

Agenda Document No. 21-10-A
Agenda Item
For Hearing of February 25, 2021



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

February 18, 2021

TO: The Commission

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

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Joshua Blume *JB*
Attorney

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Attorney

SUBJECT: Administrative Review Hearing: Jill Stein Repayment Determination
(LRA #1021)

I. INTRODUCTION

The oral hearing on the Commission's repayment determination for Jill Stein for President ("the Committee") is scheduled for February 25, 2021. To assist the Commission in preparing for the hearing, the Office of the General Counsel ("OGC") is submitting this memorandum, which provides background on the Commission's repayment determination and outlines the arguments raised in the Committee's request for administrative review.¹ OGC does not address or rebut the Committee's arguments in this memorandum. We will consider the Committee's arguments in the draft Statement of Reasons that we will prepare for the Commission's consideration and approval following the hearing. 11 C.F.R. § 9038.2(c)(3). If,

¹ OGC will provide the Committee with a copy of this memorandum prior to the oral hearing.

however, you have any questions, please contact Joshua Blume, the attorney assigned to this administrative review.

On April 16, 2019, the Commission determined that Jill Stein (“the Candidate”) and the Committee must repay \$175,272 to the United States Treasury for surplus campaign funds as of the Date of Ineligibility (“DOI”) and the excess funds they received after the DOI. *See* Final Audit Report on Jill Stein for President at 7 (Apr. 16, 2019). The Committee challenges the Commission’s repayment determination, and has requested this hearing. *See* 11 C.F.R. § 9038.2(c)(2).

The Committee’s challenge focuses on the Commission’s determination that the candidate’s date of ineligibility was August 6, 2016. The Committee argues that the date should be later than August 6, 2016. The question of whether Dr. Stein’s DOI should be later than August 6 is significant because the determination of the DOI controls the magnitude of the Committee’s repayment obligation. *See* Final Audit Report on Jill Stein for President (Apr. 16, 2019), at 11, 16-17 (existence and size of surplus tied to DOI and magnitude of funds received in excess of entitlement based on surplus).

II. BASIS FOR THE COMMISSION’S DETERMINATION OF AUGUST 6, 2016 AS DATE OF INELIGIBILITY

The date of ineligibility marks the formal end of the period of time within which an otherwise eligible presidential candidate may receive public funds for use during the candidate’s campaign for the nomination of a party (or parties). *See* 11 C.F.R. § 9033.5(c). After the DOI, public funds can only be used for: (1) paying outstanding debt from the period when the candidate was eligible, and (2) winding down the campaign. *See* 11 C.F.R. §§ 9033.5, 9034.4(a)(3). The DOI is also the date that the Commission uses to calculate the amount of the candidate’s net outstanding campaign obligations, which is necessary to determine her remaining entitlement, if any, to matching funds. *See* 11 C.F.R. §§ 9033.5, 9034.1(b), 9034.5. A candidate’s DOI is the last day of the matching payment period. 11 C.F.R. §§ 9033.5(c), 9032.6.

The Commission uses two methods to determine the end of the matching payment period. For a party that nominates its candidate at a national convention, the matching payment period ends on the date when the party nominates its presidential candidate. 11 C.F.R. § 9032.6(a). For a party that does not nominate its candidate at a national convention, the end of the matching period is the earlier of (1) the date the party nominates its presidential candidate, or (2) the last day of the last national convention held by a major party in the presidential election year. 26 U.S.C. § 9032(6); 11 C.F.R. § 9032.6(b).

Dr. Stein sought both the nomination from a national committee at a national convention (the Green Party of the United States) and nomination from parties that do not nominate candidates at a national convention — raising the issue of which method should be used to determine the DOI. The Green Party nominated Dr. Stein as its presidential candidate on August 6, 2016, during its national nominating convention. Shortly after the convention, the Commission concluded that Dr. Stein’s DOI was the date of the nomination. *See* Vote Certification, Date of Ineligibility — Jill Stein for President (LRA #1021) (Aug. 12, 2016).

