FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE BEGINNING OF MUR # 3369

DATE FILMED 9/25/92 CAMERA NO. 3

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AR-91-26

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 14, 1991

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: CURRY FOR CONGRESS - MATTERS REFERRED TO THE OFFICE OF GENERAL COUNSEL

Attached please find at Exhibits A, B, and C matters concerning Curry for Congress which were approved by the Commission on August 13, 1991, for referral to your office.

Should you or your staff wish to review any audit workpapers or discuss these matters further, please contact Wanda Thomas or Rick Halter at 376-5320.

Attachments:

Exhibit A - Excessive Contributions (with attachment)
Exhibit B - Apparent Prohibited Contributions
Exhibit C - Omission of Disclosure Information (with attachment)

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Excessive Contributions

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

Under 11 C.F.R. §110.1(b), "with respect to any election" means - in the case of a contribution designated in writing by the contributor for a particular election, the election so designated. In the case of a contribution not designated in writing by the contributor, the next election for that Federal office after the contribution is made. A contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. A contribution made by more than one person that does not indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contributions was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if - the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contributions are deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 C.F.R. 110.1(b), 110.1(k) or 110.2(b), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

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Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

The Committee received contributions from seven individuals which exceed the contribution limitation by $8,270.00. With respect to five of the contributions, a portion of each had been attributed by the Committee to another individual. However, the contribution records did not contain the signatures of the other individuals thus authorizing the Committee's attribution of the contributions.

At the exit conference, the Committee official stated that a portion of each contribution was designated for the primary election. However, the contributions were received by the Committee after the date of the primary (5/14/88) and were not designated in writing for the primary election. In addition, the Committee apparently had no primary debts outstanding at the time the contributions were received and therefore any such contributions would be prohibited. It is also noted that this explanation is inconsistent with the way the contributions were recorded and reported.

A schedule of the excessive contributions was provided to the Committee at the exit conference.

The interim audit report recommended that the Committee either present evidence that the contributions are not excessive or refund the excessive portions of the contributions and present evidence of such refunds. If funds were not available to make refunds, the Committee was instructed to disclose the excessive contributions as debts on Schedule D (Debts and Obligations) until such time that funds are available.

In response to the interim audit report the Committee submitted copies of letters to contributors which request that they sign an attached statement attesting to how their contributions should be attributed. The Committee received responses from four of the seven contributors. The responses state that the listed contributions are from the contributor and his or her spouse and are "to be applied against the Primary or General Election or to be used in a 1990 campaign as appropriate." (The Candidate did not run in the 1990 election.) The responses contain the signatures of both the contributors and their spouses. It should also be noted that the responses, dated February 19, 1991 were received by the Committee outside of the 60 days allowed at 11 C.F.R. §110.1(k) for receipt of written reattributions. See Attachment 1.

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The Committee's response to the interim audit report does not include any information to document that there were outstanding primary debts at the time the contributions were received. Therefore, the contribution reattributions noted above apply to the general election only. Consequently, portions of the reattributed contributions totaling $1,750 exceed the contribution limitations. Since no response was received with respect to $2,500 in excessive contributions and the action taken with respect to $1,750 in excessive contributions was not adequate, $6,000 in excessive contributions remain unresolved. See Attachment 2.

Recommendation #1

The Audit staff recommends that this matter be referred to the Office of General Counsel.

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REFERRAL-FAR
CURRY FOR CONGRESS

EXHIBIT A
ATTACHMENT
PAGE 1 OF 8

February 19, 1991

Curry for Congress
647 N. Tazewell Street
Arlington, Va. 22203

Dear Sir,

In 1988 during the Curry for Congress Campaign my spouse and I made contributions in the amount of $2,000 on 06/27/88 and 2,000 on 12/08/88 to be applied against the Primary or General Election or to be used in a 1990 campaign as appropriate.

Susan Meredith

Susan Meredith

Peter Meredith

Peter Meredith

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NO RESPONSE

EXHIBIT A
ATTACHMEN
PAGE 2 OF

February 19, 1991

Mr. Herman Riggs
P.O. Box 89
Pagosa Springs, Colorado 81147

Dear Herman,

This is a voice out of the past, but one that has warm and positive memories of your generous and kind support of me when I was running for Congress in 1988. Thank you for all your efforts as well as your moral support.

