

AGENDA DOCUMENT NO. 21-09-A
AGENDA ITEM
For meeting of February 25, 2021



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 8, 2021

MEMORANDUM

To: The Commission

Through: Alec Palmer *AP*
Staff Director

From: Patricia C. Orrock *PCO*
Chief Compliance Officer

Dayna C. Brown *DCB*
Acting Assistant Staff Director
Audit Division

Kendrick Smith *KDS*
Audit Manager

By: William Antosz *WAA*
Lead Auditor

Subject: Audit Division Recommendation Memorandum on Dr. Raul Ruiz for Congress (A19-03)

Pursuant to Commission Directive No. 70 (FEC Directive on Processing Audit Reports), the Audit staff presented the Draft Final Audit Report (DFAR) to Dr. Raul Ruiz for Congress (RRFC) on November 2, 2020 (see attachment). RRFC did not request an audit hearing.

This memorandum provides the Audit staff's recommendation for each finding outlined in the DFAR.

In response to the DFAR, RRFC provided additional information, as noted below. The Office of General Counsel provided a legal analysis of the RRFC response (see attachment).

Finding 1. Misstatement of Financial Activity

Subsequent to its Interim Audit Report response, RRFC reiterated that a \$4,000 disbursement was voided and re-issued through its payroll vendor and demonstrated that another \$2,600 outstanding check was also voided. As a result of this evidence, RRFC had no material misstatement.

In response to the DFAR, RRFC stated that the misstatement finding should be removed.

The Audit staff recommends that the Commission find that RRFC demonstrated that its financial activity for 2017 is materially correct.

Finding 2. Personal Use of Campaign Funds

In response to the DFAR, RRFC reiterated its position that the finding should be vacated and provided additional comments including that “there exists no clear precedent or advance notice to the regulated community stating that 11 C.F.R. §113.1(g)(8)’s log requirement applies to gas purchases.” The response also stated that the full Commission should revise the DFAR to make it completely clear that there is no adverse finding against RRFC.

The Audit staff recommends that the Commission find that RRFC used campaign funds totaling \$5,899 for personal use.

The Office of General Counsel has reviewed this memorandum and concurs with the recommendations.

If this memorandum is approved, the Proposed Final Audit Report will be prepared and circulated within 30 days of the Commission’s approval.

If this Audit Division Recommendation Memorandum is not approved on a tally vote, Directive No. 70 states that the matter will be placed on the next regularly scheduled open session agenda.

Documents related to this audit report can be viewed in the Voting Ballot Matters folder. Should you have any questions, please contact William Antosz or Kendrick Smith at 694-1200.

Attachments:

- Draft Final Audit Report of the Audit Division on Dr. Raul Ruiz for Congress
- LRA 1120 Dr. Raul Ruiz for Congress ADRM dated January 6, 2021

cc: Office of General Counsel



Draft Final Audit Report of the Audit Division on Dr. Raul Ruiz for Congress (January 1, 2017 - December 31, 2018)

Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.¹ The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

Future Action

The Commission may initiate an enforcement action, at a later time, with respect to any of the matters discussed in this report.

About the Campaign (p. 2)

Dr. Raul Ruiz for Congress is the principal campaign committee for Dr. Raul Ruiz, Democratic candidate for the United States House of Representatives from the state of California, 36th Congressional District, and is headquartered in Palm Desert, California. For more information, see the Campaign Organization chart, p.2.

Financial Activity (p. 2)

• Receipts	
○ Contributions from Individuals	\$ 1,917,208
○ Contributions from Political Committees	1,235,207
○ Transfers from Other Authorized Committees	17,829
○ Offsets to Operating Expenditures	7,810
Total Receipts	\$ 3,178,054
• Disbursements	
○ Operating Expenditures	\$ 2,502,591
○ Contribution Refunds	29,857
○ Other Disbursements	5,868
Total Disbursements	\$ 2,538,316

Findings and Recommendations (p. 3)

- Misstatement of Financial Activity (Finding 1)
- Personal Use of Campaign Funds (Finding 2)

¹ 52 U.S.C. §30111(b).



Draft Final Audit Report of the Audit Division on Dr. Raul Ruiz for Congress

(January 1, 2017 - December 31, 2018)

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Part I

Background

Authority for Audit

This report is based on an audit of Dr. Raul Ruiz for Congress (RRFC) undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 52 U.S.C. §30111(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 52 U.S.C. §30104. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 52 U.S.C. §30111(b).

