



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

November 21, 2005

**MEMORANDUM**

TO: Allan Silberman  
Director of Alternative Dispute Resolution

THROUGH: Robert J. Costa *RC*  
Acting Staff Director

FROM: Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

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SUBJECT: Jim Gerlach for Congress Committee (A05-24) – Referral Matter

On November 3, 2005, the Commission approved the final audit report on the Jim Gerlach for Congress Committee. The report was released to the public on November 17, 2005.

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Marty Kuest or Alex Boniewicz at 694-1200.

Attachment: Finding Receipt of Excessive Contributions

cc: Reports Analysis Division

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# Finding and Recommendation

## Receipt of Excessive Contributions

### Summary

GFC received \$35,021 in excessive contributions. Excessive contributions totaling \$5,950 were received from two political action committees and excessive contributions totaling \$29,071 were received from three partnerships and eleven individuals. In response to the interim audit report, GFC issued refund checks for each identified excessive contribution.

### Legal Standard

**A. Authorized Committee Limits:** An authorized committee may not receive more than a total of \$2,000 per election from any one person or \$5,000 per election from a multicandidate political committee. 2 U.S.C. §441a(a)(1)(A), (2)(A) and (f); 11 CFR §§110.1(a) and (b) and 110.9(a).

**B. Handling Contributions That Appear Excessive.** If a committee receives a contribution that appears to be excessive, the committee must either:

- Return the questionable check to the donor; or
- Deposit the check into its federal account and:
  - Keep enough money in the account to cover all potential refunds;
  - Keep a written record explaining why the contribution may be illegal;
  - Include this explanation on Schedule A if the contribution has to be itemized before its legality is established;
  - Seek a reattribution or a redesignation of the excessive portion, following the instructions provided in Commission regulations (see below for explanations of reattribution and redesignation); and
  - If the committee does not receive a proper reattribution or redesignation within 60 days after receiving the excessive contribution, refund the excessive portion to the donor. 11 CFR §§103.3(b)(3), (4) and (5) and 110.1(k)(3)(ii)(B).

**C. Contributions to Retire Debts:** If an authorized candidate committee has net debts outstanding after an election is over, a campaign may accept contributions after the election to retire the debts provided that:

- The contribution is designated for that election (since an undesignated contribution made after an election counts toward the limit for the candidate's upcoming election);
- The contribution does not exceed the contributor's limit for the designated election; and
- The campaign has net debts outstanding for the designated election on the day it receives the contribution. 11 CFR §110.1(b)(3)(i) and (iii).

**D. Determination of Net Debts Outstanding:** The treasurer of an authorized political committee shall calculate net debts outstanding as of the date of the election. Net debts outstanding is the total amount of unpaid debts and obligations incurred with respect to

an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election, less the sum of: total cash on hand available to pay those debts and obligations, any amounts owed the committee and any loans from the candidate that in the aggregate exceed \$250,000. 11 CFR §§110.1(b)(3)(ii) and 116.11(b)

**E. Presumptive Redesignation of Excessive Contributions:** An excessive contribution from an individual or a non-multi-candidate committee to an authorized political committee may be presumptively redesignated to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit.

Also, the excessive portion of an undesignated contribution made after the primary, but before the general election may be automatically applied to the primary if the campaign's net debts outstanding from the primary equal or exceed the amount redesignated. The committee is required to notify the contributor in writing of the redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent as required. Presumptive redesignations apply only within the same election cycle. 11 CFR §110.1(b)(5)(ii)(B) & (C) and (l)(4)(ii).

**F. Presumptive Reattribution of Excessive Contributions.** When a committee receives an excessive contribution made via a written instrument with more than one individual's name imprinted on it, but only one signature, the committee may first attribute the permissible portion to the signer and then, may make a presumptive reattribution of the excessive portion to the other individual whose name is imprinted on the written instrument, without obtaining a second signature, so long as the reattribution does not cause the contributor to exceed any other contribution limit. The committee is required to notify the contributor of the reattribution within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. For this action to be valid, the committee must retain copies of the notices sent as required. 11 CFR §110.1(k)(3)(ii)(B) and (l)(4)(ii).

### **Facts and Analysis**

The Audit staff's review of contributions indicated GFC received \$35,021 in excessive contributions, as detailed below.

#### Excessive Contributions to the 2002 General Election:

Following the 2002 General Election, GFC reported all disbursements as attributable to the 2004 primary election. Further, GFC reported no outstanding campaign obligations on either its 2002 Post General or 2002 Year End disclosure reports. As of November 6, 2002, the date of the general election, the Audit staff calculated that GFC did not have net debts outstanding.

On March 10, 2003, and March 22, 2003, GFC deposited contributions of \$1,000 from the Wine and Spirits Wholesalers of America Political Action Committee and \$4,950 from the NRA-Political Victory Fund, respectively, which were designated for the 2002 General Election. No documentation was found in GFC's records to indicate that a redesignation of either contribution had been obtained. Thus, the contributions were considered excessive to the 2002 General Election.

Excessive Contributions to the 2004 Primary Election:

*Partnerships*

Partnerships are subject to a per election limitation of \$2,000. Additionally, a partnership contribution must be further allocated among the contributing members of the partnership. GFC received contributions from three partnerships totaling \$19,000 which exceeded the limitation for the 2004 Primary Election by \$13,000 (\$19,000 - \$6,000). For two of the partnerships, although a presumptive redesignation of \$2,000 each to the general election could have been made; there was no documentation or other evidence that GFC availed itself of this option by notifying the contributors of the redesignation and offering a refund if the redesignation was not acceptable to the contributor.

*Individuals*

GFC received contributions from eleven individuals, totaling \$40,357, prior to the 2004 primary election. Although GFC presumptively reattributed and/or redesignated the excessive portions of these contributions, it failed to maintain documentation of written notification to the contributors that also offered a refund. As a result, GFC received excessive contributions totaling \$16,071.

**Interim Audit Report Recommendation and Committee Response**

The Audit staff recommended that GFC:

- Provide evidence that the identified contributions were not excessive or were applicable to net debt outstanding to a particular election; or,
- Refund \$35,021 and provide evidence of such refunds (copies of the front and back of the negotiated checks); or
- If funds were not available to make the necessary refunds, GFC should have reported the amounts to be refunded as debts on Schedule D (Debts and Obligations Excluding Loans) until funds became available to make the refunds.

In response to the interim audit report, GFC provided copies of checks and letters written to refund each identified excessive contribution. In a cover letter, GFC stated its intention to provide copies of the negotiated refund checks once they clear the bank.

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