Curry for Congress' books were closed the end of November, 1988, but the Federal Election Commission (FEC) is just now closing the final audit.

For administration purposes the FEC requires that I mail you the enclosed letter and ask you to sign it. The questions to be answered are how you meant the contributions to be attributed and the date. I have supplied the date the contributions were deposited to the account and my understanding of how they were to be applied. If your records indicate differently, please so indicate.

Thank you in advance for your assistance. And once again thank you for being so helpful during the campaign. Charlene and I do miss seeing you. Don't hesitate to come for a visit.

Sincerely,

Jerry R. Curry

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CURRY FOR CONGRESS

No response

EXHIBIT A
ATTACHMENT
PAGE 3 OF 8

February 19, 1991

Mr. and Mrs. Kiffin Simpson
111 Ponce deLeon Ave.
Hato Rey, Puerto Rico

Dear Mr. Simpson,

This is a voice out of the past, but one that has warm and positive memories of your generous and kind support of me when I was running for Congress in 1988. Thank you for all your efforts as well as your moral support.

Curry for Congress' books were closed the end of November, 1988, but the Federal Election Commission (FEC) is just now closing the final audit.

For administration purposes the FEC requires that I mail you the enclosed letter and ask you to sign it. The questions to be answered are how you meant the contributions to be attributed and the date. By law you are not compelled to sign the letter. I have supplied the date the contributions were deposited to the account and my understanding of how they were to be applied. If your records indicate differently, please so indicate.

Thank you in advance for your assistance. And once again thank you for being so helpful during the campaign. Charlene sends her regards.

Sincerely,

Jerry

Jerry R. Curry

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CURRY FOR CONGRESS

EXHIBIT A
ATTACHMENT
PAGE 4 OF 8

February 19, 1991

Mr. and Mrs. James W. Hazel
5117 Brookridge Place
Fairfax, VA 22030

Dear Jim,

This is a voice out of the past, but one that has warm and positive memories of your generous and kind support of me when I was running for Congress in 1988. Thank you for all your efforts as well as your moral support.

Curry for Congress' books were closed the end of November, 1988, but the Federal Election Commission (FEC) is just now closing the final audit.

For administration purposes the FEC requires that I mail you the enclosed letter and ask you to sign it. The questions to be answered are how you meant the contributions to be attributed and the date. By law you are not compelled to sign the letter. I have supplied the date the contributions were deposited to the account and my understanding of how they were to be applied. If your records indicate differently, please so indicate.

Thank you in advance for your assistance. And once again thank you for being so helpful during the campaign. Charlene sends her regards.

Sincerely,

Jerry

Jerry R. Curry

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EXHIBIT A
ATTACHMENT
PAGE 5 OF 8

Curry
647 N
Arlin

Curry for Congress
647 North Tazewell
Ariington, Virginia 22203

WASH DC 200
PM
19 FEB
1991

Mr. and Mrs. James W. Hazel
5117 Brookridge Place
Fairfax, Virginia 22030

HAZEL17 BROOKRIDGE LANO 02/28/91
FORWARDING TIME EXPIRED
HAZEL
12600 CARTWRIGHT LN.
RICHMOND VA 23314-1234
RETURN TO SENDER

CURRY FOR CONGRESS

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February 19, 1991

Curry for Congress
647 N. Tazewell Street
Arlington, Va. 22203

Dear Sir,

In 1988 during the Curry for Congress Campaign my spouse and I made contributions in the amount of $1,000 on 05/20/88 and $250 on 10/06/88 to be applied against the Primary or General Election as appropriate.

Contributor

Spouse

92040923871

February 19, 1991

Curry for Congress
647 N. Tazewell Street
Arlington, Va. 22203

Dear Sir,

In 1988 during the Curry for Congress Campaign my spouse and I made contributions in the amount of $1,000 on 06/17/88 and $1,000 on 06/27/88 and $1,500 on 12/30/88 to be applied against the Primary or General Election or to be used in a 1990 campaign as appropriate.