Scope of Audit

Following Commission-approved procedures, the Audit staff evaluated various risk factors and as a result, this audit examined:

1. the receipt of excessive contributions;
2. the receipt of contributions from prohibited sources;
3. the disclosure of contributions received;
4. the disclosure of individual contributors' occupation and name of employer;
5. the disclosure of disbursements, debts and obligations;
6. the consistency between reported figures and bank records;
7. the completeness of records; and
8. other committee operations necessary to the review.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	September 23, 2011
• Audit Coverage	January 1, 2017 – December 31, 2018
Headquarters	Palm Desert, California
Bank Information	
• Bank Depositories	Two
• Bank Accounts	One checking and one savings account
Treasurer	
• Treasurer When Audit Was Conducted	John Pinkney
• Treasurer During Period Covered by Audit	John Pinkney (January 8, 2013 – Present)
Management Information²	
• Attended FEC Campaign Finance Seminar	Not Available
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

Overview of Financial Activity (Audited Amounts)

Cash on hand @ January 1, 2017	\$ 1,003,930
Receipts	
○ Contributions from Individuals	1,917,208
○ Contributions from Political Committees	1,235,207
○ Transfers from Other Authorized Committees	17,829
○ Offsets to Operating Expenditures	7,810
Total Receipts	\$ 3,178,054
Disbursements	
○ Operating Expenditures	2,502,591
○ Contribution Refunds	29,857
○ Other Disbursements	5,868
Total Disbursements	\$ 2,538,316
Cash on hand @ December 31, 2018	\$ 1,643,668

² During pre-audit, the Audit staff provided RRFC the Internal Control Questionnaire to complete, which included these questions. Additionally, RRFC was asked these questions in follow-up correspondence. To date, the questionnaire has not been returned by RRFC.

Part III

Summaries

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

During audit fieldwork, a comparison of RRFC's reported financial activity with its bank records revealed a misstatement of disbursements for calendar year 2017. RRFC understated its disbursements by \$16,794. In response to the Interim Audit Report recommendation, RRFC stated that it was prepared to make any necessary corrections to its reports, but information provided by the Audit staff has been inconsistent and unclear, and RRFC has not been provided with a comprehensive, consistent list of corrections that must be made.

Subsequent to its Interim Audit Report response, RRFC demonstrated that two outstanding checks totaling \$6,600 were actually voided by RRFC. After making the coresponding adjustment to RRFC's 2017 reported disbursements based on this demonstration, the Audit staff determined that RRFC's financial activity for the audit period is materially correct and no further action is warranted. (For more detail, see p. 4.)

Finding 2. Personal Use of Campaign Funds

During a review of reported disbursements, the Audit staff identified disbursements totaling \$5,899 as potential personal use of campaign funds. The disbursements included purchases for vehicle-related expenditures such as parking, gasoline, and insurance payments. In response to the Interim Audit Report recommendation, RRFC stated that recordkeeping requirements were misread and misapplied by the Audit staff for these disbursements. RRFC believed that the declaration previously provided from the Campaign Manager should have resolved the finding, and that fuel expenses are a common category of campaign expenditures. As of the date of this report, no supporting documentation was provided by RRFC related to the personal use of campaign funds or demonstrating that the personal use expenses for the vehicles were of a de minimus amount.

(For more detail, see p. 6.)

Part IV

Findings and Recommendations

Finding 1. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of RRFC's reported financial activity with its bank records revealed a misstatement of disbursements for calendar year 2017. RRFC understated its disbursements by \$16,794. In response to the Interim Audit Report recommendation, RRFC stated that it was prepared to make any necessary corrections to its reports, but information provided by the Audit staff has been inconsistent and unclear, and RRFC has not been provided with a comprehensive, consistent list of corrections that must be made.

Subsequent to its Interim Audit Report response, RRFC demonstrated that two outstanding checks totaling \$6,600 were actually voided by RRFC. After making the coresponding adjustment to RRFC's 2017 reported disbursements based on this demonstration, the Audit staff determined that RRFC's financial activity for the audit period is materially correct and no further action is warranted.

Legal Standard

Contents of Reports. Each report must disclose:

- the amount of cash on hand at the beginning and end of the reporting period;
- the total amount of receipts for the reporting period and for the election cycle;
- the total amount of disbursements for the reporting period and for the election cycle; and
- certain transactions that require itemization on Schedule A (Itemized Receipts) or Schedule B (Itemized Disbursements). 52 U.S.C. §30104(b)(1), (2), (3), (4), and (5).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reconciled RRFC's reported financial activity with its bank records for calendar years 2017 and 2018. The reconciliation determined that RRFC misstated disbursements for 2017. The following chart details the discrepancies between RFCC's disclosure reports and bank activity. The succeeding paragraphs explain why the discrepancies occurred.

