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JAN 30 10 13 AM '98

January 29, 1998

BY FEDERAL EXPRESS

Office of General Counsel
Federal Election Commission
999 E. Street NW
Washington, DC 20463

Re: Matter of President Bill Clinton, et al.

Ladies and Gentlemen:

A complaint is enclosed for filing and consideration by the Commission. I represent Lenora B. Fulani, the complainant.

Very truly yours,

Gary Sinawski
Gary Sinawski

Enclosure

UNITED STATES OF AMERICA
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

President Bill Clinton, Democratic
National Committee, Clinton/Gore
'96 Primary, Inc., Harold M. Ickes
and "John Does" 1 through 20,

MUR #

4713

Respondents.

Introduction

1. Complainant, by and through counsel, believing a violation of statutes and regulations under the jurisdiction of the Federal Election Commission ("Commission") has occurred, initiates this complaint pursuant to 2 U.S.C. section 437g(a)(1) and 11 C.F.R. section 111.4 against the respondents identified below.

Parties

2. Complainant Lenora B. Fulani, 884 West End Avenue, New York, NY 10025, is a citizen of the United States and a registered voter in the State of New York. In 1988 Fulani ran for President of the United States as an independent candidate and as the candidate of several third parties. She became the first woman and the first African-American to attain access to the presidential general election ballots of all 50 states and the District of Columbia. She qualified for federal primary matching funds and received approximately \$1 million under the Presidential Primary Matching Payment Account Act. In 1992 Fulani sought the Democratic Party nomination for president in the New Hampshire Democratic primary election and subsequently attained access to the presidential general election ballots of 39 states and the District of Columbia as an independent candidate and as the candidate of several third parties. She was the first candidate for the 1992 Democratic Party nomination for president to qualify for federal primary matching funds and received over \$2 million under the Presidential Primary Matching Payment Account Act. In 1994 Fulani sought the Democratic Party nomination for Governor of New York in the Democratic primary election and polled some 21% of the vote against incumbent Mario Cuomo. In the summer of 1995 she planned a campaign against respondent Clinton in the 1996 Democratic primary elections and caucuses but was unable to pursue her candidacy because of a

purported second "initial repayment determination"¹ of approximately \$612,000 issued by the Commission against her 1992 presidential campaign ("Fulani '92") in August 1995, just as plans for her 1996 candidacy were taking shape.

3. Respondent Bill Clinton, The White House, 1600 Pennsylvania Avenue NW, Washington, DC, is the President of the United States. Clinton was a candidate in the Democratic primary and general elections in 1992 and 1996.

4. Respondent Democratic National Committee ("DNC"), 430 S. Capitol Street SW, Washington, DC 20003, has general responsibility for the affairs of the Democratic Party of the United States between the party's national conventions.

5. Respondent Clinton/Gore '96 Primary Committee, Inc. ("Clinton/Gore '96"), 818 Connecticut Avenue NW, Suite 1000, Washington, DC 20006, is an Arkansas corporation which was the principal campaign committee for Bill Clinton and Albert Gore in the 1996 Democratic presidential primary elections.

6. Respondent Harold M. Ickes, 1505 Kellum Place, Mineola, NY 11501, was at various times relevant to this complaint an agent of the other respondents and was White House Deputy Chief of Staff from January 1994 to January 1996. On information and belief, Ickes was responsible for preventing a challenge to respondent Clinton in the 1996 Democratic primaries and caucuses.²

1/ Refer to ¶¶ 10.d., 11.b., 11.c. and 14, below.

2/ Bob Woodward wrote:

As the chief political operative in the White House, Ickes knew the immediate problem was to deter, if not foreclose, any possible challenge to Clinton in the Democratic primaries for 1996. Back in 1980, Ickes had helped Senator Edward M. Kennedy launch his challenge against the sitting president, Jimmy Carter. Carter had defeated Kennedy in the primaries, but the challenge had crippled Carter, perhaps permanently. Ickes knew the importance of campaign money - not just as an instrument but as a symbol. Money could scare off a challenge, which many thought was almost inevitable. After the 1994 loss to the Republicans, Clinton appeared weak. Money could make him strong.

* * *

With Clinton's popularity down and his relevance publicly debated in the news media, Ickes continued to worry about a Democratic challenger. It would be too easy for

7. Respondents "John Does 1 through 20" are agents and employees of the other respondents whose identities are unknown to the complainants at this time and who participated in the conduct complained of herein.

Complaint

8. On information and belief, commencing soon after the 1994 election, the respondents and their agents entered into a conspiracy ("the conspiracy") to prevent a challenge to respondent Clinton in the 1996 presidential primaries and caucuses, especially a challenge from his left, by using their political control of the DNC to arrange for the expenditure of "soft money" in furtherance of this goal.³

9. On information and belief, such expenditure of soft money was in violation of the presidential primary spending limits, the prohibition against a federal candidate's use of corporate and labor union contributions, the limitations on a federal candidate's use of individual contributions, and the disclosure requirements of the federal election laws.

someone, almost a free shot. Pat Buchanan, the former Nixon and Reagan aide who was a radio and television commentator, had challenged Bush in the 1992 New Hampshire primary and after a six-week campaign had won 37 percent of the vote. Though Bush won New Hampshire with 53 percent, the skirmish had wounded him considerably. A primary challenge to an incumbent president was the nightmare scenario in the media age.

B. Woodward, The Choice, pp. 51-53.

3/ Bob Woodward wrote:

Clinton personally had been controlling tens of millions of dollars worth of DNC advertising. This enabled him to exceed the legal spending limits and effectively rendered the DNC an adjunct to his own reelection effort. He was circumventing the rigorous post-Watergate reforms that were designed to limit and control the raising and spending of money for presidential campaigns. His direct, hands-on involvement was risky, certainly in violation of the spirit of the law and possibly illegal.

B. Woodward, The Choice, p. 354.

10. On information and belief, the respondents engaged in overt acts in furtherance of the conspiracy, including the following:

a. Respondents induced individuals to make contributions to the DNC which exceeded the amounts they could legally have contributed to Clinton's campaign, so that those contributions could be used in furtherance of the conspiracy.

b. Respondents induced corporations and labor unions to make contributions to the DNC which could not legally have been made to Clinton's campaign, so that those contributions could be used in furtherance of the conspiracy.

c. Respondents arranged for respondent Ickes to coordinate the conspiracy despite his status as a government employee and Deputy Chief of Staff for Clinton.⁴

d. Respondents induced the Commission to issue a purported second "initial repayment determination" against Fulani '92 on August 3, 1995 large enough to make it impossible for Fulani to proceed with her planned 1996 primary challenge to Clinton.⁵

e. Commencing in the summer of 1995 and continuing through the summer of 1996, respondent DNC, in coordination with respondents Clinton and Clinton/Gore '96, expended some \$22 million in soft money on a television advertising campaign which cost at least \$34 million, the purposes of which included promoting Clinton's candidacy in the 1996 Democratic presidential primaries and discouraging any

4/ The New York Times reported that Ickes, then Clinton's Deputy Chief of Staff, "... is widely credited with staving off a potential challenge from the left when Mr. Clinton's political fortunes were at ebb in early 1995," T. Purdum, "Ickes, Longtime Clinton Ally, to Quit as No. 2 Chief of Staff," The New York Times (November 12, 1996), and that "[a]s the 1996 election approached Ickes helped guide his friend Jesse Jackson to the decision not to run" M. Lewis, "Bill Clinton's Garbage Man," The New York Times Magazine (September 21, 1997).

5/ Fulani and her supporters would have had to raise the funds necessary to pay any outstanding repayment determination against Fulani '92 before she could become eligible to receive matching fund payments for 1996.

competition against him in the primaries.⁶ The television advertising campaign is more fully described in the annexed copy of a letter dated October 9, 1996 from Ann McBride, President of Common Cause, to Attorney General Janet Reno, which is incorporated herein by reference to the extent that it relates to expenditures by the DNC on the television advertising campaign in coordination with Clinton and Clinton/Gore '96 in violation of the presidential primary spending limits, the prohibition against a federal candidate's use of corporate and labor union contributions, the limitations on a federal candidate's use of individual contributions, and the disclosure requirements of the federal election laws.

11. On information and belief, in furtherance of the conspiracy the respondents, through the actions described above and other actions taken by the respondents and other similarly situated persons during the past 25 years, labored to create a political environment in which the Commission and its staff could be manipulated to impede insurgent candidates and potential candidates such as Fulani by subjecting them to audit and enforcement activity beyond what is permitted by law while ignoring violations of the federal election laws by respondents and other similarly situated persons.⁷ As to Fulani:

a. In January 1993 the Commission commenced a routine audit of Fulani '92 under 26 U.S.C. section 9038(a).

b. On April 21, 1994 the Commission made an initial repayment determination of \$1,394, which amount was promptly repaid by Fulani '92. On information and belief,

6/ A widely-publicized videotape of an event at the White House on December 7, 1995 shows Clinton telling contributors that their donations to the DNC had helped finance a large television advertising campaign that had boosted his ratings in the polls. The videotape shows Clinton stating, "[w]e realized we could run these ads through the Democratic Party, which meant we could raise money in \$20,000 and \$50,000 and \$100,000 blocks. So we didn't have to do it all in \$1,000 and run down what I can spend, which is limited by law."

7/ Complainant contends that this political environment, together with the structure and political orientation of the Commission, invite flagrant abuses of the federal election laws by the major parties and their candidates, such as the abuses complained of herein. The major parties and their major candidates can engage in such abuses because they are insulated from any effective enforcement action against them by the Commission.

because Fulani '92 did not contest it, this initial repayment determination became a final repayment determination by operation of law on May 21, 1994. 11 C.F.R. section 9038.2(c)(1).

c. On July 28, 1994 the Commission commenced a special audit inquiry of Fulani '92 under 26 U.S.C. section 9039(b), using as its basis for doing so allegations previously made by a disgruntled former supporter that the Fulani '92 campaign manager had used a network of vendors he controlled to embezzle nearly \$1 million in campaign funds, which allegations were repeated in a front page article in the July 8-14, 1994 issue of the Washington, DC City Paper along with a critique of the Commission for allowing itself to be used by "marginal" candidates seeking federal funds.