In her request for public matching funds, however, Dr. Stein also certified that she would seek the nomination of several unaffiliated state Green parties, for which nomination is secured by obtaining ballot access for the general election rather than a nominating convention, and the relevant states had differing ballot access deadlines ranging from June 1 to August 15, 2016. Dr. Stein also certified she was seeking the nomination of the Peace and Freedom Party, which is not a national committee and did not hold a national nominating convention. The Peace and Freedom Party held its state nominating convention on August 13, 2016. The Commission thus had several potential dates of ineligibility to consider in its repayment determination. The Commission previously concluded that in such cases the DOI may be extended past the date of the party nomination but only up to the date of the last day of the last major party nominating convention. *See* Advisory Opinion 1984-25 (Johnson). In this case, the last day of the national convention held by a major party in 2016 was July 28, 2016. Consistent with its past practice, the Commission assigned the candidate the later date of August 6, 2016 — the date of her national Green Party nomination — which resulted in the candidate receiving the longest permissible matching payment period to which she was entitled. Memorandum from Adav Noti to Commission on Date of Ineligibility — Jill Stein for President (LRA #1021), at 3 (July 29, 2016). *See also* Memorandum from Erin Chlopak to Commission on Request for Consideration of a Legal Question Submitted by Jill Stein for President (LRA #1021) (Feb. 28, 2018); Vote Certification, Request for Consideration of a Legal Question Submitted by Jill Stein for President (LRA #1021) (Apr. 13, 2018); Vote Certification, Correction to Memorandum on Request for Consideration of a Legal Question by Jill Stein for President (LRA #1021) (May 2, 2018) (approving August 6, 2016 as DOI).

III. THE COMMITTEE SEEKS ADMINISTRATIVE REVIEW OF THE COMMISSION'S REPAYMENT DETERMINATION

The Committee has challenged the Commission's determination of the DOI on several occasions, each time seeking to use a later date as DOI.² On each occasion, the Commission affirmed that the DOI was August 6, 2016. The Committee's Hearing Request provides two main arguments for why the DOI should be after August 6th.

A. The Committee Continued to Incur Eligible Expenses after August 6

As it argued previously, the Committee contends that because it continued to incur expenses after August 6th to secure access to the general election ballots of several states, those expenses should be eligible for matching funds.³ The Committee claims the Commission

² Under Commission regulations, any issue not raised in the Committee's written Request for Administrative Review is deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings and cannot be raised at the hearing. *See* 11 C.F.R. § 9038.2(c)(2)(i); *see also Robertson v. Federal Election Commission*, 45 F.3d 486, 491 (D.C. Cir. 1995).

³ The Committee argues that the Commission identified two separate DOIs during the audit process — August 7 and August 6 — and that this inconsistency affects the DOI and “the status of funds expended for ballot access under the program.” Attachment, at 1. The Committee is referring to an error that initially identified August 7 as the DOI, which resulted in an incorrect certification. The error was quickly identified and corrected. *See* Memorandum from Erin Chlopak to Commission, Correction to Memorandum on Request for Consideration of a Legal Question by Jill Stein for President (LRA #1021) (April 24, 2018); Vote Certification, Correction to

concluded in prior advisory opinions that expenses incurred by minor party presidential candidates to gain ballot access were considered expenses related to the primary election and thus eligible for matching funds. *See* Advisory Opinion 1995-45 (Hagelin for President); Attachment, at 2-3. The Committee also states that the Commission acted inconsistently in affording Dr. Stein a DOI later than the date of her national nominating convention for her 2012 campaign but failing to do the same for her 2016 campaign. Attachment, at 3.

B. The Committee Asserts Discrimination Against Independent and Minor Party Candidates in the Allocation of Public Monies

The Committee further asserts that the Commission's process of determining DOI places independent and minor party candidates at a disadvantage via-a-vis major party candidates and represents a change from the Commission's "commitment to construe FECA in a manner consistent with the U.S. Constitution." *Id.*, Attachment, at 4. The Committee notes that, since the 1970s, the Commission has sought to create parity between the types of candidates, and that prior advisory opinions would have allowed the Committee to choose its DOI as the date of the petition filing deadline of the last state in which it sought ballot access. *See* Advisory Opinions 1975-44 (Socialist Workers 1976 National Campaign Committee); 1975-53 (Bradley for Senate). The Committee states that the Commission's change from its previous position is unconstitutional, because it is arbitrary and capricious, and because it results in discrimination in the allocation of public monies between major party candidates and independent and minor party candidates. Attachment, at 4.

