Ms. Wanda Thomas
Acting Assistant Staff Director
Audit Division
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Ms. Thomas:

This letter, and attached exhibits will serve as the response of the Washington State Democratic Central Committee ("WSDCC") to the Interim Audit Report ("Audit Report") of the Federal Election Commission's Audit Division ("the Audit Division") for the period covering the WSDCC's financial activities for 2003 and 2004.

The response to each of the Audit Division's five recommendations is as follows:

Recommendation #1

The Committee has reviewed the recommendation and has reviewed the documentation provided by the Audit Division. After a review of documentation provided by the Commission the committee agrees that these transactions require amendment. However, the appropriate amendments are not entirely in sync with the Commission’s recommended changes. Attached, as Exhibit 1, is a spreadsheet that explains the disposition of each amended item.

Recommendation #2

The following represents the disposition of the Commission’s finding on excessive candidate contributions:

Alben 2004 – The committee made a $3,000 contribution to the Alben campaign that was designated for the general election. However, Alex Alben was unsuccessful in his bid to obtain the Democratic nomination for Congress. The Alben campaign was required to refund the $3,000 contribution to the WSDCC in accordance with 11 C.F.R. § 102.9(e)(3). However, the Alben campaign failed to make a refund and was permitted to terminate the committee by the Commission in March 2005. Therefore, the WSDCC is unable to request a refund at this time.
Barbieri for Congress - $1,500 of the May 20, 2004 contribution was intended for the primary election. The report has been amended to clarify this intent. A portion of the in-kind for voter file has been moved to Schedule F, Line 25 as a coordinated expenditure.

Friends of Sandy Matheson - The in-kind contributions have been reclassified as coordinated expenditures and have been moved to Schedule F, Line 25.

Recommendation #3

The committee acknowledges the reporting errors regarding its Levin activity and has amended reports to correct these errors.

Recommendation #4

The committee has reviewed this recommendation and has determined that only two of the communications listed on the Commission’s spreadsheet were, in fact, independent expenditures. These two expenditures have been moved to Schedule E, Line 24. All other communications listed on the Commission’s spreadsheet were either coordinated communications or volunteer exempt activities. Furthermore, a number of the communications included non-federal candidates and generic references to the Democratic Party. Expenses with such references have been allocated to Lines 29 and 30(b) as appropriate. The spreadsheet attached as Exhibit 2 explains the disposition of each communication on the Commission’s spreadsheet. It should be noted that one of the mail communications on behalf of Patty Murray, entitled “Too Extreme” was a volunteer exempt activity. An affidavit and other documentation to demonstrate that this was a volunteer exempt are attached as Exhibit 3. Other mailings on behalf of Patty Murray were intended as coordinated expenditures and have been moved to Schedule F, Line 25.

It should be noted that there are several mailings undertaken on behalf of John Kerry, the Democratic nominee for President listed on the Commission schedules. It is the WSDCC’s belief that these mailings were intended as volunteer exempt activities. However, the committee has been unable to locate any documentation regarding the volunteer participation with respect to these communications. In accordance with the committee’s belief that these were exempt activities, the disbursements have been moved to Line 30(b).

Recommendation #5

The committee has carefully reviewed the Commission’s finding and recommendation and disagrees with both the Commission’s conclusion and legal analysis. First, the Commission offers no regulatory citation for (and no citation existed with respect to 2004 activities) with respect to the requirement that funds raised that “convey a plan” to promote, support, attack or oppose a federal candidate must be deposited into a federal account. To be sure, the Commission promulgated a regulation that requires contributions that are solicited with the intent to exclusively support or oppose a clearly identified federal candidate must be deposited into a federal account. This regulation did not take effect until January 1, 2005.1 The Commission may not retroactively apply

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1 11 C.F.R. § 109.57(b). The WSDCC questions whether the Commission really intended to include party committees within the purview of this regulation. The regulation requires that no more than 50% of contributions raised through
the regulation to activity by the WSDCC that took place in 2004. The committee's fundraising
efforts were, in fact, in furtherance of its efforts to support the election of state and local candidates
and were deposited into the committee's non-exempt account which was limited to contributions of
$3,400 per year in 2004. Due to this limitation, the committee must use small donor, in-person
teaching activities to fund activities on behalf of state and local candidates.