12. In the spring of 1994 Fulani entered the contest for the Democratic party nomination for Governor of New York. In the September primary election she polled 21% of the vote against incumbent Mario Cuomo. She polled 35-40% of the vote in 10 counties in which Ross Perot had polled his highest percentages for president in the 1992 general election. Cuomo was subsequently defeated in the 1994 general election by Republican candidate George Pataki. Some political insiders considered that Fulani had weakened Cuomo sufficiently to make him vulnerable to defeat.

13. Fulani's showing in the 1994 New York gubernatorial primaries and its potential implications if repeated against Clinton attracted the attention of a successful Republican fundraiser and political strategist. In July of 1995 Fulani and her representatives entered into negotiations with this individual which resulted in a plan for Fulani to wage a campaign against Clinton in the 1996 Democratic presidential primary elections financed by federal primary matching funds, fueled by Fulani's proven grassroots fundraising abilities and the aforesaid individual's direct mail fundraising capability.

14. On August 3, 1995, in connection with its special audit inquiry, the Commission issued a purported second "initial repayment determination" against Fulani '92 in the amount of \$612,557.32.

15. Fulani and her supporters continued to plan for her 1996 primary campaign against Clinton in the hopes that the special audit inquiry could be resolved quickly. It was not.⁸

⁸/ It was not until March 6, 1997 that the Commission issued a purported second "final repayment determination" against Fulani '92 in the amount of \$117,269.54. This determination is

Fulani's prospective backer withdrew his offer of support, and Fulani abandoned preparations for her 1996 primary campaign.

16. On information and belief, "soft money" was expended by respondent DNC and its agents in coordination with respondents Clinton, Clinton/Gore '96 and Ickes and their agents to cause the occurrence of some or all of the events described above, and other such events unknown to the complainants at this time, in order to subvert Fulani's 1996 primary campaign against Clinton.

The Public Interest

17. The American public and the Commission have the following interests in a prompt determination that the respondents violated the relevant campaign finance laws, and in the application of appropriate sanctions.

a. preserving the integrity of the public campaign financing system;

b. punishing the unfair advantage taken in the 1996 Democratic primary elections by the respondents by means of their use of funds obtained in violation of the federal election campaign finance laws to stifle competition;

c. deterring future abuses of the public campaign financing system;

d. restoring the unlawfully obtained funds to the United States Treasury;

e. ensuring that there are sufficient funds in the federal treasury for public financing of the 2000 presidential election;

f. restoring public confidence in the Commission's ability to carry out its responsibilities in a fair and impartial manner; and

g. ensuring equal justice, in the form of fair and impartial application of the campaign finance laws to all persons subject to the Commission's jurisdiction, including the President of the United States.

currently being appealed to the United States Court of Appeals for the District of Columbia Circuit.

Civil Penalty

18. On information and belief, respondents committed knowing and willful violations of the federal campaign finance laws. The Commission should therefore impose a penalty pursuant to 2 U.S.C. section 437(g)(5)(B) in an amount equal to 200% of the contributions and expenditures found to have been made in violation of law.

19. The unlawful diversion of funds in a presidential campaign is a major campaign decision which would necessarily involve the candidate, his campaign treasurer and other high level campaign officials. Each such individual is responsible for the unlawful actions of the respondents because, on information and belief, each participated in the offending conduct, assented to it or ratified it.

20. The respondents and the treasurer of Clinton/Gore '96 are jointly and severally liable for the appropriate penalties.

Conclusion

For these reasons, complainant asks the Commission to find that respondents have violated the federal election laws and impose significant penalties. Since the Commission's decision in this matter will have a significant impact on the campaign tactics employed by candidates in preparation for the 2000 presidential election, complainant requests that this complaint be processed on an expedited basis.

Dated: January 29, 1998

Respectfully submitted,



Gary Sinawski
250 West 57th Street, Suite 2015
New York, NY 10107
(212) 581-1516

Attorney for Complainant

VERIFICATION

STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

Lenora B. Fulani, being duly sworn, deposes and says:
I am the complainant in the foregoing complaint. I have read the complaint and know the contents thereof. The same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.


Lenora B. Fulani

Sworn to before me this
29th day of January, 1998


Notary Public

CYNTHIA M. CARRATHIOS
Notary Public, State of New York
No. 01CA5065545
Qualified in New York County
Commission Expires Sept. 9, 1998

Common Cause

1250 CONNECTICUT AVENUE, NW ♦ WASHINGTON, D.C. 20036 ♦ PHONE: (202) 833-1200 ♦ FAX: (202) 659-3716

EDWARD S. CABOT
Chairman

ANN MCBRIDE
President

ARCHIBALD COX
Chairman Emeritus

JOHN GARDNER
Founding Chairman

October 9, 1996

The Honorable Janet Reno
The Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Attorney General Reno:

There are substantial grounds to believe that the Clinton/Gore '96 Primary Committee, Inc. (Clinton Committee), acting through the Democratic National Committee (DNC), and the Dole for President Primary Committee, Inc. (Dole Committee), acting through the Republican National Committee (RNC), have each engaged in an illegal scheme to circumvent the federal campaign finance laws. Through these schemes, the Clinton Committee and the Dole Committee, and their agents, each committed knowing and willful violations of the federal election laws, involving tens of millions of dollars, during the 1996 presidential primary campaign.

These matters warrant investigation to determine whether criminal violations of the federal campaign finance laws have occurred.

In the circumstances here, the Independent Counsel Act requires the appointment of an independent counsel in an investigation involving high-level officers of the President's reelection campaign committee, 28 U.S.C. 591(b)(6), and authorizes the appointment of an independent counsel in an investigation where, as in this matter involving the Dole Committee, the RNC and the DNC, you may have a "political conflict of interest." 28 U.S.C. 591(c).

Common Cause therefore urges you to fulfill your responsibility under the law by taking the steps necessary to seek the appointment of an independent counsel under the Independent Counsel Act to investigate all of the matters discussed below.

I. Summary of the Allegations

During the 1996 presidential primary campaign, the Clinton Committee and the

Dole Committee, and their agents, both spent millions of dollars in excess of the overall presidential primary spending limit that applied to each of their campaigns, and in doing so, used millions of dollars in "soft money" contributions that could not legally be used directly to support a presidential campaign.

The Clinton and Dole Committees and their agents made these campaign expenditures through their respective national political parties, using the parties as conduits to run multimillion-dollar TV ad campaigns to support their candidacies. The TV ad campaigns were in each case prepared, directed and controlled by the Clinton and Dole campaigns and their agents. Money used to pay for the ad campaigns was raised by agents of the Clinton and Dole Committees. The ads were targeted to run in presidential battleground states. The ads dealt with President Clinton and Senator Dole by name, and promoted their respective candidacies or criticized their respective opponents.

Thus, the TV ad campaigns, run in the guise of being DNC and RNC ad campaigns, were in fact Clinton and Dole ad campaigns, and accordingly were subject to the contribution and spending limits that apply to presidential campaigns.

The purpose of the Clinton ad campaign, according to published reports, was to allow the Clinton Committee and its agents to conduct a multimillion-dollar TV advertising campaign for the President's reelection, from the summer of 1995 until the summer of 1996, without any of the money being counted against the \$37 million spending limit applicable to the Clinton Committee during the presidential primary period. The ad campaign cost at least \$34 million during this period.

The purpose of the Dole ad campaign, according to published reports, was to allow the Dole Committee to conduct a multimillion-dollar TV advertising campaign to support Senator Dole's candidacy during the period from April 1996 through the Republican convention in August 1996, a time when the Dole campaign already had spent nearly all of the \$37 million that it could legally spend during the presidential primary period. The ad campaign cost at least \$14 million through June 1996, the period for which relevant FEC disclosure reports are currently available.

We believe the Clinton and Dole Committees massively violated the primary election spending limits they had each agreed to as a condition of receiving taxpayer funds. In addition, the Clinton and Dole Committees massively violated the contribution prohibitions and limits by financing their ad campaigns in large part with millions of dollars of "soft money" funds which they could not legally use to support their candidacies. The Clinton Committee used at least \$22 million in "soft money" and the Dole Committee used at least \$9 million in "soft money." These "soft money" funds included corporate and labor union contributions, and large contributions from

individuals in excess of the federal contribution limits.

In sum, the Clinton Committee and the Dole Committee, and their agents, acting through their respective national political parties in the ways described above, each have engaged in an illegal scheme to violate the presidential primary spending limits and to violate the prohibition on a federal candidate's use of corporate and labor union contributions and the restrictions on such candidate's use of large individual contributions. The Committees have also engaged in an illegal scheme to violate the disclosure requirements of the federal election laws.

Any such scheme to knowingly and willfully exceed the presidential primary spending limit, to knowingly and willfully spend "soft money" directly to support a federal candidate and to knowingly and willfully violate the federal disclosure requirements is a criminal violation of the federal election laws.

The Justice Department has exclusive jurisdiction to prosecute such criminal violations, subject to the Independent Counsel Act. Justice Department guidelines indicate that this is the kind of election law case that should be pursued by the Department, regardless of the Federal Election Commission's primary jurisdiction to investigate potential civil violations of the law.

Common Cause believes that massive violations have occurred during the 1996 presidential election, the most massive violations of the campaign finance laws since the Watergate scandal. These violations involve tens of millions of dollars in campaign contributions and expenditures.

Under these circumstances, *an independent counsel is required to investigate these matters and to take appropriate action to hold responsible individuals and entities accountable for any violations that have occurred.*

Set forth below is a review of the applicable statutes and the factual allegations requiring an investigation by an independent counsel.

II. Independent Counsel Act

The Independent Counsel Act, 28 U.S.C. 591 *et seq.*, provides for the appointment of an independent counsel to conduct criminal investigations that involve any member of a specified class of individuals, including the President and Vice President, members of the Cabinet, high-ranking individuals in the Executive Office of the President, other high-level Executive Branch officials, and the chairman and treasurer of the principal national campaign committee seeking the election or reelection of the President and any officer of

that committee exercising authority at the national level. 28 U.S.C. 591(b).

The law also provides for the appointment of an independent counsel to conduct criminal investigations of any person where the Attorney General determines such investigation "may result in a personal, financial, or political conflict of interest." 28 U.S.C. 591(c).