Contributor

Spouse

92040923872

February 19, 1991

Curry for Congress
647 N. Tazewell Street
Arlington, Va. 22203

Dear Sir,

In 1988 during the Curry for Congress Campaign my spouse and I made contributions in the amount of $500 on 08/02/88 and $20 on 10/14/88 and $500 on 12/30/88 to be applied against the Primary or General Election or to be used in a 1990 campaign as appropriate.

Contributor
VINCENT J. THOMAS

Spouse
ELIZABETH C THOMAS

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REFERRAL-FAR
CURRY FOR CONGRESS

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EXHIBIT A
ATTACHMENT #2

CURRY FOR CONGRESS
SCHEDULE OF EXCESSIVE CONTRIBUTIONS

CONTRIBUTOR'S NAME (REATT. CONTRIBUTOR)	DEPOSIT DATE	CHECK AMOUNT	E	EXCESSIVE AMOUNT IAR	REATTRI-BUTED AMOUNT	E	EXCESSIVE AMOUNT REQ.ACTION	
SUSAN MEREDITH	6/27/88	2,000.00	G					
	12/08/88	2,000.00	G	3,000.00	-2,000.00*		1,000.00	c
(PETER MEREDITH)					2,000.00	G	1,000.00	a
HERMAN RIGGS	3/02/88	1,500.00	P	500.00			500.00	b
K. D. SIMPSOM	9/26/88	2,000.00	G	1,000.00			1,000.00	b
JAMES W. HAZEL	5/20/88	1,000.00	G					
	9/15/88	1,000.00	G	1,000.00			1,000.00	b
JOHN T. HAZEL	5/20/88	1,000.00	G					
	10/06/88	250.00	G	250.00	-625.00*		.00	
(VIRGINIA E. HAZEL)					625.00	G	.00	
C.E.THRUSTON, JR.	6/17/88	1,000.00	G					
	6/27/88	1,000.00	G					
	12/13/88	1,500.00	G	2,500.00	-1,750.00*		750.00	c
(ANNE F. THURSTON)					1,750.00	G	750.00	a
VINCENT J. THOMAS	8/02/88	500.00	G					
	10/14/88	20.00	G					
(ELIZABETH C THOMAS)	12/30/88	500.00	G	20.00	510.00	G	.00	
TOTAL		15,270.00		8,270.00	4,885.00		6,000.00	

E - ELECTION DESIGNATION: P= PRIMARY, G= GENERAL (THE COMMITTEE HAD NO PRIMARY DEBTS, THEREFORE CONTRIBUTIONS RECEIVED AFTER THE PRIMARY DATE (5/14/88) ARE ATTRIBUTABLE TO THE GENERAL ELECTION.)

* - AMOUNT NOT INCLUDED IN THE COLUMN TOTAL.

a - REATTRIBUTED AMOUNT EXCEEDS THE CONTRIBUTION LIMITATION FOR THE GENERAL ELECTION.

b - NO RESPONSE WAS RECEIVED FROM THE CONTRIBUTOR.

c - THE CONTRIBUTOR'S RESPONSE IS INADEQUATE TO CORRECT THE EXCESSIVE AMOUNT.

Apparent Prohibited Contributions

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

Section 441e of Title 2 of the United States Code states, in part, that it shall be unlawful for a foreign national directly or through any other person, to make any contribution of money or anything of value in connection with any election to any political office or in connection with any primary election, convention, or caucus held to select candidates for any political office; or for any person to solicit, accept, or receive any cash contribution from a foreign national.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that any contribution which appears to be illegal and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make such refunds.

A review of the Committee's contributor records identified 3 contributions from 3 corporations totaling $250. In addition, the Committee received 3 contributions drawn on the accounts of apparent foreign nationals totaling $2,150.00.

At the exit conference, the Committee was provided with a schedule of apparent prohibited contributions.

The interim audit report recommended that the Committee either present evidence that the contributions are not funded from prohibited sources or refund the contributions and present evidence of such refunds. If funds were not available to make refunds, the Committee was instructed to disclose the prohibited contributions as debts on Schedule D (Debts and Obligations) until such time that funds are available.

In response to the interim report the Committee submitted letters from the three corporate contributors stating that their contributions were from private, not corporate sources. However, according to the appropriate Secretary of State's

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office the businesses in question are corporations. Therefore, the accounts on which the contributions were drawn, are apparently owned by corporations.

