned in 1995 and reported this compensation on Schedule C on his 1995 tax return. Thus, Mr. Fuller's affidavit states the Primary Committee treated him as a vendor.

It appears that Mr. Fuller was not acting as an individual when he provided campaign chairman services to the Primary Committee. See 11 C.F.R. § 116.5 (provision applies to committee staff and *other individuals*). However, it is not entirely clear he was acting as a commercial vendor because there is no evidence that his usual and normal course of business involves the provision of campaign chairman services. 11 C.F.R. § 116.1(c). Nonetheless, this Office believes that the balance of available information at this point weighs in favor of treating Mr. Fuller as a commercial vendor pursuant to 11 C.F.R. § 116.3(c).⁴ Although Mr. Fuller did not provide copies of his 1995 federal tax return, the statements contained in his affidavit are consistent with the 1995 Internal Revenue Service ("IRS") tax year sole proprietorship requirements.⁵ Moreover, it appears that the Primary Committee did not consider Mr. Fuller an employee because it reported Mr. Fuller's earnings on IRS Form 1099, a form specifically used for nonemployees. See Instructions to 1995 IRS Form 1040 at 10 (nonemployee compensation reported on IRS Form 1099-MISC).

Nonetheless, this Office notes that the Primary Committee has failed to demonstrate that The Fuller Company's ordinary course of business was to extend credit

⁴ Because Mr. Fuller made inquiries to the Primary Committee concerning payment of his \$22,000 August 1995 retainer fee, this Office does not believe that Mr. Fuller extended credit to the Committee totaling \$22,000 under 11 C.F.R. § 116.3. See Affidavit of Craig Fuller dated January 17, 1997. This Office also notes that Mr. Fuller's August 1995 retainer fee is not properly included under 11 C.F.R. § 116.5 because the retainer fee is money owed by the Primary Committee to Mr. Fuller; it is not the payment or advance of monies by Mr. Fuller to the Primary Committee for the costs incurred to provide goods and services to the Primary Committee. In limited circumstances, the Commission has permitted entities to pay upfront costs that are incurred in connection with providing goods or services to a political committee without such costs constituting a contribution to the political committee. See generally: Advisory Opinions 1991-18 and 1991-20.

⁵ A "sole proprietorship" is "a business, usually unincorporated, owned and controlled exclusively by one person." *Black's Law Dictionary* 1220 (6th Ed. 1991). For tax year 1995, the IRS required individuals who received a profit or loss from a sole proprietorship to report the gross receipts or sales from their respective businesses on IRS Schedule C, an attachment to IRS Form 1040. 1995 IRS Form 1040, line 12 and 1995 IRS Form Schedule C, Part 1, No. 1. Individuals determine the amount of the gross receipts or sales from their respective businesses by examining box 7 on IRS Form 1099-MISC. 1995 IRS Form Schedule C Instructions at C-2; see also, Instructions to 1995 IRS Form 1040 at 10 (nonemployee compensation reported on IRS Form 1099-MISC). Thus, for tax year 1995, individuals with sole proprietorships received IRS Form 1099-MISC and reported the amount of gross receipts or sales from their respective businesses on IRS Form 1040 and Schedule C. Schedule C requires a description of the filer's business, including the general field or activity, the type of product or service, and the type of customer or client. Schedule C Instructions at C-1.

for expenses, such as taxi fares, meals, and hotel lodging, in the course of performing work for other clients.⁶ 11 C.F.R. § 116.3(c). Mr. Fuller's affidavit only discusses the existence of The Fuller Company and his filings for the 1995 tax year; it does not discuss the business practices of The Fuller Company, and the Primary Committee has not submitted any other documentation addressing The Fuller Company's usual and normal course of business. As a result, this Office believes The Fuller Company extended credit totaling \$29,193 to the Primary Committee outside of its ordinary course of business.⁷