Some of the matters raised in this letter involve the Clinton presidential campaign committee, whose national officers are "covered persons" within the meaning of section 591(b).

Other matters raised here are intimately related to the allegations about these "covered persons," and involve the Dole presidential campaign committee, the Democratic National Committee and the Republican National Committee. Any investigation of these entities would plainly involve a "political conflict of interest" for you as Attorney General within the meaning of section 591(c). The allegations related to these entities should be examined as part of the investigation of the section 591(b) "covered persons" that must be referred to an independent counsel. As a result, all of the matters raised here should, under the Act, be referred to an independent counsel.

Accordingly, under sections 591(b) and 591(c), the investigation of this entire matter is governed by the independent counsel law.

The independent counsel law provides that whenever you receive "information sufficient to constitute grounds to investigate" whether any covered person, including a person covered by section 591(c), "may have violated any Federal criminal law," you have 30 days to determine if the information is sufficiently specific and from a sufficiently credible source to justify beginning a "preliminary investigation." 28 U.S.C. 591(a), (d).

Under the law, if you determine that the information is specific and from a credible source, then you have 90 days to conduct a "preliminary investigation" for the purpose of determining whether "further investigation is warranted." 28 U.S.C. 592(a). If you conclude that there are "reasonable grounds to believe that further investigation is warranted," you must apply to the appropriate court for the appointment of an independent counsel. 28 U.S.C. 592(c)(1)(A).

Common Cause calls on you to fulfill your responsibilities under the Act by opening a preliminary investigation leading to the appointment of an independent counsel to investigate the matters discussed in this letter. The independent counsel should be responsible for conducting only this investigation. Given the statutory time frames, we

recognize that an application to the court for appointment of an independent counsel may not be made until after the election on November 5.

III. The Applicable Federal Statutes

A. The presidential campaign financing system and related criminal laws.

1. Public funding provisions

Candidates seeking the presidential nomination of a political party are eligible to receive public matching funds if they so choose and if they meet the conditions of eligibility for receiving the funds. 26 U.S.C. 9031 *et seq.* As one of those conditions, a candidate must agree in writing to abide by an overall spending limit during the primary campaign. 26 U.S.C. 9033(b). For the 1996 election, the overall primary spending limit was approximately \$37 million.¹

President Clinton and former Senator Dole both sought and received taxpayer funds and, in exchange, both signed commitment letters to the Federal Election Commission in which they agreed to comply with the primary election spending limit.²

Major party nominees are also eligible to receive full public funding of their general election campaigns, provided they agree to limit their spending to the public money received. 26 U.S.C. 9003(b). For the 1996 general election, the public funding is approximately \$62 million to each major party candidate. President Clinton and former Senator Dole both have sought and received this money and have agreed in a written commitment to comply with the condition to limit their campaign spending to \$62 million.³

¹ The 1996 overall primary spending base limit was \$30,910,000. Candidates were, in addition, allowed to spend another 20 percent, or \$6,182,000, for fundraising purposes, making the total overall spending limit \$37,092,000. Federal Election Commission, "FEC Announces 1996 Presidential Spending Limits," (Press Release, March 15, 1996).

² Letter of October 13, 1995 from William J. Clinton to the Honorable Danny Lee McDonald; Letter of April 24, 1995 from Robert J. Dole to Chairman, Federal Election Commission.

³ Letter signed August 29, 1996 by William J. Clinton and Albert Gore, Jr. to the Honorable Lee Ann Elliott; Letter of August 14, 1996 from Robert J. Dole and Jack F.

The national political parties are authorized to make expenditures, subject to a limit, in connection with the general election campaign of their presidential nominees. 2 U.S.C. 441a(d). For the 1996 presidential general election, the limit on party spending is approximately \$12 million.⁴ The national parties are not separately authorized to make any other expenditures directly to support a presidential candidate.⁵

2. Criminal provisions

There are a number of statutory limitations, prohibitions and disclosure requirements (set forth below) that accompany the above provisions. For "knowing and willful" violations of these limitations, prohibitions and disclosure requirements, there are federal felony penalties. In particular, two criminal statutory provisions are applicable:

First, the Federal Election Campaign Act (FECA), in 2 U.S.C. 437g(d)(1)(A), states:

Any person who knowingly and willfully commits a violation of any provision of this Act which involves the making, receiving, or reporting of any contribution or expenditure aggregating \$2,000 or more during a calendar year shall be fined, or imprisoned for not more than one year, or both.

Second, section 9042 of the Presidential Primary Matching Payment Account Act ("the Primary Fund Act"), which establishes the presidential primary campaign financing

Kemp to the Honorable Lee Ann Elliott.

⁴ Federal Election Commission, "FEC Announces 1996 Presidential Spending Limits," (Press Release, March 15, 1996).

⁵ Although a recent Supreme Court decision, Colorado Republican Federal Campaign Committee v. Federal Election Commission, 116 S.Ct. 2309 (1996), held that political parties can make "independent expenditures" on behalf of their candidates for Congress, the Court specifically noted that it was not "address[ing] issues that might grow out of the public funding of Presidential campaigns," and thus did not hold that the political parties could make independent expenditures in publicly funded presidential elections. In any event, the expenditures at issue in this matter were controlled and directed by agents of the presidential campaigns, and plainly could not qualify as having been made "independently" from the presidential campaigns.

system, 26 U.S.C. 9042, states:

Any person who violates the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both. Any officer or member of any political committee who knowingly consents to any expenditure in violation of the provisions of section 9035 shall be fined not more than \$25,000, or imprisoned not more than 5 years, or both.

3. Justice Department guidelines

The Justice Department guidelines for criminal prosecution of election offenses state:

Intentional and factually aggravated violations of the FECA are crimes, subject to prosecution by the Justice Department.

...

Most violations of the FECA and the public financing provisions of Title 26 are handled civilly by the FEC. A campaign financing violation is generally prosecuted criminally only if it was a willful violation of a core prohibition of the FECA, ... involved a substantial sum of money, and resulted in the reporting of false campaign information to the FEC.

In addition, a scheme to infuse illegal sums into a federal election campaign impedes the FEC in its statutory enforcement and disclosure responsibilities. Such schemes have been successfully prosecuted as conspiracies to obstruct and impede the lawful functioning of a government agency ... and as willfully causing false information to be submitted to a federal agency. ...⁶

The matters involved here and set forth in detail below clearly fall within these guidelines for criminal prosecution. These matters deal with potentially willful and

⁶ U.S. Department of Justice, Federal Prosecution of Election Offenses (6th ed. Jan. 1995) at 93.

knowing violations of "core" provisions of the FECA,⁷ that involve "substantial" sums of money, and result in the reporting of "false campaign information" to the Federal Election Commission.

These matters also deal with "a scheme to infuse illegal sums into a federal election campaign" that would have the effect of impeding the FEC from carrying out its statutory enforcement and disclosure responsibilities.

Therefore, under the Justice Department's guidelines, the allegations discussed below warrant a criminal investigation.

4. "Knowing and willful" violations

Criminal violations of the campaign finance statutes must be "knowing and willful." We believe the violations set forth below meet this standard.

We believe the Committees and their agents intended to circumvent the law: they intended to make expenditures in the presidential primary campaign in excess of what could be legally spent to promote their candidates; they intended to spend "soft money" that could not be legally spent to directly support a federal candidate, and they intended to use their respective political parties as conduits to accomplish these goals. In short, there was "such reckless disregard of the consequences as to be a knowing, conscious and deliberate flaunting" of the FECA, which constitutes a "knowing and willful" violation of the Act. AFL-CIO v. FEC, 628 F.2d 97 (D.C. Cir.) cert. den. 449 U.S. 982; see also Screws v. United States, 325 U.S. 91, 106 (1945) (where, in dealing with violations of the Civil Rights Act, the Court required that the defendants "at least act in reckless disregard" of constitutional prohibitions or guarantees).

Even if the standard is the "good faith" test adopted by the U.S. Supreme Court for tax cases in Cheek v. U.S., 498 U.S. 192 (1991) -- i.e., that a person has not acted willfully if he had a "good faith" belief he was not violating the law -- the unreasonableness of the interpretation of the FECA under the factual circumstances set forth below would constitute evidence for a jury to consider in determining whether a defendant's claimed good faith belief in the legality of his actions was in fact the state of mind with which the acts were carried out. This is not an issue that can properly be

⁷ These "core" provisions, according to the Justice Department guidelines, include the limits on contributions from persons and groups, the ban on contributions from corporations and labor unions, and the avoidance of the statute's disclosure requirements. Federal Prosecution of Election Offenses at 96-97.

resolved by you as Attorney General in deciding whether to appoint an independent counsel. Rather, it must be resolved by the independent counsel in deciding whether to initiate a prosecution or, ultimately, by a jury.

B. Knowing and willful violation of the presidential primary spending limit is a federal crime.

Two statutory provisions are violated when a presidential campaign committee exceeds the spending limit that the candidate agreed to abide by in return for receiving taxpayer funds. When the violation is knowing and willful, it becomes criminal under 2 U.S.C. 437g(d)(1) and 26 U.S.C. 9042, both set forth above.

The first provision violated by exceeding the spending limit is in the FECA which states, in 2 U.S.C. 441a(b)(1)(A):

No candidate for the office of President of the United States who is eligible under ... section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of [the spending limit].⁸

This provision makes it illegal for a candidate who receives taxpayer funds to exceed the overall spending limit in the presidential election.

The second provision violated by exceeding the spending limit is contained in the Primary Fund Act, which establishes the presidential primary campaign financing system. Section 9035 of the Act (26 U.S.C. 9035) states:

No candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2. ...

This provision also makes it illegal for a candidate who receives taxpayer funds to exceed the presidential primary spending limit in the FECA.

⁸ The dollar amount of the spending limit set forth in the statute is \$10 million, but this amount is adjusted each election cycle to account for changes in the consumer price index. 2 U.S.C. 441a(c). As noted above, the adjusted spending limit for the 1996 primary campaign, including the 20-percent exemption for fundraising disbursements, was approximately \$37 million.