Generally, in cases where a conflict exists between the information submitted by a contributor and the information obtained from the Secretary of State, the Audit staff depends on the information obtained from the independent party. However, in light of the relatively small amount involved, no further action is warranted.

The Committee also submitted a letter which attests to the U.S. citizenship of an individual who, at the time of the interim report, was an apparent foreign national. Therefore his contributions of $150 are not prohibited. Finally, the Committee submitted a copy of a letter addressed to the remaining apparent foreign national. The letter had been returned due to an incomplete address.

Recommendation #2

The Audit staff recommends that the $2,000 contribution received from an apparent foreign national be referred to the Office of General Counsel.

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Omission of Disclosure Information

1. Receipts

Section 434(b)(3)(A) of Title 2 of the United States Code requires that each report under this section disclose the identification of each person who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such contribution.

At 11 C.F.R. §100.12, "identification" is defined as an individual's full name, including: first name, middle name or initial, and last name; mailing address; occupation; and the name of his or her employer; and in the case of any other person, the person's full name and address.

Section 104.3(a)(4) of Title 11 of the Code of Federal Regulations requires that in addition to the above, the aggregate year-to-date totals for such contributions be reported.

Section 104.7 of Title 11 of the Code of Federal Regulations states that if best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

The Audit staff reviewed the Committee's disclosure reports and determined that of the total number of contributions itemized, 62.60% lacked the contributor's occupation and 60.16% lacked the name of employer. In an attempt to determine whether the Committee demonstrated best efforts to obtain the required information, the Audit staff examined the 10 sample contributor response cards that the Committee was able to provide. Only 6 of the 10 response cards examined requested the contributor's occupation and only 3 requested the name of employer. Therefore, the Committee has not demonstrated best efforts.

In addition, for contributions totaling $25,362.14, the aggregate year-to-date totals were not reported and with regard to contributions totaling $12,250.00, the contributor's mailing address was not reported.

2. Disbursements

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made, together with the date, amount and purpose of such expenditure.

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A review of the Committee's disclosure reports identified 73 disbursements totaling $28,965.21 for which the proper disclosure information as required by 2 U.S.C. §434(b) was omitted. For forty-one of the disbursements the payee's mailing address was either missing or incomplete, and for forty-five of the disbursements the purpose was either missing, inaccurate or inadequate. The majority of the omitted information was available in the Committee's records or in the local telephone directory.

The Committee official stated that she would take the appropriate action to obtain and submit the required information.

In the interim audit report the Audit staff recommended that the Committee include in a comprehensive amendment, amended Schedules A and B correcting the aforementioned errors.

In response to the interim report, the Candidate stated that complying with the recommendation was more than he could manage and still do his job as a Federal regulator. The Candidate requested that the requirement be waived. See Attachment 1.

Recommendation #3

The Audit staff recommends that this matter be referred to the Office of General Counsel.

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REFERRAL-FAR
CURRY FOR CONGRESS

EXHIBIT C
ATTACHMENT
PAGE 1 OF

647 North Tazewell
Arlington, VA 22203

March 20, 1991

Ms. Wanda Thomas
Federal Election Commission
Washington, D.C. 20463

Dear Wanda:

This submission is in response to your request of February 12, 1991:

Finding II.A: Misstatement of financial activity: Schedule B is completed and enclosed.

Finding II.B: Excessive contributions: All were written; seven of nine responded as stated in the last submission.

Finding II.C: Prohibited contributions: Wrote both contributors with foreign addresses; one answered and, as stated, is a U.S. Citizen. Alleged corporate contributions are shown to be private contributions as stated.

Finding II.D: Itemization of contributions/disbursements: As requested, PAC addresses were obtained except for two.

A report for the period 1/1/89 through 1/6/90 is enclosed.

Obtaining copies of original filings and writing for information from contributors is more than I can manage and still do my job as a Federal regulator. I request that you waiver the requirement.

I appreciate all your assistance and other assistance cheerfully provided by the FEC. I hope this submission satisfies your requirements.