III. NON-QUALIFIED CAMPAIGN EXPENSES - COMPLIANCE COMMITTEE EXPENSES PAID FOR BY THE PRIMARY COMMITTEE (SECTION III.B.3.3)

The proposed report notes that the Primary Committee spent \$699,098 on joint fundraising appeals with the Compliance Committee. The Primary Committee paid the Compliance Committee's share of the joint fundraising appeals, in addition to \$10,000 for "Compliance Committee Processing."⁸

The proposed report states that Compliance Committee fundraising costs paid for by the Primary Committee are non-qualified campaign expenses. The proposed report applies a funds-received allocation method to determine the allocable costs of joint solicitations which occurred prior to August 16, 1995, the effective date of the 11 C.F.R. § 9034.4(e)(6)(i). As a result, the proposed report determined that the costs associated with the joint solicitations prior to August 16, 1995 should be allocated 85.86% to the Primary Committee and 14.14% to the Compliance Committee. Therefore, the proposed report states that the Primary Committee incurred non-qualified campaign expenses totaling \$130,854 for Compliance Committee solicitation costs.⁹

⁶ Because this Office believes Mr. Fuller's expenses are better analyzed under 11 C.F.R. § 116.3, it is immaterial whether Mr. Fuller paid for his expenses by cash or personal credit card. Compare 11 C.F.R. § 116.3 with § 116.5(b)(2).

⁷ As a commercial vendor, Mr. Fuller is not entitled to the travel exemption for individuals pursuant to 11 C.F.R. § 116.5(b). See 11 C.F.R. § 100.7(b)(8). Therefore, the amount of the contribution increases.

⁸ The Primary Committee was not required to pay such costs. The Primary Committee could have paid Compliance Committee costs without incurring non-qualified campaign expenses if it used surplus monies that may have existed once it fulfilled all of its repayment obligations. See 11 C.F.R. § 113.2(d). Alternatively, these costs could have been paid with the personal funds of Pete Wilson or they could have been paid with any remaining residual funds from a Pete Wilson committee that was authorized for a different election cycle. See 11 C.F.R. §§ 110.3(c)(5), 9003.2(c)(8), and 9035.2(a)(1).

⁹ This Office recommends that the proposed report be revised to include a discussion describing how this number was derived.

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715
5115
792

This Office does not agree that a funds-received allocation method is appropriate to determine the allocable costs of joint solicitations which occurred prior to August 16, 1995.¹⁰ Such a method contradicts prior Commission practice with respect to joint solicitation costs between a primary committee and a compliance committee. Prior to the 1992 election cycle, it does not appear the Commission specifically addressed whether costs incurred between a primary committee and a compliance committee could be allocated, and if so, what allocation method should be used. See Explanation and Justification for 11 C.F.R. § 9034.4(e), 60 Fed. Reg. 31866-68 (June 16, 1995); see generally, Financial Control and Compliance Manuals for Presidential Primary Candidates and General Election Candidates Receiving Public Financing for 1984, 1988, and 1992. However, the Commission discussed joint primary committee and compliance committee expenses in the Clinton for President Committee, Inc. ("Clinton Committee") audit. In 1992, the Clinton Committee hired a vendor to conduct two joint mailings for the Clinton/Gore '92 General Election Compliance Fund ("Clinton GELAC") and it. Final Audit Report on the Clinton for President Committee, Inc. at 51 (December 20, 1994). The Clinton Committee allocated the cost of these mailings 85% to the Clinton Committee and 15% to the Clinton GELAC according to "the benefit reasonably expected to be derived [by each committee]." *Id.* at 52; see also, 11 C.F.R. § 106.1(a). The Commission rejected this method, and the joint mailing costs were allocated 50% to the Clinton Committee and 50% to the Clinton GELAC. *Id.* at 52 and 63.