Thus, it is a criminal violation of both the FECA (section 437g(d)(1)) and the Primary Fund Act (section 9042) for a presidential campaign committee or its agents to knowingly and willfully make "expenditures" or incur "qualified campaign expenses" in excess of the spending limit that a presidential candidate agrees to in order to receive taxpayer funds.

C. Knowing and willful violation of the ban on use of corporate and union money, and the limit on individual contributions, in federal elections is a federal crime.

The FECA, in 2 U.S.C. 441b, makes it illegal for any corporation or labor union to make contributions or expenditures to directly support a federal candidate, and for any candidate or political party to receive or accept any such funds for that purpose. When the violation is knowing and willful, it becomes criminal under 2 U.S.C. 437g(d)(1)(A).

Section 441b provides:

It is unlawful for ... any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

(Emphasis added)

The FECA, in 2 U.S.C. 441a(a)(1), also makes it illegal for any person to contribute more than \$1,000 to a candidate with respect to any federal election, or more than \$20,000 per year to any national political party:

No person shall make contributions --

- (A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000;
- (B) to the political committees established and maintained by a national

political party ... in any calendar year which, in the aggregate, exceed \$20,000; ...

The FECA provides, in 2 U.S.C. 441a(f), that it is illegal for any candidate or political committee to accept any contribution in excess of these contribution limits, or to make any expenditure in violation of the statute's limits. When the violation is knowing and willful, it becomes criminal under 2 U.S.C. 437g(d)(1)(A).

Section 441a(f) provides:

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of [section 441a]. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under [section 441a].

Thus, it is a criminal violation of the FECA, 2 U.S.C. 437g(d)(1)(A), for a presidential campaign committee or its agents to "knowingly and willfully" use corporate or labor union contributions, or contributions from individuals in excess of the federal contribution limits to directly support a federal candidate.

D. Knowing and willful violation of the FECA's disclosure requirements is a federal crime.

The FECA, in 2 U.S.C. 434, requires a presidential campaign committee, and the national political party committees, to report all contributions and expenditures in excess of \$200 made in connection with a presidential campaign. When the violation is knowing and willful, it becomes criminal under 2 U.S.C. 437g(d)(1)(A).

Section 434 provides:

(a)(1) Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of this subsection. ...

(b) Each report under this section shall disclose -- ...

(2) for the reporting period and calendar year, the total amount of all

receipts, and the total amount of all receipts in the following categories:

(A) contributions from persons other than political committees; ...

(C) contributions from political party committees; ...

(3) the identification of each --

(A) person (other than a political committee) 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, ...

(4) for the reporting period and the calendar year, the total amount of all disbursements, and all disbursements in the following categories:

(A) expenditures made to meet candidate or committee operating expenses; ...

(G) for an authorized committee, any other disbursements; ...

(5) the name and address of each --

(A) person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Thus, it is a criminal violation of the FECA, 2 U.S.C. 437g(d)(1)(A), for a presidential campaign committee or its agents to "knowingly and willfully" fail to report all contributions and expenditures in excess of \$200 made in connection with a presidential campaign.

E. The TV ad campaigns at issue were a Clinton ad campaign and a Dole ad campaign, respectively, and were subject to the presidential primary spending and contribution limits and prohibitions.

Under the FECA, an expenditure is defined to include "any purchase, payment, ... or anything of value, made by any person for the purpose of influencing any election for Federal office. ..." 2 U.S.C. 431(9)(A). Similarly, under the Primary Fund Act, a

"qualified campaign expense" is defined to include "a purchase, payment ... or gift of money or of anything of value incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election. ..." 26 U.S.C. 9032(9).

Thus, any money spent by a presidential candidate or his agents "for the purpose of influencing" the candidate's campaign, or "in connection with" the candidate's campaign is an "expenditure" under the FECA and a "qualified campaign expense" under the Primary Fund Act, and therefore counts against the candidate's spending limit. This includes, of course, money spent by a candidate campaign committee or its agents to conduct an advertising campaign to support the candidate.

It is clear that a candidate makes an "expenditure" and incurs a "qualified campaign expense" for a candidate ad campaign, within the meaning of the federal campaign finance laws, where the candidate's campaign committee or its agents:

- Prepare, direct and control the ad campaign;
- Target the ads to run in presidential battleground states; and
- Run ads that name the candidate and promote his candidacy, or name his opponent and criticize him.

The record discussed below shows that these circumstances exist here for both the Clinton ad campaign run through the DNC and the Dole ad campaign run through the RNC. Under such circumstances, it does not make any difference if the candidate campaign chooses to use a political party (or any other third party) as a conduit through which it runs its campaign ads, as both the Clinton Committee and the Dole Committee did in this case.

Thus, the Clinton ad campaign and the Dole ad campaign, run through their respective political parties, are candidate ad campaigns and the money spent on these ads are candidate "expenditures" under the FECA and "qualified campaign expenses" under the Primary Fund Act. As such, the expenditures count against the overall primary election spending limits applicable to the Clinton Committee and the Dole Committee. The contributions used to finance these expenditures must also meet the contribution prohibitions and limitations contained in federal law, and must comply with the law's disclosure requirements.

In addition to the fact that the money spent on these ad campaigns plainly meets the definition of "expenditure" by a candidate under the FECA, the Act also provides, in 2 U.S.C. 441a(b)(2)(B), that for purposes of the presidential campaign spending limits, an

expenditure is "made on behalf of a candidate" if it is made by any "agent of the candidate for purposes of making any expenditure," or by "any person authorized or requested by ... an agent of the candidate, to make the expenditure."

Thus, this provision also makes the money spent on the ad campaigns at issue here expenditures "on behalf of a candidate," and accordingly subject to the presidential primary spending limit applicable to the Clinton Committee and the Dole Committee.

Since the TV ad campaigns at issue here were candidate ad campaigns, and the expenditures involved were therefore candidate expenditures, the question whether the TV ads contained any terms of "express advocacy" such as "vote for" or "vote against" is irrelevant. While the Supreme Court has held that "express advocacy" is required for an ad by an independent group to fall under the federal campaign finance laws, see Buckley v. Valeo, 424 U.S. 1, 43 (1976), no one has ever contended, and no court has ever found, that an ad run by a candidate must contain terms of "express advocacy" in order to be treated as an expenditure under the campaign finance laws.

No one would argue, for instance, that an ad run by the Clinton Committee that promotes President Clinton's candidacy should not count against the Committee's spending limit simply because it does not say "Vote for Clinton." Indeed, many of the ads financed directly by the Clinton Committee and the Dole Committee do not contain any such terms of "express advocacy." Yet the Clinton Committee and the Dole Committee themselves have treated these ads as candidate ads and counted these expenditures against their spending limits.

The same holds true for the Clinton Committee ads and the Dole Committee ads run through their respective political parties: since they are candidate ads and candidate expenditures, there is no requirement for them to contain express advocacy in order to be covered by the federal campaign finance laws.

The record demonstrates that each presidential campaign committee used its respective national political party as a conduit to run its ad campaign, and that therefore the ad campaign is a candidate campaign expenditure. But the same result would be reached under federal law even if each presidential campaign and its national party was simply engaged in a joint venture in which the candidate campaign committee and the party coordinated their activities with each other.

Under 2 U.S.C. 441a(a)(7)(B)(i), expenditures "made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate," and "shall also be reported as an expenditure" by the

recipient candidate. 11 C.F.R. 104.13(a)(2).⁹

The record in this case clearly shows that there was direct involvement and control by the candidate campaign committees or their agents in virtually all aspects of the ad campaigns at issue. There is no way to treat these ad campaigns as efforts by the parties independent from and uncoordinated with the candidates and their agents.

Thus, even if the ad campaigns were not candidate ads run through the parties as conduits, they would still constitute expenditures by the candidates under section 441a(a)(7)(B)(i) of the FECA. As expenditures coordinated between the candidate campaign committees and their respective parties, they would constitute in-kind contributions to, and expenditures by, the candidates under this section, and therefore would count against the candidates' spending limits.

IV. The Clinton Ad Campaign Run Through the DNC

From the summer of 1995 through the summer of 1996, the Clinton Committee ran an ad campaign through the Democratic National Committee to promote President Clinton's reelection. The ad campaign was prepared, directed and controlled by agents of the Clinton Committee, the ads were targeted to run in presidential battleground states by agents of the Clinton Committee, and the ads promoted President Clinton or criticized his presumptive general election opponent, Senator Dole. The ad campaign was financed in large part by "soft money" raised by agents of the Clinton campaign. The Clinton Committee spent on the ad campaign during this period at least \$34 million in excess of the amount it was legally permitted to spend during the presidential primary campaign, and in doing so used at least \$22 million in "soft money" contributions that cannot be legally used to directly support a presidential candidate.

Background

In early summer of 1995, the Clinton Committee spent \$2.4 million of its campaign committee funds to run a series of ads relating to the ban on assault weapons in over 20 major television markets "in key electoral states," according to Bob Woodward's

⁹ Nor could the ads in question here be considered party "generic" ads. Under FEC rules a "generic" party ad is one that urges voters to "support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate." 11 C.F.R. 106.5(a)(2)(iv) (emphasis added). The ads run through the parties here in each case specifically mention President Clinton or Senator Dole.

book, The Choice.¹⁰ This candidate ad campaign, unusual in its timing some 18 months before the election, was designed by Clinton's chief media consultant Robert Squier¹¹ and his then-chief political strategist Richard Morris. Other Clinton aides strongly opposed spending so much of the Clinton Committee's campaign money so long before the election.¹²

According to a report published in *The Boston Globe*, this internal division led to a debate during the summer of 1995 about whether to turn down public financing during the primary elections "in order to avoid federal spending limits." According to this report:

Worried about Clinton's battered popularity, his political advisers are tempted to use the fund-raising powers of the presidency to bankroll an early television advertising campaign in key states. ...

Some Clinton aides, therefore, consider the \$36 million limit on primary spending and the state-by-state caps as obstacles to their reelection plans. ...

[T]he Clinton-Gore campaign already has spent more than \$2 million on television ads and is contemplating another multimillion-dollar advertising blitz for the fall.

Even though the president so far faces no Democratic opponent, his advisers are planning expensive media campaigns to boost Clinton's standing in key general election battleground states during next year's primary season.