Sincerely,

Jerry Ralph Curry

Enclosures

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RECEIVED
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SECRETARIAT

92 JUL 28 PM 4:33

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

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR 3369
STAFF MEMBERS George F. Rishel
Jeffrey D. Long

SOURCE: INTERNALLY GENERATED

RESPONDENTS: Curry for Congress and Vincent G. Thomas, as treasurer

RELEVANT STATUTES:
2 U.S.C. § 434(b)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441e
11 C.F.R. § 103.3(b)(3)
11 C.F.R. § 104.8(d)
11 C.F.R. § 110.1(b)
11 C.F.R. § 110.1(k)
11 C.F.R. § 110.1(l)
11 C.F.R. § 110.4(a)

INTERNAL REPORTS CHECKED: Audit Workpapers

FEDERAL AGENCIES CHECKED: None

92040923880

I. GENERATION OF MATTER

This matter was generated by an audit referral of Curry for Congress and Vincent G. Thomas, as treasurer, ("Respondents" or "Committee") made by the Commission on August 13, 1991.[1] The Committee registered with the U.S. House of Representatives on May 19, 1988, as the principal campaign committee of Jerry Curry, the Republican candidate for Congress from the Second Congressional District of Virginia in the 1988 general election. The candidate lost that election with 35.5 percent of the vote.

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1. This matter was reassigned in June 1992 to new staff upon the resignation of the staff person originally assigned to it.

This matter was generated by an audit undertaken in accordance with 2 U.S.C. § 438(b). The referral covers three items: (1) receipt of excessive contributions; (2) receipt of a prohibited contribution (foreign national); and (3) omission of disclosure information.

The Committee reported raising $194,005.66 and spending $189,394.74 and ending the 1988 calendar year with $4,726.92 cash on hand with no debts outstanding. The Committee ceased filing reports with the 1988 Year End Report. On February 28, 1990, the candidate filed a letter addressed to the Clerk of the House of Representatives that stated:

> Curry for Congress was placed in caretaker status in November of 1988. It was closed in February of 1989. Subsequent to that, its records were audited by the Federal Election Commission. A final report was filed.
>
> I will not be running for Congress again and will not be soliciting or disbursing funds. Please remove "Curry for Congress" from your correspondence list.

See Attachment 3, page 5. On August 31, 1990, RAD sent a letter to the treasurer at the Post Office Box in Virginia Beach stating that we were in receipt of the Committee's termination letter but that certain conditions had to be met before the Committee could terminate and asked that any amendment or clarification be filed with the Clerk. To date, no such amendment or clarification has been filed, and the Committee remains on the "B" Index without any notation that it is "terminated." The audit staff evidently dealt with the former candidate at his current residential address in Arlington, Virginia. The former candidate was, until

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recently, the administrator of the National Highway Traffic Safety Administration.

II. FACTUAL AND LEGAL ANALYSIS

A. Excessive Contributions

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person shall make contributions to any candidate for federal office that in the aggregate exceed $1,000 per election. 2 U.S.C. § 441a(a)(1)(A). The Act further prohibits any candidate or political committee from knowingly accepting contributions from persons in excess of this limitation. 2 U.S.C. § 441a(f). Commission regulations provide that if the treasurer of a committee receives a contribution that on its face or when aggregated with other contributions from the same contributor with respect to the same election exceeds these limitations, the treasurer may return the contribution or deposit it. If it is deposited, the treasurer must obtain a redesignation or reattribution of the contribution within 60 days or refund it to the contributor in that time frame. 11 C.F.R. § 103.3(b)(3). Commission regulations further provide that a joint contribution must be signed by both contributors or be accompanied by a separate writing signed by both contributors indicating the amount to be attributed to each contributor. Reattributions must be similarly documented. 11 C.F.R. §§ 104.8(d), 110.1(k), and 110.1(l). The regulations also set out procedures for designating and redesignating a contribution to a particular election. 11 C.F.R. § 110.1(b).

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The audit concluded that the Curry Committee had not adequately resolved $8,270 in excessive contributions. This amount included $1,750 in which the reattributed amount exceeds the contribution limitation for the general election, $2,500 in which no response was received from the contributor, and $1,750 in which the contributor's response was inadequate to correct the excessive amount, and $2,270 in which the reattributions were untimely. A chart for these contributions is set out in Attachment 1, page 13.[2]

Therefore, we recommend that the Commission find reason to believe the Curry Committee violated 2 U.S.C. § 441a(f).