Attachment:

1. Jill Stein for President's Request for Administrative Review, June 17, 2019
2. Final Audit Report of the Commission on Jill Stein for President
3. Memorandum to the Commission from Erin Chlopak re: Request for Consideration of a Legal Question Submitted by Jill Stein for President, February 28, 2018
4. Correction to the Memorandum to the Commission from Erin Chlopak re: Request for Consideration of a Legal Question Submitted by Jill Stein for President, April 24, 2018
5. Memorandum to the Commission from Adav Noti re Date of Ineligibility, July 29, 2016

LAW OFFICE OF
HARRY KRESKY

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June 17, 2019

BY EMAIL AND REGULAR MAIL

Federal Election Commission
999 E Street NW
Washington, DC 201463

Re: Response to Final Audit Report

Dear Sir or Madam:

This office represents the Jill Stein for President Committee (the “Committee”) and submits this response to the Federal Election Commission’s (the “Commission”) final audit report (the “report”) transmitted by letter dated April 17, 2019.

The pivotal issue in this matter is the status of necessary and anticipated ballot access expenses incurred after the purported Date of Ineligibility (“DOI”). The Committee submits that these expenses are reimbursable under the primary matching funds program (the “program”). The Commission seeks repayment of money received by the Committee for them. The Committee questions the DOI applied by the Commission and its rationale for disallowing reimbursement.

For the reasons set forth below, the establishment of an August 6, 2016 DOI was arbitrary, capricious and contrary to the letter and intent of the matching funds program and its past interpretation and application. The Commission’s position that matching funds paid for ballot access and related activities carried out after that date must be repaid is irrational and contrary to the applicable regulations, law and constitutional principles.

The Committee will demonstrate herein that were reimbursement of these ballot access and related expenses allowed, no repayment would be called for. In addition, it will be shown that the other findings concerning the nature of winding down expenses, misstatement of financial activity and disclosure of debts and obligations likewise cannot survive scrutiny.

The establishment of the DOI- In its “Response to a Request for Consideration of a Legal Question” dated February 28, 2018, the Commission notes that, in addition to the Green Party nomination, Jill Stein also sought the nomination of parties that did not have a national nominating convention and, therefore, settled on the date of the later of the Green Party nominating conventions (“August 7, 2016”) or the last major party nominating convention which was before the Green Party convention. But then in the final audit report, it gave the date as August 6, 2016, the supposed date of the Green Party convention. These and the other

inconsistencies described below affect not only the DOI, but the status of funds expended for ballot access under the program.

In a series of advisory opinions dating back to 1975, the Commission expressed its commitment “to construe the provisions of the Act in a manner consistent with Constitutional requirements, regardless of a candidate’s party affiliation or independent status.” It found that “the petition process required of the presidential candidates of the minor parties as the equivalent of the primary elections and convention process of the major party candidates.” AO 1975-44.

In AO 1975-53 the Commission held that in the case of a campaign for Senate, the DOI was the later of the last day to file a nominating petition for a place on the general election ballot or the date of the last major party primary.

The position taken by the Commission in these cases is consistent with 11 CFR 100.2(c)(4):

“With respect to individuals seeking federal office as independent candidates, or without nomination by a major party (as defined in 26 U.S.C. 9002(6)), the primary election is considered to occur on one of the following dates, at the choice of the candidate:(i) The day prescribed by applicable State law as the last day to qualify for a position on the general election ballot may be designated as the primary election for such candidate.(ii) The date of the last major party primary election, caucus, or convention in that State may be designated as the primary election for such candidate.(iii) In the case of non-major parties, the date of the nomination by that party may be designated as the primary election for such candidate.”

(emphasis added)

The application of these principles would require the Commission to accept the Committee contention that the DOI was the date of the petition filing deadline of the last state in which it sought ballot access, and funds so expended for ballot access were matchable until that date. The position taken by the Commission in the instant matter deviates from this principal and, consequently from the commitment to construe FECA in a manner consistent with U.S. Constitution.