If the Clinton campaign accepts federal funds, it would have to honor the spending caps in essential states. ...¹³

¹⁰ B. Woodward, The Choice, p. 213.

¹¹ *Id.* at 212.

¹² *Id.* at 213.

¹³ J. Farrell, "Clinton campaign mulls private funding," *The Boston Globe* (August 28, 1995).

In this debate, according a report in *The Washington Post*, some Clinton political advisers considered the spending limits that condition the receipt of public funds as imposing an unacceptable constraint on the reelection campaign:

[S]ome Clinton political advisers argued that as an incumbent president, he could raise all the money he needed and then would be able to spend it however he wanted. The proposal was part of a larger strategy that suggested Clinton could spend millions on television advertising in late winter and spring of 1996. ...¹⁴

In this connection, Clinton political strategist Richard Morris reportedly advocated rejecting the federal funds and spending limits:

Morris wanted to ensure that Clinton was in a position to maximize saturation television advertising in the coming primary season. ...

The lawyers said that if Clinton rejected the federal matching funds, he would not have to abide by any fund-raising limits during the primary period. The possibilities would be limitless -- potentially tens of millions of dollars more to spend on television advertising, perhaps even \$50 to \$60 million or more for an unparalleled media blitz. Morris decided that was the solution.¹⁵

The Clinton Committee's chief political strategist, Morris, and its chief media strategist, Squier, in August 1995 were advocating an unusually early TV ad campaign to emphasize President Clinton's protection of Medicare in order to bolster Clinton's popularity as they headed into the election year.¹⁶ Other campaign officials who advocated accepting public funds and spending limits were opposed to "using our precious money" for this ad campaign since they were going to be subject to "an absolute

¹⁴ A. Devroy, "Clinton Rejects Aides' Proposal to Refuse U.S. Matching Funds," *The Washington Post* (September 18, 1995).

¹⁵ B. Woodward, *The Choice*, p. 233-34.

¹⁶ *Id.* at 235.

legal ceiling" as part of accepting public funds.¹⁷

In the end, published reports show, the Clinton campaign and its agents designed a scheme to try to have it both ways -- to receive taxpayer funds and agree to a spending limit, and also to run a multimillion-dollar Clinton ad campaign through the DNC without counting any of these expenditures against the spending limit the campaign had agreed to.

Running campaign ads through the DNC was, in their view, "the compromise that allowed the President to have television air time without eating into his own re-election treasury."¹⁸ Under the scheme designed by the Clinton campaign, the ads would, in their view, "allow the President to start defining himself for the 1996 re-election campaign without using up his own campaign funds or counting the costs against the strict spending limits that Presidential candidates face."¹⁹

In fact, however, the ad campaign run through the DNC was plainly an ad campaign of the Clinton Committee and its agents, and the expenditures for the ad campaign of at least \$34 million were required to be counted against the Clinton Committee's overall spending limit.

A. The Clinton campaign and its agents prepared, directed and controlled the ad campaign run through the DNC.

The Clinton campaign and its agents designed and produced the ads, determined the placement of the ads and made the media buys, and raised money to pay for the ad campaign run through the DNC. This included the campaign's chief media strategist, Robert Squier, and the campaign's chief political strategist, Richard Morris. It also reportedly included the President himself:

At weekly evening meetings in the White House, Clinton went through [the ads], offered suggestions and even edited some of the scripts. He directed the process, trying out what

¹⁷ B. Woodward, "Clinton Called Shots for Party Ad Blitz," *The Washington Post* (June 25, 1996); B. Woodward, *The Choice*, p. 235.

¹⁸ A. Mitchell, "Democrats Plan Fund-Raising Drive for TV Ads in Budget Debate," *The New York Times* (October 17, 1995).

¹⁹ *Id.*

he wanted to say, what might work, how he felt about it, and what it meant.²⁰

The ad campaign run through the DNC was managed by Robert Squier,²¹ the head of Squier Knapp Ochs and its division, the November 5 Group. At the same time, Squier was also serving as President Clinton's chief media advisor and directing the ad campaign for the Clinton-Gore Committee.²² *Mediaweek* noted, "The Democratic planning is led by Bob Squier of the Washington firm Squier Knapp Ochs. The firm has a tight hold on the planning and buying process, creating ads and acting as chief media consultants to the Clinton-Gore campaign and the Democratic National Committee."²³ *National Journal* reported that Squier's "latest ad for the President's reelection effort emphasizes many of the same points found in the ads that he produced for the DNC."²⁴

As *National Journal* noted with reference to both the Clinton and Dole campaign media consultants:

[T]he fact that the media consultants who are crafting the commercials for the national parties are also the same strategists producing ads for the Clinton and Dole campaigns belies the notion that the ads are intended to benefit the party as a whole.²⁵

According to published reports, the Clinton campaign's chief political strategist, Richard Morris, was heavily involved with Squier in the design and planning of the ads. They jointly "tested" various 30-second ad scripts and jointly prepared the first ad run in

²⁰ B. Woodward, "Clinton Called Shots for Party Ad Blitz," *The Washington Post* (June 25, 1996).

²¹ *Id.*

²² J. Barnes, "Party Favors," *National Journal* (May 11, 1996).

²³ M. Gimein, "Media race shapes up," *Mediaweek* (March 25, 1996).

²⁴ J. Barnes, "Party Favors," *National Journal* (May 11, 1996).

²⁵ J. Barnes, "The Great 'Soft'-Money Flood of '96," *National Journal* (June 1, 1996).

August 1995.²⁶

According to published reports, President Clinton "directed a special fundraising effort"²⁷ for the DNC beginning in the summer of 1995 to raise money to pay for the ad campaign:

McAuliffe [the President's chief fundraiser] knew that if the president was behind a special fundraising drive by the party, the money would be raised. Clinton did not make the fundraising calls himself, but Vice President Gore made about 50 personal calls, and the party's chairman and entire fundraising apparatus were turned loose. Because the money supposedly would be for the party, there were no limits on contributions -- the so-called soft money loophole in the law allowing contributions for general operations. A number of large contributions in the \$100,000 range were received.

Of course the distinction between Clinton-Gore money and Democratic Party money existed only in the minds of the bookkeepers and legal fine-print readers. It was all being raised and spent by the same people -- Clinton, Gore, Morris and the campaign apparatus.²⁸

In this effort, the DNC reportedly raised over \$10 million in soft money and borrowed additional funds.²⁹ By the end of 1995, \$18 million dollars reportedly had been spent to fund an advertising campaign sponsored by the DNC.³⁰

During the first six months of 1996, under President Clinton's leadership and with his active involvement, the DNC raised \$34.9 million in "soft money" contributions. A significant portion of this money was used to finance the Clinton ad campaign run

²⁶ B. Woodward, The Choice, p. 236-37.

²⁷ *Id.* at 236.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 344.

through the DNC, which aired during this period.³¹

B. The TV ads were targeted to run in presidential battleground states.

The Clinton ad campaign run through the DNC during the period from July 1, 1995 to June 30, 1996 spent \$27 million in the top 12 states where the most expenditures were made on the ad campaign, including \$18 million in "soft money" and \$9 million in "hard money."³²

Listed below are the top 12 states and the total amount spent in each state on the Clinton ad campaign:

<u>State Party</u>	<u>Amount spent on Clinton ads</u>
1. California	\$4,156,092
2. Pennsylvania	\$3,809,470
3. Florida	\$3,578,159
4. Ohio	\$2,984,535
5. Michigan	\$2,647,529
6. Washington	\$1,910,807
7. Illinois	\$1,857,482
8. Wisconsin	\$1,470,784

³¹ As of December 31, 1995, the DNC reported having \$1,895,545 in "soft money" on hand.

³² Under the federal campaign finance disclosure laws, a national political party can file either monthly or quarterly reports with the FEC. State political parties file quarterly reports on their federal activities, and their joint federal-nonfederal activities.

The DNC has chosen to file quarterly reports. As a result, information for July 1996 and August 1996 regarding the DNC's transfers to state parties to finance the Clinton ad campaign, as well as information on payments by the Democratic state parties for the ad campaign, will not be available until reports for the period July 1 through September 30, 1996 are filed on October 15, 1996.

The RNC has chosen to file monthly reports. As a result, information regarding the RNC's transfers to its state parties in July 1996 and August 1996 is already available. But since the state parties themselves file only quarterly, information regarding state party spending on the Dole ad campaign in July 1996 and August 1996 will not be available until their third quarter reports are filed on October 15, 1996.

9. Minnesota	\$1,401,058
10. Colorado	\$1,258,217
11. Oregon	\$1,115,941
12. Missouri	\$1,113,584

These 12 states were considered during this period as key states in President Clinton's reelection effort.³³ The fact that eight of these states -- California, Colorado, Illinois, Michigan, Missouri, Ohio, Pennsylvania and Washington -- were also among the top 12 states where expenditures were made for the ad campaign run by the Dole campaign confirms that these battleground states were chosen by both campaigns for their importance to winning the presidential election.

The amounts listed above for the top 12 states represent funds paid by the state parties to the two media firms headed by Robert Squier, Squier Knapp Ochs and the November 5 Group, to pay for the Clinton ad campaign. Based on disclosure reports filed at the FEC, Common Cause has traced virtually all of these "soft money" and "hard money" funds as moving from the DNC to the Democratic state parties involved, and then being paid by the state parties to the two media firms.³⁴

It is expected that further expenditures for the Clinton ad campaign will be revealed when the DNC and Democratic state parties file their disclosure reports for the period that covers July 1996 and August 1996. Those reports are due to be filed on October 15, 1996.

According to a published report:

[M]illions of dollars [were spent] on ads touting President Clinton's reelection in various carefully selected markets. In

³³ See, e.g., A. Mitchell, "Behind the Cloak of Office, Clinton's War Room Hums, *The New York Times* (May 7, 1996).

³⁴ In tracing these transactions, Common Cause used (a) close proximity in time between the transfers from the DNC to the state parties and the payments by the state parties to the media firms, and (b) similarity in amounts between the transfers and the payments, to match transfers from the DNC to the state parties with disbursements by the state parties to the media firms.