In addition to this audit, the Commission promulgated a joint solicitation regulation for the 1996 election cycle, which applied to candidates who receive public funding in both the primary and the general election. 11 C.F.R. § 9034.4(e). This regulation specifically requires the costs of a solicitation to be attributed to the primary election or to the GELAC depending on the purpose of the solicitation. 11 C.F.R. § 9034.4(e)(6)(i). If a candidate solicits funds for both the primary election and for the GELAC in a single communication, 50% of the cost of the solicitation shall be attributed to the primary election, and 50% to the GELAC. *Id.* The Commission promulgated this provision to clarify past questions "[that] have arisen as to whether a p[re] DOI communication was intended to influence the general election, or vice versa." See Explanation and Justification for 11 C.F.R. § 9034.4(e), 60 Fed. Reg. 31866-68 (June 16, 1995). Apparently, the Commission assumed that GELAC accounts would only be established by primary candidates who were assured of obtaining their party's nomination to become general election candidates. See 11 C.F.R. § 9003.3(a)(1) (GELAC may be established by a major party candidate prior to being nominated or selected as the candidate of a political party for the office of President) and § 9003.3(a)(2)(ii)(A) (compliance related costs shall initially be paid from the federal fund account of a major

¹⁰ On October 29, 1996, the Commission determined that General Election Legal and Accounting Compliance Funds ("GELAC") expenses paid by presidential primary committees are non-qualified campaign expenses. However, the Commission did not make a determination with respect to the method of allocating costs of joint fundraising between a GELAC and a primary committee.

party candidate seeking the office of the President in the general election; the GELAC may later reimburse the federal fund account for these costs).

Although 11 C.F.R. § 9034.4(e)(6)(i) does not directly apply to the Primary Committee because Governor Wilson did not receive public funding in both the primary and general elections, this regulation provides additional guidance concerning the proper allocation method for joint primary/GELAC solicitations, irrespective of whether a GELAC was established by a publicly funded candidate who failed to be nominated or selected as the candidate of a political party for President. Accordingly, this Office believes that 11 C.F.R. § 9034.4(e)(6)(i) can be used, by analogy, as support for the proposition that a 50%/50% allocation method should be used to determine the Compliance Committee's share of joint solicitation costs incurred prior to August 16, 1995.

Based on the Clinton Committee audit and 11 C.F.R. § 9034.4(e)(6)(i), by analogy, this Office believes that use of a funds received method to allocate the costs of joint solicitations between the Primary Committee and the Compliance Committee prior to August 16, 1995 is inconsistent with the Commission's past and present treatment of such costs. Accordingly, this Office believes that the Audit Division should allocate these costs on a 50%/50% basis.¹¹ Therefore, this Office recommends that the Audit Division revise the proposed report to reflect this allocation percentage in the amount of non-qualified campaign expenses subject to a pro-rata repayment to be paid by the Primary Committee.

¹¹ Because 11 C.F.R. § 9034.4(e)(6)(i) applies to candidates who receive public funding in both the primary and general election, it does not appear that this provision specifically applies to joint solicitations undertaken by an unsuccessful publicly funded primary candidate for President and its GELAC after August 16, 1995. However, for the above-stated reasons, this Office believes that this regulation applies, by analogy, to such joint solicitations. Therefore, this Office concurs with the proposed report's conclusion that joint solicitations between the Primary Committee and the Compliance Committee which occurred after August 16, 1995 should be allocated on a 50%/50% basis.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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FEDERAL ELECTION
COMMISSION
AUDIT DIVISION

May 21 2 20 PM '97

May 28, 1997

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

Rhonda J. Vosdingh
Assistant General Counsel

Andre G. Pineda
Attorney

SUBJECT: Proposed Audit Report on the Pete Wilson for President
Committee, Inc.: Pete Wilson for President Compliance
Committee, Inc.: and Pete Wilson for President Audit Fines and
Penalties Account, Inc. (LRA #478) - Supplemental Comments

I. INTRODUCTION

This memorandum is written pursuant to an informal request by the Audit Division on May 16, 1997 to reconsider the conclusions contained in our memorandum dated May 13, 1997 concerning the proposed audit report on the Pete Wilson for President Committee, Inc. ("Primary Committee"), Pete Wilson for President Compliance Committee, Inc. ("Compliance Committee"), and Pete Wilson for President Audit Fines and Penalties Account, Inc. If you have any questions concerning these supplemental comments, please contact Andre G. Pineda, the attorney assigned to this audit.