In subsequent years the Commission abandoned this principle of parity with major party candidates in applying the matching fund program to the presidential campaigns of independent and minor party candidates. Thus, in AO 1984-11 the Commission ruled that the DOI of a candidate seeking the nomination of one or more minor parties is “the earlier of (1) the last date when Mr. Serrette is nominated by any political party on the state level, or (2) the last day of the last national convention held by a major political party in 1984.” Thus, funds expended on ballot

access (i.e. petition for a place on the ballot) incurred in petition drives after the DOI would not be reimbursed:

“In Mr. Serrette's situation, expenditures will apparently be made to collect petition signatures for the general election ballot. The Commission is of the opinion that these expenses, to the extent they are paid or incurred within what would be Mr. Serrette's matching payment period if he becomes eligible for matching funds, would be qualified campaign expenses for purposes of the Matching Payment Act.”

See also, AO 1984-25 and AO 2000-18.

The Commission has articulated no reason for deviating from its previous commitment to parity and its invocation of the need “to construe the provisions of the Act in a manner consistent with Constitutional requirements, regardless of a candidate’s party affiliation or independent status.” The consequence is dramatic. A major party candidate who secures the nomination of a major party (with the help of primary matching funds) faces no hurdles to or further expenses to insure his or her appearance on the ballot of all fifty states. A minor party or independent candidate must continue to incur the expenses of ballot access in numerous states after the DOI. The Committee’s January 12, 2018 submission identified 25 such states.

That submission claimed that the Committee relied on AO 1995-45 (sought by the Presidential campaign of minor party candidate Dr. John Hagelin in planning its effort with the assumption that ballot access expenditures in those states would be matched.) In that Advisory Opinion the Commission stated:

“It has long been the view of the Commission that, for non-major party candidates, the process by which they satisfy the requirements of State law governing qualification for a position on the general election ballot serve purposes similar to a primary election or other nominating process. See Advisory Opinions 1984-11 and 1975-44. This view is supported by the Commission regulations defining the term "election," which state that, for non-major party and independent candidates, the day prescribed by applicable State law as the last day to qualify for a position on the general election ballot may be designated as the primary election for such candidate. 11 CFR 100.2(c)(4)(i). Based on this reasoning, the Commission concluded in Advisory Opinions 1984-25 and 1984-11, that the ballot access expenses of candidates for minor party nominations would be qualified campaign expenses.”

Indeed, Dr. Jill Stein’s 2012 presidential campaign received matching funds for ballot access expenses in each state where it was sought and no repayment was required. Moreover, the DOI that cycle was a month later, September 6, 2012.

Constitutional considerations- Just as the Constitution mandates equal treatment of minor party and independent campaigns under FECA, it forbids discrimination against them in the allocation of public monies. Thus, in *Riddle v. Hickenlooper*, 742 F.3d 922 (10th Cir. 2014), the Court of Appeals held that a campaign finance program that favored major party candidates over others violated the equal protection clause of the U.S. Constitution. *Cf. Green Party of Conn. v. Garfield*, 616 F.3d 213 (2d Cir. 2010).

Further, a decision by the Commission which is arbitrary and capricious will not pass judicial muster. *Common Cause v. FEC*, 906 F.2d 705 (D.C. Cir. 1990). *In Fox TV Stations, Inc. v. FCC*, 280 F.3d 1027, 1044-45 (D.C. Cir. 2002); modified in *Fox Television Stations, Inc. v. FCC*, 293 F.3d 537 (2002), the Court of Appeals, in scrutinizing new rules issued by the Federal Communications Commission, stated:

“The Commission may, of course, change its mind, but_ it must explain why it is reasonable to do so. See [Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.](#), 463 U.S. 29, 57, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983) An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis.”); [Telecomm. Research and Action Ctr. v. FCC](#), 255 U.S. App. D.C. 287, 801 F.2d 501, 518 (D.C. Cir. 1986).

“The Commission now argues that the refusal of the Congress to allow the agency to implement the *1984 Report* and its decision in the 1996 Act to retain an ownership cap rendered irrelevant the views the Commission expressed in the *1984 Report*. When the Congress in 1996 directed the Commission periodically to review the ownership cap, however, it did nothing to preclude the Commission from considering certain arguments in favor of repealing the cap -- including the arguments the Commission had embraced in 1984. So long as the reasoning of the *1984 Report* stands un rebutted, the Commission has not fulfilled its obligation, upon changing its mind, to give a reasoned account of its decision.”