B. Prohibited Contribution

The Act prohibits the making, soliciting, receiving, or accepting of a contribution by a foreign national directly or indirectly in connection with any election. 2 U.S.C. § 441e. The Act and regulations define "foreign national" to include a "foreign principal" (other than a U.S. citizen) and an individual who is not a citizen and not lawfully admitted for permanent residence under applicable federal law. See 11 C.F.R. § 110.4(a).

The audit of the Curry Committee uncovered a $2,000 contribution check dated September 14, 1988, and drawn on a foreign banking institution, the Canadian Imperial Bank of Commerce in Toronto, Ontario, Canada. The check had an entity

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2. One thousand dollars of this amount is also included in the section addressing apparent prohibited contributions, as apparently made by a foreign national.

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identified as "The Verdun Foundation" printed on its face. It was signed by "K.D. Simpson" with a handwritten notation "personal" in the lower left hand corner above the account number. Above the signature line there was a printed notation that read: "The Verdun Foundation U.S. Dollar Account." During the audit process, the former candidate sent a letter to The Verdun Foundation in Toronto, Ontario, Canada to clarify the source of this contribution, but the letter was returned because of an incomplete address.

The Curry Committee reported the receipt of a $1,000 contribution from K.D. Simpson on September 26, 1988, and a $1,000 contribution from a Mrs. K.D. Simpson on the same date. The report did not include any address or occupation or employer, although the majority of itemized receipts for that period did include addresses. Given the information on the contribution check showing it was drawn on a foreign bank, it would appear that the treasurer should have immediately questioned this contribution and sought verification of its legality. This Office contacted a public librarian in Toronto and learned that there was no Verdun Foundation listed in the Canadian Directory of Associations, the Canadian Directory of Foundations, the Canadian business directory, the donor's guide, or the telephone book. There was one listing for a K.D. Simpson, but when we called that person, we learned that he was not the one who made the subject contribution.

We note that the list of excessive contributions also includes a $1,000 excessive from a K.D. Simpson on September 26,

9204092384

1988, which is apparently the same contribution covered in the audit finding regarding the receipt of a contribution from a foreign national. See Attachment 1, page 13; Attachment 3, pages 1 and 4. The list of letters included as an attachment to the audit referral materials for the excessive contributions includes one addressed to Mr. and Mrs. Kiffin Simpson in Hato Rey, Puerto Rico, with a "no response" notation on the letter. See Attachment 1, page 7. The letter itself seems to indicate that the former candidate was personally acquainted with the Kiffin Simpsons. This letter may explain why the $2,000 check was reported as a contribution from Mr. and Mrs. K.D. Simpson. Nevertheless, it is somewhat perplexing why the former candidate was unable to associate the K.D. Simpson contribution on the Canadian check with the Kiffin Simpsons that he apparently knew and to seek proper clarification of this contribution or where the Puerto Rico address came from.

Therefore, we recommend that the Commission find reason to believe the Curry Committee accepted a contribution in violation of 2 U.S.C. § 441e.

C. Disclosure Information

The Act requires that a committee itemize its receipts in excess of an aggregate of $200 per calendar year. 2 U.S.C. § 434(b)(3)(A). This requirement also requires the reporting of the identification of the contributor, which is defined to mean the name, mailing address, and occupation in the case of an individual as well as his or her employer and the full name and address in the case of any other person. 2 U.S.C. § 431(13).

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The Act further requires that a committee disclose the name and address of each person to whom an expenditure in an aggregate amount in excess of $200 per calendar year is made together with the date, amount, and purpose of such expenditure. 2 U.S.C. § 434(b)(5)(A).

The audit determined that the Curry Committee had not disclosed the contributor occupation for 62.6 per cent of its receipts and had not disclosed the employer for 60.16 percent of its receipts. The audit staff examined 10 sample contributor response cards provided by the committee. Six of the 10 requested the occupation and three requested the name of the employer. Furthermore, the audit found that for $25,362.14 in contributions, the aggregate year-to-date totals were not reported and that for $12,250.00 in contributions, the mailing address was not reported.

In addition, the audit determined that 73 disbursements totaling $28,965.21 lacked sufficient disclosure information. For 41 disbursements, the payee's mailing address was missing or incomplete, and for 45 disbursements, the purpose was missing, inaccurate, or inadequate. The audit stated that for the majority of the disbursements the omitted information was available in the Committee's records or the local telephone directory.