99 JUN 11 1997

II. APPARENT EXCESSIVE CONTRIBUTION (SECTION III.A.1.a)

The Audit Division requested that this Office reconsider its conclusion that Craig Fuller is most likely a commercial vendor whose transactions with the Primary Committee should be analyzed under 11 C.F.R. § 116.3. Specifically, the Audit Division informed this Office of its belief that Mr. Fuller was acting more like a Primary Committee employee, than a commercial vendor. In support of its position, the Audit Division noted the following: (1) Mr. Fuller lacked other business clients; (2) he paid for expenses via a personal credit card; (3) his business and personal address were the same; (4) his current resume does not refer to The Fuller Company; and (5) a search of The Fuller Company revealed that it was not an incorporated entity in either California, the District of Columbia, or Virginia.

Based on this request, this Office examined Internal Revenue Service Ruling 1987-41, which sets forth guidelines for determining whether a person is an employee or independent contractor for tax purposes.¹ This ruling states that an individual is an employee for federal tax purposes if the individual has the status of an employee under the "usual common law rules applicable in determining the employer-employee relationship." Rev. Rul. 87-41, 1987-1 C.B. 296, 298. In general, an employer/employee relationship exists when the "person or persons for whom the services are performed have the right to control and direct the individual who performs the services." *Id.* Thus, an individual is an employee when he or she "is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done." *Id.* The designation or description of the relationship between parties is immaterial. *Id.* However, individuals who are engaged in an independent trade, business, or profession, in which they offer their services to the public, are generally not employees. *Id.*

The Internal Revenue Service examines 20 factors to determine whether sufficient control is present to establish an employer-employee relationship. *Id.* These factors include: (1) instructions; (2) training; (3) integration; (4) services rendered personally; (5) hiring, supervising, and paying assistants; (6) continuing relationship; (7) set hours of work; (8) full time required; (9) doing work on employer's premises; (10) order or sequence set; (11) oral or written reports; (12) payment by hour, week, or month; (13) payment of business and/or traveling expenses; (14) furnishing of tools or materials; (15) significant investment; (16) realization of profit or loss; (17) working for more than one firm at time; (18) making service available to general public; (19) right to discharge; and (20) right to terminate. *Id.* at 298-299 (explaining each factor in greater detail). No specific weight is given to a particular factor: "the degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed." *Id.* at 298. Each determination is analyzed on a case-by-case basis.

¹ IRS rulings are not binding or controlling on Commission determinations. However, such rulings provide guidance as to how the Commission can analyze particular circumstances or situations.

At this point, this Office believes that there is insufficient information regarding Craig Fuller's relationship to the Primary Committee to definitively conclude that Mr. Fuller was a Primary Committee employee.² Many of the listed factors require detailed knowledge of the relationship that Mr. Fuller and The Fuller Company had with the Committee, details which were not available during the audit. For example, it is not clear whether Mr. Fuller was required to submit oral or written reports (factor #11) or whether he was required to work a set amount of hours (factor #7). The only information obtained during the audit that provides substantive details concerning the relationship between Mr. Fuller and the Primary Committee is a contract dated May 1, 1995. This contract, however, provides little assistance in ascertaining Mr. Fuller's duties. See Article 3 ("Duties of Vendor"). Nonetheless, it appears that parts of this contract support either conclusion: that he is a Primary Committee employee or a commercial vendor. Compare factor #12 (contract provision specifying payment of monthly retainer suggests employer/employee relationship) with factor # 17 (contract provision permitting the ability to contract with other parties suggests independent contractor relationship).