2017 Committee Activity			
	Reported	Bank Records	Discrepancy
Beginning cash on hand @ January 1, 2017	\$990,316	\$1,003,930	\$13,614 Understated
Receipts	\$1,803,606	\$1,814,922	\$11,316 Understated

2017 Committee Activity			
	Reported	Bank Records	Discrepancy
Disbursements	\$698,170	\$714,964	\$16,794 Understated
Ending cash on hand @ December 31, 2017	\$2,095,752	\$2,103,888	\$8,136 Understated

The understatement of disbursements resulted from the following:

• Disbursements not reported or reported incorrectly	+ 13,500
• Contribution refunds reported but did not clear bank	- 586
• Unexplained differences	<u>+ 3,880</u>
Net Understatement of Disbursements	<u>\$16,794</u>

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed this matter during the exit conference with RRFC representatives and provided schedules detailing the misstatement of financial activity. RRFC representatives did not provide any comments.

In response to the exit conference, RRFC submitted documentation which reduced the amount of the understatement on the FEC reports to \$16,794 (reflected above in the Facts section).

The Interim Audit Report recommended that RRFC amend its disclosure reports or file a Form 99³ (Miscellaneous Electronic Submission) to correct the misstatement noted above, and reconcile the cash balance on its most recently filed report to include these adjustments and correct any subsequent discrepancies.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RRFC stated that a finding of \$16,794 is “scant” when compared to RRFC’s \$5,716,370 in overall activity over the two-year period, and “is the result of inconsistent and confusing guidance provided by the auditors.” RRFC stated that it has cooperated throughout the audit process and it is prepared to make any necessary corrections to its reports, but it has not been provided a comprehensive list of the corrections that must be made. RRFC requested that the Audit Division “vacate the finding” and provide a corrected listing of the needed changes, upon which RRFC will promptly amend its reports to comply with the recommendation.

Contrary to RRFC’s assertions that it has not been provided a comprehensive list of needed corrections, when the Audit staff notified RRFC of the reduced error amount following the exit conference, a revised schedule that outlined the errors was also provided to RRFC representatives. In addition, to ensure RRFC was provided adequate time to respond to the revised finding, the Audit staff extended the exit conference response period by three days.

³ RRFC was advised by the Audit staff that if it chose to file a Form 99 instead of amending its disclosure reports, the form must contain all pertinent information that is required on the schedule.

Subsequent to the Interim Audit Report response, the Audit staff reached out to RRFC representatives to determine whether additional information was needed to prepare its amended reports. RRFC representatives replied and there were several communications regarding disbursements the Audit staff had classified as outstanding checks. RRFC representatives made the Audit staff aware that it had previously provided documentation showing that a \$4,000 disbursement was actually voided and re-issued through its payroll vendor. In addition, RRFC representatives provided documentation not presented to the Audit staff prior to the issuance of the Interim Audit Report, demonstrating that another \$2,600 outstanding check was also voided. The Audit staff agrees that these disbursements were voided and has consequently removed the two checks totaling \$6,600 from the bank disbursement totals. Therefore, in light of this documentation, RRFC has no material misstatement and no amendments are needed to its disclosure reports.

Finding 2. Personal Use of Campaign Funds

Summary

During a review of reported disbursements, the Audit staff identified disbursements totaling \$5,899 as potential personal use of campaign funds. The disbursements included purchases for vehicle-related expenditures such as parking, gasoline, and insurance payments. In response to the Interim Audit Report recommendation, RRFC stated that recordkeeping requirements were misread and misapplied by the Audit staff for these disbursements. RRFC believed that the declaration previously provided from the Campaign Manager should have resolved the finding, and that fuel expenses are a common category of campaign expenditures. As of the date of this report, no supporting documentation was provided by RRFC related to the personal use of campaign funds or demonstrating that the personal use expenses for the vehicles were of a de minimus amount.

Legal Standard

- A. Use of Campaign Funds.** Using campaign funds for personal use is prohibited. 11 CFR §113.1 (g).
- B. Personal Use Defined.** Personal use is defined as any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate's campaign or duties as a Federal officeholder. 11 CFR § 113.1 (g).