In response to the interim audit report, the former candidate stated: "Obtaining copies of original filings and writing for information from contributors is more than I can manage and still

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do my job as a Federal regulator." He asked that this requirement be waived.

Based on the above, we recommend that the Commission find reason to believe the Curry Committee violated 2 U.S.C. §§ 434(b)(3)(A) and 434(b)(5)(A).

Although the above apparent violations are not insignificant, we note that they involve a 1988 campaign, that the former candidate does not intend to seek elective federal office in the future, and that the committee is not an on-going entity and apparently does not have outstanding debts other than the apparent excessive contributions and the foreign national contribution that may require refunding. We also believe it would require substantial Commission resources to further investigate the remaining issues in this matter compared to the apparent violations involved. Therefore, in view of these considerations, we further recommend that the Commission exercise its prosecutorial discretion and take no further action regarding these recommended findings and close the file in this matter. See, Heckler v. Chaney, 470 U.S. 821 (1985). We would further recommend that the notification letter to the respondents, including the former candidate, contain language admonishing them regarding the alleged violations and pointing out the steps needed to terminate the committee, including the refund of excessive/foreign national contributions.

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III. RECOMMENDATIONS

1. Find reason to believe that Curry for Congress and Vincent G. Thomas, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A), 434(b)(5)(A), 441a(f) and 441e but take no further action.

2. Approve the attached Factual and Legal Analysis.

3. Close the file.

4. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date 7/28/92

BY: Lois G. Lerner
Associate General Counsel

Attachments:
1. Referral Materials
2. Final Audit Report
3. Backup Materials
4. Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 3369
Curry for Congress and Vincent G. Thomas, as treasurer	)	
	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 11, 1992, do hereby certify that the Commission decided by a vote of 6-0 to take the following actions in MUR 3369:

1. Find reason to believe that Curry for Congress and Vincent G. Thomas, as treasurer, violated 2 U.S.C. §§ 434(b)(3)(A), 434(b)(5)(A), 441a(f) and 441e but take no further action.

2. Approve the Factual and Legal Analysis recommended in the General Counsel's report dated July 28, 1992.

3. Close the file.

(continued)

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4. Approve the appropriate letters as recommended in the General Counsel's report dated July 28, 1992.

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

Attest:

8-11-92
Date

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

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 24, 1992

Vincent G. Thomas, Treasurer
Curry for Congress
c/o Johns Brothers, Inc.
P.O. Box 2540
Norfolk, Virginia 23501

RE: MUR 3369
Curry for Congress and Vincent
G. Thomas, as treasurer

Dear Mr. Thomas:

On August 11, 1992, the Federal Election Commission found reason to believe that Curry for Congress and Vincent G. Thomas, as treasurer ("Committee"), violated 2 U.S.C. §§ 434(b)(3)(A), 434(b)(5)(A), 441a(f) and 441e, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act.") However, after considering the circumstances of this matter, the Commission also determined to take no further action and closed its file. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

The Commission instructs you that the failure to fully identify contributors and the receipt of contributions in excess of the limitations and from foreign nationals are violations of the Act. You should take immediate steps to insure that this activity does not occur in the future.

In addiditon, according to 11 CFR 102.3(a), the following conditions must be satisfied before a committee can terminate: 1) the committee must no longer receive contributions or make any disbursements that would otherwise qualify it as a political committee; 2) all outstanding debts and obligations must be extinguished; and 3) a statement must be submitted regarding the disposition of any residual funds. The last report filed by the Curry for Congress committee (1988 Year End Report) disclosed $4,726 in cash on hand. If your committee wishes to terminate, please demonstrate in writing to the Reports Analysis Division that the committee has met the above requirements, including a statement regarding the residual funds. In addition, the excessive and foreign national contributions should be refunded.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30

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days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

If you have any questions, please contact Jeffrey Long, the staff member assigned to this matter, at (202) 219-3690.

Sincerely,

Scott E. Thomas
Vice Chairman

Enclosure
Factual and Legal Analysis

cc: Jerry Curry

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 3369

DATE FILMED 9/25/92 CAMERA NO. 3

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