Here, the Commission provides no rationale for its deviation from its earlier commitment to parity between major party candidates and minor party or independent ones.

As will be demonstrated in a further submission coming directly from the Committee, were it not for the improper imposition of the August 6, 2016 DOI, no repayment would be called for.

Federal Election Commission
June 17, 2019
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A hearing before the Commission is request to address issues pertaining to the DOI.

Respectfully submitted,

/s/

Harry Kresky

cc: Steven Welzer, Treasurer

Emery Celli Brinckerhoff & Abady LLP
Litigation Counsel

DATE: June 17, 2019

TO: Federal Election Commission
1050 First St, NE
Washington, DC 20463

FROM: Jill Stein for President
Compliance Department
PO Box 260197
Madison, WI 53726

SUBJECT: Committee Response to Final Audit Report (FAR)

Mary Moss,

Enclosed is a copy of the Committee's response (including the materials provided by the Law Office of Harry Kresky) to the Final Audit Report findings sent April 17, 2019. Should there be any difficulties accessing these records, please contact Matt Kozlowski, Director of Compliance, at Finance@Jill2016.com.

Sincerely,

Steven Welzer
Treasurer
Jill Stein for President

Ballot Access Expenditures – DOI Impact

Ballot Access Costs – Post DOI

Following August 6th, 2016, the Jill Stein for President Campaign expended \$310,477.48 in direct expenses in support of ballot access petitioning activities. These expenses included the costs of paying petitioners for ballot signatures, printing costs, filing fees, and other such direct expenses. Note: this figure does not include any costs of supervision, national staff support for such operations, office expenses, or other associated costs that would be included in an adjusted DOI for the committee.

In the findings presented by the audit staff, a total of \$255,671 in such expenses were identified as not being qualified expenditures due to the date when these costs were incurred.

Given these figures, and the determination of NOCO surplus, these costs exceed the amount determined to be in surplus per the Commission’s findings prior to any other adjustments to DOI, winding down costs, or other such adjustments.

Finding 3. Misstatement of Financial Activity

Utilizing the schedules and details provided by the Audit Division, the Committee has finalized all such amendments to update disclosures of financial activity. The Committee has begun the process of uploading these amendments via filing software.

Finding 4. Disclosure of Debts and Obligations

Utilizing the schedules and details provided by the Audit Division, the Committee has finalized all such amendments to update disclosures of debts and obligations. The Committee has begun the process of uploading these amendments via filing software.



Final Audit Report of the Commission on Jill Stein for President

(January 17, 2015 – December 31, 2016)

Why the Audit Was Done

Federal law requires the Commission to audit every political committee established by a candidate who receives public funds for the primary campaign.¹ The audit determines whether the candidate was entitled to all of the matching funds received, whether the campaign used the matching funds in accordance with the law, whether the candidate is entitled to additional matching funds, and whether the campaign otherwise complied with the limitations, prohibitions, and disclosure requirements of the election law.

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. 3)

Jill Stein for President is the principal campaign committee for Jill Stein, a candidate for the Green Party nomination for the office of President of the United States. The Committee is headquartered in Lexington, Massachusetts. For more information, see the chart on the Campaign Organization, p. 3.

Financial Activity² (p. 4)

• Receipts	
○ Contributions from Individuals	\$ 11,010,439
○ Matching Funds Received	456,035
○ Loans Received	40,000
○ Offsets to Operating Expenditures	716,735
Total Receipts	\$ 12,223,209
• Disbursements	
○ Operating Expenditures	\$ 11,885,379
○ Transfers to Other Authorized Committees	22,300
○ Fundraising Disbursements	15,156
○ Contribution Refunds	2,465
○ Other Disbursements	250
Total Disbursements	\$ 11,925,550

Commission Findings (p. 5)

- Net Outstanding Campaign Obligations - Surplus (Finding 1)
- Matching Funds Received in Excess of Entitlement (Finding 2)
- Misstatement of Financial Activity (Finding 3)
- Reporting of Debts and Obligations (Finding 4)

¹ 26 U.S.C. §9038(a).