Expenditures listed here do not include any payments made to the media firms directly by the DNC.

what is called a 'stealth' campaign by some, the party has mostly avoided buying ads in big cities where air time is costly and voters tend to lean Democratic anyway. The Democratic strategists are hoping to firm up support for their ticket early.³⁵

The report continued:

Republicans and news organizations have been tracking the Democratic advertising buys, providing a picture of where the money has been concentrated. According to tracking done for CNN, Clinton has put his money in 24 states. The campaign has avoided states that he won by large margins in 1992 and where his strategists believe that he is well ahead now. These include New York, Massachusetts, West Virginia and Vermont. They have also largely stayed away from places where they believe that Clinton has no real chance -- Texas, the tier of states in the Great Plains north of Texas to North Dakota, and such southern Republican strongholds as South Carolina, Alabama and Virginia.³⁶

In sum, the Clinton Committee and its agents, acting through the DNC, targeted a \$27 million Clinton ad campaign to run in 12 presidential battleground states.

C. The ads name President Clinton and promote his candidacy or name Senator Dole, his presumptive opponent, and criticize him.

The ads run by the Clinton Committee and its agents through the DNC, from the summer of 1995 through the summer of 1996, were the same kind of ads that any candidate would run to promote his candidacy or criticize his opponent.

The following are examples of some of the ads:

- "Values" promoted President Clinton and criticized Senator Dole:

³⁵ E. Randolph, "Clinton Camp Sows Televised Seeds of Support in Key Regions," *The Los Angeles Times* (May 22, 1996).

³⁶ *Id.*

American values. Do our duty to our parents. President Clinton protects Medicare. The Dole/Gingrich budget tried to cut Medicare \$270 billion. Protect families. President Clinton cut taxes for millions of working families. The Dole/Gingrich budget tried to raise taxes on eight million of them. Opportunity. President Clinton proposes tax breaks for tuition. The Dole/Gingrich budget tried to slash college scholarships. Only President Clinton's plan meets our challenges, protects our values.³⁷

- "Economy" promoted President Clinton and criticized Senator Dole:

(Graphic: 1991) Recession, jobs lost. The Dole-GOP bill tries to deny nearly a million families unemployment benefits.

(Graphic: 1992) Higher interest rates. 10 million unemployed. With a Dole amendment, Republicans try to block more job training.

(Graphic: 1996 and images of Clinton) Today: We make more autos than Japan; record construction jobs; mortgage rates down; 10 million new jobs; more women-owned companies than ever. The President's plan -- education, job training, economic growth -- for a better future.³⁸

- "Photo" promoted President Clinton and criticized Senator Dole:

60,000 felons and fugitives tried to buy handguns -- but couldn't -- because President Clinton passed the Brady Bill -- five-day waits, background checks. But Dole and Gingrich voted no. One hundred thousand new police -- because President Clinton delivered. Dole and Gingrich? Vote no, want to repeal 'em. Strengthen school anti-drug programs. President Clinton did it. Dole and Gingrich? No again. Their old ways don't work. President Clinton's plan. The new

³⁷ M. Daly, "Campaign '96: Ad Watch," *The Hartford Courant* (June 28, 1996).

³⁸ *The Associated Press*, "Democratic National Committee Ad Touts Clinton's Economic Record" (July 24, 1996).

way. Meeting our challenges, protecting our values.³⁹

- "Same," promoted President Clinton and criticized Senator Dole:

America's values. Head Start. Student loans. Toxic cleanup. Extra police. Protected in the budget agreement; the president stood firm. Dole, Gingrich's latest plan includes tax hikes on working families. Up to 18 million children face health care cuts. Medicare slashed \$167 billion. Then Dole resigns, leaving behind gridlock he and Gingrich created. The president's plan: Politics must wait. Balance the budget, reform welfare, protect our values.⁴⁰

- "Finish" promoted President Clinton and criticized Senator Dole:

Head Start. Student loans. Toxic cleanup. Extra police. Anti-drug programs. Dole, Gingrich wanted them cut. Now they're safe. Protected in the '96 budget -- because the President stood firm. Dole, Gingrich? Deadlock. Gridlock. Shutdowns. The president's plan? Finish the job, balance the budget. Reform welfare. Cut taxes. Protect Medicare. President Clinton says get it done. Meet our challenges. Protect our values.⁴¹

- "Dreams" promoted President Clinton:

The president says give every child a chance for college with a tax cut that gives \$1,500 a year for two years, making most community colleges free, all colleges more affordable. ... And for adults, a chance to learn, find a better job. The president's tuition tax cut plan. ...⁴²

³⁹ *The Associated Press*, "Analysis of DNC Ad on Crime Issues," (April 20, 1996).

⁴⁰ *The Associated Press*, "The New Democratic Ad on Clinton vs. Dole" (May 23, 1996).

⁴¹ J. Lender, *The Hartford Courant*, "Campaign '96: Ad Watch," (May 8, 1996).

⁴² *The Associated Press*, "The New DNC Ad on President Clinton's Tuition Tax-Credit Proposal" (June 11, 1996).

- "Defend" promoted President Clinton and criticized Senator Dole:

Protecting families. For millions of working families, President Clinton cut taxes. The Dole-Gingrich budget tried to raise taxes on eight million. The Dole-Gingrich budget would have slashed Medicare \$270 billion. Cut college scholarships. The president defended our values. Protected Medicare. And now, a tax cut of \$1,500 a year for the first two years of college. Most community colleges free. Help adults go back to school. The president's plan protects our values.⁴³

All of these ads were produced by Robert Squier, the Clinton Committee's chief media strategist.

Conclusion on Clinton ad campaign

According to one published report:

By spring 1996, Clinton personally had been controlling tens of millions of dollars' worth of DNC advertising. This enabled him to exceed the spending limits and effectively rendered the DNC an adjunct to his own reelection effort. ... For practical purposes, Clinton's control of the party advertising -- and his aggressive use of it going back to the first Medicare ads the previous August -- gave him at least \$25 million more money for the primary period. That was in addition to the \$37 million the Clinton-Gore campaign was authorized to spend under the law.⁴⁴

Further:

By using the Democratic National Committee money for advertising, Clinton's managers were able to continue to save

⁴³ *The Associated Press*, "The New DNC Ad on President Clinton's Record," (June 15, 1996).

⁴⁴ B. Woodward, "Clinton Called Shots for Party Ad Blitz," *The Washington Post* (June 25, 1996).

much of the Clinton-Gore campaign money. And the Morris-Squier advertising blitz was in full force. In the fall [of 1995], the ads attacking the Republican budget had covered some 30 percent of all media markets in the nation. The December [1995] 30-second commercials followed the pattern showing Clinton as champion crime fighter and as the leader seeking tax cuts, welfare reform and a balanced budget that would protect vital health programs, education and the environment.

By Christmas, the pro-Clinton ads had been on the air in an incredible 42 percent of the national media markets. The advertising pattern was designed to project one theme as spot after spot showed Clinton as a figure of national reconciliation, a healer bringing the various sides together, who rounded the sharp edges of the Republicans. ... By the end of [1995], \$18 million had been spent on this extraordinary media campaign.⁴⁵

This record shows that the Clinton Committee and its agents prepared, directed and controlled the ad campaign, targeted the ads to run in presidential battleground states, and prepared ads that named President Clinton and promoted his candidacy or named Senator Dole and criticized him.

The record shows that the Clinton campaign used the DNC as a conduit to run an ad campaign during the period from July 1, 1995 to June 30, 1996 -- costing at least \$34 million and using at least \$22 million in "soft money" -- to directly support President Clinton's reelection effort.

Under these circumstances, it is plainly correct that the ads involved here are ads of the Clinton Committee and its agents within the meaning of the federal campaign finance laws. The expenditures for those ads therefore must be counted against the expenditure limits applicable to President Clinton's reelection campaign and the money used to finance the ads must comply with the contribution limitations and prohibitions of the FECA.

⁴⁵ B. Woodward, The Choice at p. 344.

V. The Dole Ad Campaign Run Through the RNC

During the period from April 1996 through the Republican convention in August 1996, the Dole Committee ran an ad campaign through the RNC to promote Senator Dole's election as President. The ad campaign was prepared, directed and controlled by agents of the Dole campaign, the ads were targeted to run in presidential battleground states by agents of the Dole campaign, and the ads promoted Senator Dole or criticized his general election opponent, President Clinton. The ad campaign was financed in large part by "soft money" raised by agents of the Dole campaign. Through the ad campaign, the Dole Committee during the period from April 1 through June 30, 1996 spent at least \$14 million in excess of the amount it was legally permitted to spend and used at least \$9 million in "soft money" to finance the ad campaign, money that cannot be legally used to directly support a presidential candidate.⁴⁶

Background

By mid-May 1996, according to published reports, the Dole Committee was within \$200,000 of the overall primary election spending ceiling that would limit the campaign's spending until the Republican convention in August.⁴⁷ "No Presidential campaign has reported coming this close to the spending limit this long before its convention. ..."⁴⁸

With the Dole campaign unable to spend any money on a TV advertising campaign and months to go before the August convention when it would receive its general election public funds, the Dole Committee and its agents undertook a multimillion-dollar TV advertising campaign using the RNC as a conduit.

⁴⁶ Substantial additional expenditures for the Dole ad campaign run through the RNC are expected to be revealed for the months of July 1996 and August 1996 when Republican state parties file their disclosure reports covering the period from July 1 to September 30, 1996. These reports are due at the Federal Election Commission on October 15, 1996. Any payments made in July 1996 and August 1996 by Republican state parties to media firms to finance the Dole ad campaign will be reported on these disclosure reports.

⁴⁷ K. Seelye, "A Financial Squeeze So Tight That Dole Campaign Is Forced to Sell Assets," *The New York Times* (May 18, 1996).