Commission regulation lists a number of purposes that would constitute personal use *per se*. This includes but is not limited to the use of campaign funds for:

- Household food items or supplies;
- Funeral, cremation, or burial expenses;
- Clothing other than items of *de minimis* value used in the campaign such as T-shirts or caps;
- Tuition payments;
- Mortgage, rent, or utility payments;

- Admission to sporting events, concerts, theaters, or other form of entertainment unless part of a specific campaign or officeholder activity;
- Dues, fees, or gratuities at a country club, health club, recreational facility, or other non political organization; and
- Salary payments to a family member (unless the family member is providing bona fide services). 11 CFR §113.1 (g)(1)(i).

Where a specific purpose is not listed as personal use, the Commission makes a determination, on a case-by-case basis, whether an expense would fall within the regulation's definition of personal use. Examples of such other uses include:

- Legal expenses;
- Meal expenses;
- Travel expenses; and
- Vehicle expenses. 11 CFR §113.1(g)(1)(ii).

C. Vehicle Expenses. If a committee uses campaign funds to pay expenses associated with a vehicle that is used for both personal activities beyond a *de minimis* amount and campaign or office-holder-related activities, the portion of the vehicle expenses associated with the personal activities is personal use, unless the person(s) using the vehicle for personal activities reimburse(s) the campaign account within thirty days for the expenses associated with the personal activities. 11 CFR §113.1(g)(1)(ii)(D).

D. Recordkeeping. For those uses of campaign funds that involve both personal use and either campaign or office-holder activity, the committee must maintain a contemporaneous log or other record to document the dates and expenses related to the personal use of campaign funds. The log must be updated whenever campaign funds are used for personal expenses rather than for campaign or officeholder expenses. The log or other record must also be maintained and preserved for 3 years after the report disclosing the disbursement is filed, pursuant to 11 CFR §102.9 and 104.14(b). 11 CFR §113.1(g)(8).

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff reviewed disbursements by RRFC and determined that disbursements totaling \$5,899 were not campaign related. These disbursements were for vehicle-related purchases, including gasoline (\$5,861), parking (\$22), and insurance (\$16). Personal vehicles were used by committee staff for both personal and campaign related activities. This is permissible; however, in accordance with 11 CFR §113.1(g)(8), when a vehicle is used for both personal and campaign-related activities, a committee must maintain a record which documents the personal usage, which RRFC did not maintain. In addition, there is no evidence of personal use activities being reimbursed by campaign personnel, as required under 11 CFR §113.1(g)(1)(ii)(D). The Audit staff requested that RRFC provide documentation such as receipts, dates of events, or any contemporaneous documentation that correlates these disbursements with campaign activity. Documentation was not provided by RFCC during audit fieldwork.

B. Interim Audit Report & Audit Division Recommendation

The Audit staff discussed the personal use of campaign funds with RRFC representatives during the exit conference and provided schedules detailing the transactions. In response, RRFC representatives provided a declaration from the Campaign Manager attesting that the disbursements for gasoline were for campaign-related travel. The Campaign Manager further stated that because the congressional district is 6,000 square miles in area, extensive vehicle travel was necessary in connection with the campaign.

With the exception of the declaration from the Campaign Manager, no supporting documentation was provided by RRFC to substantiate the campaign-related nature of these disbursements. The declaration does not meet the provisions of 11 CFR §113.1(g)(8) as it is not a contemporaneous log or other record which documents the dates and expenses related to the personal use of campaign funds. In addition, the declaration does not provide any evidence of reimbursements for the mix of personal and campaign related expenses, which is required under 11 CFR §113.1(g)(1)(ii)(D). For these reasons, the Audit staff concluded that these disbursements were not related to the campaign.

The Interim Audit Report recommended that RRFC provide documentation demonstrating that the identified disbursements were for campaign-related activity. In accordance with 11 CFR §113.1(g), the documentation may include, but is not limited to, a record which documents the personal usage of the vehicle(s) and evidence of personal use activities being reimbursed to the committee by the campaign representative(s). Absent such demonstration, the Interim Audit Report further recommended that the \$5,899 be reimbursed to RRFC by committee personnel who made the vehicle-related purchases. If reimbursed, RRFC should provide copies of the reimbursement checks received, along with the corresponding bank statements that demonstrated the check deposits into the RRFC bank account. RRFC should also provide any comments it deems relevant to this matter.