The committee also disagrees with the Commission's finding with respect to the fundraising
expenses. First, the committee disagrees with the Commission's use of MURs 5403 and 5466 as
authority for the proposition cited by the Commission that fundraising communications that PASO
a clearly identified federal candidate are "expenditures." These matters involved the abuse of the
Commission's allocation regulations by a non-connected PAC who purported to raise
impermissible non-federal funds for the purpose of using those funds to influence federal elections.
It was in that context that the Commission made its findings. In this matter, the WSDCC was
depositing federally permissible funds into its non-federal account for the purpose of influencing
non-federal elections. As described above, the motivation behind this fundraising was not to use
the funds to influence any federal election but rather, due to the restrictive nature of Washington
campaign finance law and the need to fund an account to spend funds directly on behalf of state
and local candidates. It serves no legal or policy purpose to demand that the WSDCC return these
funds to the federal account (which would ironically result in a federal fund windfall for the state
party). Likewise, it serves no legal or policy purpose to require the WSDCC pay for these
fundraising expenses with federal funds.

Second, the committee disputes that the script actually attacks or opposes a federal candidate. The
communication merely states that the WSDCC has a plan to defeat George W. Bush. It does not, in
any way, attack President Bush's plans or projects, or attack his character. The letter merely
discusses the general plans of the WSDCC, which in a presidential election year, would obviously
include activities in connection with the presidential election. Thus, in 2004, it was within the
WSDCC's rights to deposit any or all of the funds raised by this mailing in the committee's non-
federal account. Furthermore, the committee was permitted to use non-federal funds to pay for
these expenses.

Although the WSDCC disagrees with the findings and recommendations of the audit report, the
committee intended to comply with the Commission's recommendation with respect to Finding #5.
However, at this time, the committee has only $5,813 in its "non-exempt" account, the account into
which these funds were deposited. Due to the restrictive nature of the contribution limits to this
account, the committee has difficulty raising funds for the account, other than through small donor
fundraising. The committee does maintain an unrestricted "exempt" non-federal account for
activities that do not directly influence non-federal elections. The WSDCC sought guidance from
the Washington State Public Disclosure Commission as to whether it was permitted to use exempt
funds to comply with the Commission's recommendation. The WSDCC has been informed by the
Public Disclosure Commission that any attempt to use exempt funds to comply with the
Commission's recommendation would likely result in a violation of Washington campaign finance

reference to federal and non-federal elections be deposited into a non-federal account. This ratio is consistent with the
50% federal allocation formula for non-party political committees but is inconsistent with the allocation formula for
state and local party committees which range from 15% to 36% federal.
law. In addition, as of April 17, 2009, the WSDCC only has $19,241 in its federal accounts. Therefore, the WSDCC is unable to comply with the Commission's recommendation at this time.

Based upon our objections to the findings, the committee does not intend to amend its reports at this time, but will consider filing such amendments if the Commission, by a vote of a majority of its members, disagrees with the committee's response to the Interim Audit Report.

If you require any further information, or have any other questions, please call me at (202) 479-1111.

Sincerely,

Neil Reiff
Counsel to the Washington State Democratic Central Committee
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BEFORE THE
FEDERAL ELECTION COMMISSION

IN RE
Washington Democratic Party

DECLARATION OF MICHAEL KING:

1. During the 2004 general election campaign I served as a regional field
director for the Patty Murray for U.S. Senate. In that capacity, I supervised the
production and distribution, by volunteers, of a mail ploce entitled "Extreme" in October
2004.

2. In that regard, I was responsible for the oversight of Washington
Democratic Party volunteers who were assisting in the production of this mailing.

3. Due to the fact that the mailing occurred almost five years ago, I cannot
recall the exact particulars of what each volunteer did. However, I can recall, generally,
that the volunteers played an extensive role in the preparation of this mailing.

I declare under penalties of perjury that the foregoing is true and correct to the
best of my present knowledge, information and belief. Dated this 15th day of April,
2009.

Michael King