⁴⁸ *Id.*

On May 16, 1996, RNC chairman Haley Barbour announced that the RNC would conduct a \$20 million TV "issue advocacy" campaign.⁴⁹ Barbour called the timing of the RNC advertising campaign "more than serendipitous."⁵⁰ Another published report noted that this ad campaign is "designed to ride to the rescue of the Dole campaign. Short of money until the convention, when it will receive federal matching funds, the Dole campaign barely has travel funds, let alone advertising money."⁵¹

According to an article in *The New York Times*, "Without a meaningful advertising budget, for example, the [Dole] campaign must rely almost entirely on the national Republican Party to pay for advertisements."⁵² Indeed, the Dole Committee did not pay for a TV commercial from March 18 until it received general election public funds after the Republican convention in August.⁵³

According to a published report, "R.N.C. ads attacking Clinton on everything from welfare reform to his Paula Jones problems have aired across the country, with only the fact that they don't say 'Vote for Bob' as evidence that they don't emanate from Dole headquarters."⁵⁴

In fact, however, the ad campaign run through the RNC was plainly an ad campaign of the Dole Committee and its agents and the expenditures for the ad campaign of at least \$14 million, through June 30, 1996, were required to be counted against the Dole Committee's spending limit.

⁴⁹ N. Fitzgerald, "Here Comes the Mud," *Adweek* (Jun 17, 1996); see also J. Bennet, "New G.O.P. Drive, New Finance Debate," *The New York Times* (May 31, 1996).

⁵⁰ M. Moore, "Republicans Roll Out Their Ads," *USA Today* (May 17, 1996).

⁵¹ E. Chen, "Dole Travels to Heartland for New Beginnings," *Los Angeles Times* (May 17, 1996).

⁵² S. Labaton, "Dole's Limited Cash Will Restrict His Message, Campaign Experts Say," *The New York Times* (May 17, 1996).

⁵³ J. Bennet, "Dole, Kemp and Their Tax Plan Make First Commercial Foray," *The New York Times* (August 21, 1996).

⁵⁴ J. Birnbaum, "The Bucks Start Here," *Time* (June 24, 1996).

**A. The Dole Committee and its agents
prepared, directed and controlled the ad campaign.**

The Dole Committee and its agents designed and produced the ads, determined the placement of the ads and made the media buys, and raised money to pay for the ad campaign. This included the campaign's chief media strategist, Don Sipple, the campaign's chief pollster, Anthony Fabrizio, and Dole's chief fundraiser for some 30 years, Joanne Coe.

In March 1996, Don Sipple became the Dole campaign's chief media strategist, and "the campaign's chief message-meister."⁵⁵ Sipple produced and directed the ad campaign run through the RNC at the same time he was serving as the chief media strategist for Dole.⁵⁶

According to one published report, Sipple in June 1996 "set up a new company, New Century Media Group, Inc., to handle the RNC's advertising assignments as well as the Dole campaign's commercials during the general election. Its offices are on the 10th floor of the Dole campaign headquarters building in Washington."⁵⁷

In March 1996, at the same time that Don Sipple became Dole's chief media strategist, Anthony Fabrizio became Dole's chief pollster, serving as head of polling and survey research for the Dole Committee.⁵⁸ Fabrizio is head of Multi-Media Services.⁵⁹

Multi-Media Services, made the media buys for the Dole ad campaign run through the RNC at the same time Fabrizio was serving as the chief pollster for Dole.

⁵⁵ J. Barnes, "Team Dole," *National Journal* (April 13, 1996).

⁵⁶ H. Kurtz, "Dole's Fall Ad Team Takes Shape, With Help From Madison Avenue," *The Washington Post* (June 28, 1996); B. Jackson, "Dems, GOP Trade Accusations on Campaign Finance," *AllPolitics* (July 8, 1996); H. Kurtz, "Volleys Fired Before Target Was Fielded," *The Washington Post*, (August 7, 1996).

⁵⁷ J. Barnes, "Along the Campaign Trail," *National Journal* (June 8, 1996)(emphasis added).

⁵⁸ J. Barnes, "Shake-Up of Dole's High Command...Has a Very Familiar Ring to It," *National Journal* (March 2, 1996).

⁵⁹ *Campaigns & Elections* (February 1995).

Money to pay for the Dole ad campaign was raised by agents of the Dole Committee, led by Joanne Coe, "the trusted Dole adviser with the longest tenure -- almost three decades."⁶⁰ Coe has been Dole's chief fundraiser for some 30 years, raising money for his congressional campaigns, his presidential campaigns and his political action committee, Campaign America, since 1967.⁶¹

Coe served as the chief fundraiser for the Dole presidential primary campaign. In early April 1996, after Coe had raised the maximum amount the Dole Committee could legally spend on the presidential primary campaign, she moved to the RNC to take responsibility for raising "soft money."⁶²

Under Coe's direction, some \$38 million in "soft money" was raised from April 1, 1996 to August 31, 1996.⁶³ Significant amounts of this money were used to pay for the Dole ad campaign which aired during this period.

Much of this \$38 million raised under Coe's leadership came in large contributions from Dole supporters:

When [Coe and other Dole fundraisers] moved [to the RNC], so did the money of some of Dole's biggest backers. Philip Anschutz, a billionaire Denver oilman who serves on Dole's campaign finance committee, hadn't given heavily to the RNC in recent years. But in April, after Anschutz and his wife reached their individual contribution limits for Dole's presidential campaign, his company, Anschutz Corp., gave the RNC \$250,000.

In April and May, nine other Dole finance committee members or the companies they run each gave \$100,000 or

⁶⁰ J. Barnes, "Team Dole," *National Journal* (April 13, 1996).

⁶¹ J. Keen, "Primaries hardened Dole team," *USA Today* (March 28, 1996).

⁶² J. Barnes, "Along the Campaign Trail," *National Journal* (April 6, 1996).

⁶³ This figure is based on a Common Cause analysis of RNC disclosure reports on file at the Federal Election Commission.

more to the RNC.⁶⁴

B. The TV ads were targeted to run in presidential battleground states.

The Dole ad campaign run through the RNC during the period from April 1, 1996 to June 30, 1996 spent more than \$13 million in the top 12 states where the most expenditures were made on the ad campaign, including \$8.8 million in "soft money" and \$4.5 million in "hard money."

Listed below are the top 12 states and the total amount spent in each state on the ad campaign:

<u>State party</u>	<u>Amount spent on Dole ads</u>
1. California	\$4,018,821
2. Pennsylvania	\$1,735,443
3. Illinois	\$1,553,663
4. Ohio	\$1,295,910
5. Tennessee	\$ 946,688
6. Georgia	\$ 839,699
7. Washington	\$ 684,000
8. Missouri	\$ 661,980
9. Colorado	\$ 496,485
10. Iowa	\$ 420,720
11. Michigan	\$ 346,260
12. New Mexico	\$ 332,393

Eight of these states -- California, Colorado, Illinois, Michigan, Missouri, Ohio, Pennsylvania and Washington -- were also among the top 12 states where expenditures were made for the ad campaign run by agents of the Clinton campaign, confirming that these presidential battleground states were chosen by both the Clinton and Dole campaigns for their importance to winning the presidential election.

Three of the four other states -- Georgia, Tennessee and Iowa -- were also considered key states in Senator Dole's election efforts.

The amounts listed above for the top 12 states represent funds paid by the state parties to the two media firms, Multi-Media Services and Target Enterprises, to pay for

⁶⁴ C. Babcock and R. Marcus, "'Dole Inc.': The Rise of a Money Machine," *The Washington Post* (August 20, 1996).

the Dole ad campaign. Based on disclosure reports filed at the FEC, Common Cause has traced virtually all of these "soft money" and "hard money" funds as moving from the RNC to the Republican state parties involved, and then being paid by the state parties to the two media firms.⁶⁵

This information does not reflect the full Dole ad campaign run through the RNC, since state party reports are not yet available for expenditures by state parties to media firms for Dole campaign ads that were made during July and August, 1996. RNC reports, which are available for this period, show that an additional \$7 million in "soft money" was transferred by the RNC to state parties in July and August, 1996. The top five recipients of these funds are key states in Dole's election effort: Ohio (\$839,670), North Carolina (\$609,781), Florida (\$599,979), Michigan (\$424,961) and Washington (\$408,797). Disclosure reports showing how much of these funds may have been used by state parties to pay for the Dole ad campaign are due to be filed on October 15, 1996.

These amounts represent funds that Common Cause has traced through FEC disclosure reports as moving from the RNC to the Republican state parties involved, and then from the state parties to the Dole media firm pay for the ad campaign.

It is expected that further expenditures for the Dole ad campaign will be revealed when the Republican state parties file their disclosure reports for the period that covers July 1996 and August 1996. Those reports are due to be filed on October 15, 1996.

In sum, the Dole Committee and its agents, acting through the RNC, targeted a \$13 million Dole ad campaign to run in 12 states, including 11 presidential battleground states.

⁶⁵ In tracing these transactions, Common Cause used (a) close proximity in time between the transfers from the RNC to the state parties and the payments by the state parties to the media firms, and (b) similarity in amounts between the transfers and the payments, to match transfers from the RNC to the state parties with disbursements by the state parties to the media firms.

Expenditures listed here do not include any payments made to the media firms directly by the RNC.

C. The ads name Senator Dole and promote his candidacy or name President Clinton and criticize him.

The ads run by the Dole Committee and its agents through the RNC during the period from April 1996 through August 1996 were the same kind of ads that any candidate would run to promote his candidacy or criticize his opponent.

The ads produced by Don Sipple, the Dole Committee's chief media strategist, at times used the same video footage first seen in ads made by Sipple for the Dole Committee.⁶⁶ According to a published report, "The Sipple/RNC ad even uses lots of video first seen in ads made by Sipple for the Dole campaign. The ads, obviously coordinated, look identical in spots."⁶⁷

The following are examples of some of the ads run by the Dole Committee and its agents through the RNC:

● "The Story" promoted Senator Dole:

(Dole) "We have a moral obligation to give our children an America with the opportunity and values of the nation we grew up in."

(Announcer) Bob Dole grew up in Russell, Kansas. From his parents he learned the value of hard work, honesty and responsibility. So when his country called, he answered. He was seriously wounded in combat. Paralyzed, he underwent nine operations.

(Dole) "I went around looking for a miracle that would make me whole again."

(Announcer) The doctors said he'd never walk again. But after 39 months, he proved them wrong.

(Elizabeth Hanford Dole) "He persevered, he never gave up."

⁶⁶ B. Jackson, "Dems, GOP Trade Accusations on Campaign Finance," *AllPolitics* (July 8, 1996).