C. Committee Response to Interim Audit Report

In response to the Interim Audit Report recommendation, RRFC stated that this finding is not supported by fact or law. RRFC made the following four points on how the personal use rules were misread by the Audit staff:

- 1) Campaigns at all levels commonly incur expenses for fuel, whether directly or by reimbursing their personnel. These disbursements present no special issue of personal use, and to the contrary, Commission rules expressly provide that neither travel expenses nor vehicle expenses are per se personal use, but instead are evaluated on a case-by-case basis, like all other expenses;
- 2) There is no general Commission requirement that campaigns must keep records to support fuel expenses. Rather, the additional documentation requirements cited by the auditors apply only when a campaign uses funds for both personal use and either campaign or officeholder use;
- 3) The regulations take fuel expenses out of the category of per se personal use and treat them like other expenses, but the audit report takes the opposite approach and presumes the expenses to be personal use, requiring RRFC to

prove otherwise. The auditors have created a new presumption of personal use; and

- 4) The report rejects the evidence; the declaration from the Campaign Manager provided in response to the exit conference, that attested that the disbursements were for campaign-related travel. RRFC believed that the declaration should have resolved the finding, but because the evidence was not in the form of a contemporaneous log or record, it did not meet the auditor's erroneous understanding of the rules.

As noted previously, RRFC staff used personal vehicles for both personal and campaign related activities. The use of campaign funds for purchases related to gasoline, parking and insurance for vehicles being used for personal and campaign related activities, resulted in the requirement to maintain a contemporaneous log or other record to document the dates and expenses related to the personal use of campaign funds, in accordance with 11 CFR §113.1(g)(8).

The Audit staff concurs that, pursuant to 11 CFR §113.1(g)(1)(ii), the Commission has the authority to determine, on a case-by-case basis, whether other uses of funds (vehicle expenses) in a campaign account fulfill a commitment, obligation or expense that would exist irrespective of the candidate's campaign or duties as a Federal officeholder and therefore are personal use.

Although RRFC provided a declaration from the Campaign Manager stating that the vehicle expenditures were not personal use, the declaration does not satisfy the provisions of 11 CFR §113.1(g)(8). The declaration is not a contemporaneous log or other record which documents the dates and expenses related to the personal use of campaign funds for the vehicles. The declaration also does not satisfy 11 CFR §113.1(g)(1)(ii)(D) because it does not demonstrate that the individuals using the vehicles for both personal activities beyond a de minimis amount and campaign/office holder-related activities reimbursed the campaign account within thirty days for the expenses associated with the personal activities, as required. RRFC did not provide any other documentation. Absent RRFC either submitting a contemporaneous log or other record for the vehicles which documents the dates and expenses related to the personal use of campaign funds rather than for campaign or office-holder expenses, or demonstrating that the personal use expenses for the vehicles were of a de minimis amount, the Audit staff concludes that the disbursements were a personal use of campaign funds.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

January 6, 2021

TO: Patricia C. Orrock
Chief Compliance Officer

Dayna Brown
Acting Assistant Staff Director
Audit Division

FROM: Neven F. Stipanovic *NFS*
Associate General Counsel
Policy Division

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Danita Alberico *DA*
Attorney

SUBJECT: Audit Division Recommendation Memorandum on Dr. Raul Ruiz
for Congress (LRA 1120)

I. INTRODUCTION

The Office of the General Counsel has reviewed the Audit Division Recommendation Memorandum (“ADRM”) on Dr. Raul Ruiz for Congress (“Committee”) and the Committee’s response to the Draft Final Audit Report (“DFAR”). We concur with the two findings of the DFAR. We have reviewed arguments presented by the Committee in response to the DFAR and address those arguments in this memorandum. If you have any questions, please contact Danita Alberico, the attorney assigned to this audit.

II. PERSONAL USE OF CAMPAIGN FUNDS (Finding 2)

The Committee contends that there exists no clear precedent or advance notice to the regulated community stating that 11 C.F.R. § 113.1(g)(8)'s log requirement applies generally to campaign staff gasoline purchases. The Committee contends that in context of vehicle expenses the log requirement would apply only to campaign-purchased vehicles, which is not the case here.

We disagree with the Committee's contentions. Commission regulations require campaigns to keep a contemporaneous log or other record for certain expenses, including vehicle expenses, that involve both personal and campaign use in order to document the dates and expenses related to the personal use of campaign funds. 11 C.F.R. § 113.1(g)(8). Commission regulations in this context do not distinguish "vehicle expenses" based on the ownership of the vehicle. *See id.* § 113.1(g)(1)(ii)(D). The Commission, moreover, has clearly and unequivocally stated that "[b]ecause the expenses associated with a *personal vehicle* usually exist irrespective of the candidacy or the officeholder's duties, the use of campaign funds for these expenses will generally be considered personal use." Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7869 (Feb. 9, 1995) (emphasis added). The Committee used campaign funds to pay for the expenses of personal vehicles that were used in campaign-related activity. A log or other contemporaneous record that tracks expenses for these vehicles, including gasoline, thus would be necessary to demonstrate whether a particular vehicle expense was incurred for personal or campaign use.