III. NON-QUALIFIED CAMPAIGN EXPENSES - COMPLIANCE
COMMITTEE EXPENSES PAID FOR BY THE PRIMARY COMMITTEE
(SECTION III.B.3.3)

The Audit Division also requested that this Office reconsider its conclusion that use of a funds-received allocation method is not appropriate to determine the allocable costs of joint solicitations incurred by the Primary Committee and the Compliance Committee prior to August 16, 1995. In short, the Audit Division informed this Office of its belief that the 1992 audit on The Clinton for President Committee, Inc. ("Clinton '92 Committee") does not constitute prior Commission practice with respect to the allocation of joint solicitation costs between a primary committee and a compliance committee. Accordingly, the Audit Division believes that no Commission precedence exists with respect to the allocation of joint primary/compliance solicitation costs prior to August 16, 1995, and as a result, use of a funds-received allocation ratio by the Commission is permissible.

This Office maintains its position that the costs incurred prior to August 16, 1995 for joint fundraising of the Primary Committee and Compliance Committee should be allocated 50%/50% to each committee. The Clinton '92 Committee audit constitutes precedent with respect to the allocation of joint primary/compliance solicitation costs incurred prior to August 16, 1995. In the Clinton '92 Committee audit, the Commission allocated the cost of the joint solicitations 50% to the Clinton '92 Committee, and 50% to the Clinton/Gore '92 General Election Compliance Fund. Therefore, it is clear that past

² The factors cited by the Audit Division, such as Mr. Fuller's apparent lack of other business clients, provide some evidence that Mr. Fuller is an employee of the Primary Committee. However, these factors are not dispositive.

Memo to Robert J. Costa
Proposed Audit Report on the Pete Wilson for
President Committee, Inc., et al.
Page 4

Commission practice was to allocate joint primary/compliance solicitation costs on a 50%/50% basis. Accordingly, this Office advises the Audit Division to apply a 50%/50% allocation percentage for Primary Committee/Compliance Committee joint solicitation costs incurred prior to August 16, 1995.

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1997

Ms. Renee Croce, Treasurer
Pete Wilson for President Committee, Inc.
Pete Wilson for President Compliance Committee, Inc.
Pete Wilson for President Audit Fines and Penalties Account, Inc.
228 South Washington Street, Suite 200
Alexandria, VA 22314

Dear Ms. Croce:

Attached please find the Audit Report on Pete Wilson for President Committee, Inc., Pete Wilson for President Compliance Committee, Inc. and Pete Wilson for President Audit Fines and Penalties Account, Inc. The Commission approved the report on August 27, 1997. As noted on page 5, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9038.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$126,240 is required within 90 calendar days after service of this report (December 1, 1997).

Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (September 30, 1997), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 30 day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 30 day period provided, it will be considered final.

The Commission approved Audit Report will be placed on the public record on September 5, 1997. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 28, 1997

Governor Pete Wilson
c/o Ms. Renee Croce, Treasurer
Pete Wilson for President Committee, Inc.
Pete Wilson for President Compliance Committee, Inc.
Pete Wilson for President Audit Fines and Penalties Account, Inc.
228 South Washington Street, Suite 200
Alexandria, VA 22314

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The Commission approved Audit Report will be placed on the public record on September 5, 1997. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

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

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

11/11/99 10:59 AM

CHRONOLOGY

**- PETE WILSON FOR PRESIDENT COMMITTEE, INC. =
PETE WILSON FOR PRESIDENT COMPLIANCE COMMITTEE, INC.
AND
PETE WILSON FOR PRESIDENT AUDIT FINES
AND PENALTIES ACCOUNT, INC.**

Audit Fieldwork	5/28/96 — 8/17/96
Exit Conference Memorandum to the Committee	11/4/96
Response Received to the Exit Conference Memorandum	1/20/97
Audit Report Approved	8/27/97

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