⁶⁷ *Id.* (emphasis added).

He fought his way back from total paralysis."

(Announcer) Like many Americans, his life experience and values serve as a strong moral compass. The principle of work to replace welfare. The principle of accountability to strengthen our criminal justice system. The principle of discipline to end wasteful Washington spending.

(Dole) "It all comes down to values; what you believe in, what you sacrifice for, and what you stand for."⁶⁸

According to a published report, "[T]he ad concluded with the innocuous entreaty, 'call your elected officials.' What one was supposed to tell them was never made clear."⁶⁹ This attempt to cast the ad as an "issues" ad rather than as a Dole candidate ad belies reality. This ad is the same kind of bio ad that any candidate would run to promote his candidacy.

Senator Dole himself made perfectly clear that this ad was intended to support his candidacy. Discussing this ad, Dole said, "It's called 'generic.' It's not 'Bob Dole for President.' It never says that I am running for President, though I hope that is fairly obvious, since I am the only one in the picture."⁷⁰

As noted above, FEC rules make clear that this Dole bio ad is not a "generic" party ad, which is required to urge voters to support candidates of the party "without mentioning a specific candidate." 11 C.F.R. 106.5(a)(2)(iv). The Dole bio ad run through the RNC not only "mentions" a specific candidate -- Senator Dole -- but focuses exclusively on him in the same way that any candidate bio ad would.

- "Surprise" promoted Senator Dole and criticized President Clinton:

(Announcer) Three years ago, Bill Clinton gave us the largest tax increase in history, including a 4 cent a gallon increase on

⁶⁸ *The Associated Press*, "Sippl's Ad for the GOP on Dole's Experience," (June 6, 1996).

⁶⁹ D. Morris, "Let the Ad Wars Begin," *PoliticsNow* (July 1, 1996).

⁷⁰ A. Clymer, "System Governing Election Spending Found In Shambles," *The New York Times* (June 16, 1996).

gasoline. Bill Clinton said he felt bad about it.

(Clinton): "People in this room still get mad at me over the budget because you think I raised your taxes too much. It might surprise you to know I think I raised them too much, too."

(Announcer) OK, Mr. President, we are surprised. So now, surprise us again. Support Senator Dole's plan to repeal your gas tax. And learn that actions do speak louder than words.⁷¹

- "Stripes" criticized President Clinton:

Bill Clinton, he's really something. He's now trying to avoid a sexual harassment lawsuit claiming he is on active military duty. Active duty? Newspapers report that Mr. Clinton claims as commander in chief he is covered under the Soldiers and Sailors Relief Act of 1940, which grants automatic delays in lawsuits against military personnel until their active duty is over. Active duty? Bill Clinton, he's really something.⁷²

- "Who" criticized President Clinton:

(Announcer) Compare the Clinton rhetoric with the Clinton record.

(Clinton) "We need to end welfare as we know it."

(Announcer) But he vetoed welfare reform not once, but twice. He vetoed work requirements for the able-bodied. He vetoed putting time limits on welfare. And Clinton still supports giving welfare benefits to illegal immigrants. The Clinton rhetoric hasn't matched the Clinton record.

(Clinton) "Fool me once, shame on you. Fool me twice,

⁷¹ *The Associated Press*, "Analysis of New GOP Ad on Taxes, (May 8, 1996).

⁷² *The Associated Press*, "GOP Ad on Clinton's Claim in Sexual Harassment Suit," (May 25, 1996).

shame on me."

(Announcer) Tell President Clinton you won't be fooled again.⁷³

- "The Pledge" criticized President Clinton:

(Clinton) "I will not raise taxes on the middle class."

(Announcer) We heard it a lot.

(Clinton) "We've got to give the middle class tax relief no matter what we do."

(Announcer) Six months later, he gave us the largest tax increase in history. Higher income taxes, increased taxes on social security benefits. More payroll taxes. Under Clinton, the typical American family now pays over \$1,500 more in federal taxes. A big price to pay for his broken promise. Tell President Clinton you can't afford higher taxes for more wasteful spending.⁷⁴

- "The Plan" promoted Senator Dole:

(Dole): "Americans are working harder and longer but taking home less. In fact, the typical American family spends more on taxes than on food, clothing and housing combined. The American people deserve better."

(Announcer) Bob Dole's economic plan will cut taxes 15 percent for every single taxpayer. The typical family of four will save over \$1,600 a year.

⁷³ *The Associated Press*, "New Republican Ad on Clinton's Welfare Record," (May 24, 1996).

⁷⁴ *The Associated Press*, "New Republican National Committee Ad on Clinton's Abandoned Tax Break," (July 10, 1996).

(Dole) "The Dole plan: Americans keep more of what they earn."⁷³

All of these ads were produced by Don Sipple, the Dole Committee's chief media adviser.

Conclusion on Dole ad campaign

The record shows that the Dole campaign and its agents prepared, directed and controlled the ad campaign, targeted the ads to run in presidential battleground states and prepared ads that named Senator Dole and promoted his candidacy or named President Clinton and criticized him.

The record shows that the Dole campaign used the RNC as a conduit to run an ad campaign during the period from April 1, 1996 to June 30, 1996 -- costing at least \$14 million and using at least \$9 million in "soft money" -- to directly support Senator Dole's election effort.

Under these circumstances, it is plainly correct that the ads involved here are ads of the Dole Committee and its agents within the meaning of the federal campaign finance laws. The expenditures for those ads therefore must be counted against the expenditure limits applicable to Senator Dole's election campaign and the money used to finance the ads must comply with the contribution limitations and prohibitions of the FECA.

VI. Potential Criminal Violations of Law

The foregoing provides substantial grounds to believe that the ad campaigns run by the Clinton Committee and its agents acting through the DNC and by the Dole Committee and its agents acting through the RNC constituted knowing and willful violations of the federal campaign finance laws.

A. Violation of presidential primary spending limits

The overall spending limit for the 1996 presidential primary campaign, which the Clinton Committee and the Dole Committee each agreed in writing to abide by in exchange for taxpayer funds, was \$37.1 million. 2 U.S.C. 441a(b)(1)(A).

⁷³ H. Kurtz, "Volleys Fired Before Target Was Fielded," *The Washington Post* (August 7, 1996).

According to FEC reports, the Clinton Committee reported spending \$34.1 million on its presidential primary campaign as of August 31, 1996. According to FEC reports, the Dole Committee reported spending \$37.7 million on its presidential primary campaign as of August 31.⁷⁶ Thus, the Dole Committee reported that it was at its spending limit, while the Clinton Committee reported being within \$3 million of the spending limit.

The Clinton Committee and its agents spent at least \$34 million dollars on the ad campaign that the Committee and its agents ran through the DNC. This spending was not counted by the Clinton Committee against its spending limit and was not disclosed as Clinton Committee expenditures.

The Dole Committee and its agents spent at least \$14 million on the ad campaign that the Committee and its agents ran through the RNC. This spending was not counted by the Dole Committee against its spending limit and was not disclosed as Dole Committee expenditures.

In each case, the Clinton Committee and the Dole Committee grossly exceeded the spending limit applicable to the presidential primary campaign.

An independent counsel is necessary to investigate whether the Clinton Committee and the Dole Committee, and their respective agents, knowingly and willfully violated the presidential primary election spending limit, in violation of 2 U.S.C. 437g(d)(1) and 26 U.S.C. 9042.

**B. Violation of ban on use of "soft money" to
 directly support a presidential candidate.**

Federal law bars the use of corporate and labor union funds, and large individual contributions in excess of the federal limits, to directly support a presidential candidate. 2 U.S.C. 441b; 2 U.S.C. 441a(a)(1),(2); 2 U.S.C. 441a(f).

The Clinton Committee and its agents used at least \$22 million in "soft money" to finance the ad campaign the Committee and its agents ran through the DNC. The Dole Committee and its agents used at least \$9 million in "soft money" to finance the ad campaign the Dole Committee and its agents ran through the RNC. These funds were used to directly support a presidential candidate.

⁷⁶ These figures are from the Clinton and Dole Committees' August 1996, disclosure reports, filed with the FEC on September 20, 1996. The spending figures for both committees include funds spent under the 20-percent fundraising exclusion.

An independent counsel is necessary to investigate whether the Clinton Committee and the Dole Committee, and their respective agents, knowingly and willfully violated the ban on the use of "soft money" to directly support a presidential candidate, in violation of 2 U.S.C. 437g(d)(1).

C. Violation of the disclosure requirements for federal candidates.

Federal law requires that a presidential campaign disclose and itemize all of its receipts and expenditures in excess of \$200. 2 U.S.C. 434.

The Clinton Committee and its agents spent at least \$34 million on the ad campaign that the Committee and its agents ran through the DNC. The Dole Committee and its agents spent at least \$14 million on the ad campaign that the Dole Committee and its agents ran through the RNC. The expenditures by the Clinton and Dole Committees for these ad campaigns were not disclosed by either Committee. The contributions used by the Clinton and Dole Committees to pay for these ad campaigns also were not disclosed by either Committee.

An independent counsel is necessary to investigate whether the Clinton Committee and the Dole Committee, and their respective agents, knowingly and willfully violated the disclosure requirements of the FECA, in violation of 2 U.S.C. 434 and 2 U.S.C. 437g(d)(1).

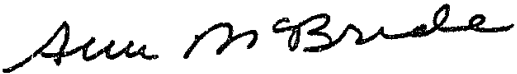
VII. Conclusion

Common Cause believes that massive violations of this Nation's campaign finance laws have occurred in the 1996 presidential election. The issues raised here are of fundamental importance to the integrity of our democracy, of our political system and of the office of the presidency.

Under sections 591(b) and 591(c) of the Independent Counsel Act, you are required to open a preliminary investigation leading to the appointment of an independent counsel to investigate these matters and to determine whether the Clinton Committee, the Dole Committee, the Democratic National Committee and the Republican National Committee, and their respective agents, have engaged in knowing and willful violations of the Federal Election Campaign Act and the Presidential Primary Matching Payment Account Act.

Common Cause strongly urges you to take the steps necessary to seek the appointment of an independent counsel under the Independent Counsel Act in order to investigate these fundamentally important matters.

Sincerely,


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