The Committee further contends that the Audit Division erroneously treats the absence of a log under 11 C.F.R. § 113.1(g)(8) as a substantive violation of 11 C.F.R. § 113.1(g)(1)(ii)(D)'s personal use prohibition. The Committee contends that since section 113.1(g)(8) is a recordkeeping requirement, the campaign manager's declaration — even though it contains no contemporaneous information — supports a conclusion that there was no personal use of campaign funds. The Audit Division, however, does not conclude that the absence of a log or other contemporaneous record is a substantive violation of 11 C.F.R. § 113.1(g)(1)(ii)(D). Rather, the Audit Division concludes that using campaign funds to pay for expenses associated with *personal vehicles* may be a substantive violation. The Commission's presumption that using campaign funds to pay expenses associated with personal vehicles is personal use could have been rebutted by a log or other contemporaneous record, a showing that staff reimbursed the Committee, or a showing that there was *de minimis* personal activity. In the absence of a log or other contemporaneous record, it is impossible for the Commission to verify claims that Committee staff did not engage in personal activity while using their personal vehicles to conduct campaign activity.

III. AUDIT DIVISION MAY ISSUE AUDIT REPORTS IN THE ABSENCE OF A QUORUM OF AT LEAST FOUR COMMISSIONERS

The Committee contends that a "gap in oversight" exists when interim and draft final audit reports are issued in the absence of a quorum of at least four Commissioners. The Committee suggests that (1) audit reports issued without a quorum are invalid and (2) should not be placed on the public record at the conclusion of an audit. The Committee is also concerned that the Commission's processes for issuing interim audit reports and draft final audit reports and for placing these audit reports on the public record at the conclusion of an audit are misleading because the audit reports set forth preliminary findings that may be resolved prior to the final audit report or ultimately rejected by the Commission. The Committee thus asks the Commission to issue a final audit report that states only that the

Committee materially complied with the Act. We disagree with the Committee's contentions. The interim and draft final audit reports were issued, and will be placed on the public record, as required by Commission Directive 70.

1. Issuing interim and draft final audit reports without a Commission quorum

The Committee's contention that a quorum of four or more Commissioners must weigh in on interim and draft final audit report findings is incorrect. The Committee cites no statutory or regulatory basis — and we are aware of none — for suggesting that audit reports issued to a committee by the Audit Division are invalid and should not be made public if the reports are issued when the Commission does not have a quorum. Under the Federal Election Campaign Act, only the vote to initiate an audit requires four affirmative votes. 52 U.S.C. § 30111(b). Once an audit commences, the processing of audit reports is subject to Commission Directive 70 ("Directive 70"). That directive generally does not require a Commission vote as a prerequisite for the Audit Division to issue interim and draft final audit reports to a committee. Interim audit reports for Title 52 audits are generally not circulated for a Commission vote unless an audit report presents complex, novel or unsettled questions of law. Directive 70 at 1. In our view, this audit does not present such circumstances. Draft final audit reports are served on the audited committees *before* the Commission votes on whether to approve the recommendations. Directive 70 at 2-3. In this audit, the draft final audit report was served on the Committee but doing so did not require a Commission vote. The Directive 70 process allows committees to respond to any legal or factual issues raised by the Audit Division in the draft final audit report, as the Committee has done here, or to ask for an audit hearing. After these steps are completed, an audit division recommendation memorandum articulating the Audit Division's recommendations on each of the draft final audit report findings is circulated for a Commission vote. As required by Directive 70, the audit division recommendation memorandum on the draft final audit report findings here will be circulated for a Commission vote in due course. A challenge to the validity of such a vote is thus premature at this stage.

2. Making interim and draft audit reports public

The Commission has made the policy decision to place interim and draft final audit reports on the public record. Directive 70 contemplates that interim and draft final audit reports may contain potential findings that are not ultimately approved by the Commission. Despite the possibility that the Commission may make findings that differ from the Audit Division's interim and draft final audit report recommendations, the Commission, in Directive 70, has expressly required that interim and draft final audit reports be placed on the public record at the conclusion of an audit.