² These figures contain primary, general and recount activity. The general and recount activity combined accounted for approximately \$9,590,974, or 78% of total receipts, and approximately \$9,618,886 or 81% of total disbursements. See Committee Structure on p. 1.



Final Audit Report of the Commission on Jill Stein for President

(January 17, 2015 – December 31, 2016)

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Part I

Background

Authority for Audit

This report is based on an audit of Jill Stein for President (JSFP), undertaken by the Audit Division of the Federal Election Commission (the Commission) as mandated by Section 9038(a) of Title 26 of the United States Code. That section states, “After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received [matching] payments under section 9037.” Also, Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission’s Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

Scope of Audit

Unless noted in the Committee Structure section below, this audit examined JSFP’s primary election activity only. The following areas were covered by this audit:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The receipt of transfers from other authorized committees.
4. The disclosure of contributions and transfers received.
5. The disclosure of disbursements, debts and obligations.
6. The recordkeeping process and completeness of records.
7. The consistency between reported figures and bank records.
8. The accuracy of the Statement of Net Outstanding Campaign Obligations.
9. The campaign’s compliance with spending limits.
10. Other campaign operations necessary to the review.

Committee Structure

JSFP was the only campaign committee authorized by Jill Stein (the Candidate) for the 2016 Presidential election and conducted primary, general and recount activity for the Candidate. JSFP opened six bank accounts: one checking and one savings account for each activity. JSFP deposited contributions received before the Candidate’s nomination into the primary checking account, and most contributions received after the nomination into the general checking account. JSFP received matching funds for its primary campaign. This audit covered JSFP’s primary election activity to determine if the expenses were qualified campaign expenses defrayed in connection with the primary election.³

³ Under Title 26, this audit included an examination of JSFP’s Statement of Net Outstanding Campaign Obligations based solely on JSFP’s primary election activity for the purpose of determining the extent to which the Candidate was entitled to primary matching funds (Finding 1). Due to the committee’s structure, this audit also covered a Title 52 examination of JSFP’s overall consistency between reported figures and bank activity, which included general and recount activity. For clarification, the Audit staff has indicated in Finding 3 – Misstatement of Financial Activity, those transactions that were not related to primary election activity.

Commission Guidance

Request for Early Commission Consideration of a Legal Question

Pursuant to the Commission's "Policy Statement Establishing a Program for Requesting Consideration of Legal Questions by the Commission," JSFP requested early consideration of two legal questions raised during the audit. The first question pertained to whether the Commission's original determination of the Candidate's date of ineligibility (DOI) was proper. The second question was whether committees should be permitted to incur winding down expenses and other primary expenses after the DOI if they are clearly incurred to improve compliance with existing laws and regulations or if they are clearly required in the course of seeking the qualification for the ballot in various states.⁴

The Commission concluded, by a vote of 4-0, to reaffirm JSFP's original DOI as August 6, 2016.⁵ (See Finding 1, p. 8.)

Inventory of Campaign Records

The Audit staff routinely conducts an inventory of campaign records before it begins audit fieldwork. JSFP's records were materially complete when fieldwork commenced.⁶

Audit Hearing

JSFP declined the opportunity for a hearing before the Commission on the matters presented in this report.

⁴ Although JSFP's request purported to identify three separate questions for review, two of the questions raised the same essential issue, which is whether the Commission's original DOI determination was proper. Therefore, those two questions were consolidated into a single question.

⁵ JSFP presented no argument in its Request for Consideration of a Legal Question regarding the second question, however, the response to this question is addressed directly in the Commission's regulations. The regulations provide for the payment of winding down costs, i.e. costs associated with the termination of political activity, including compliance with statutory post-election requirements and other specifically defined administrative costs. 11 CFR §§ 9034.4(a)(3) and 9034.11. Because the regulations directly address the payment of winding down costs, there was no need for the Commission to reach a determination on the second question in the request.

⁶ The Audit staff encountered delays prior to fieldwork due to JSFP's inability to timely provide complete computerized information.

Part II

Overview of Campaign

Campaign Organization

Important Dates	
• Date of Registration	July 14, 2015
• Eligibility Period ⁷	April 13, 2016 – August 6, 2016
• Audit Coverage ⁸	January 17, 2015 – December 31, 2016
Headquarters	
Lexington, Massachusetts	
Bank Information	
• Bank Depositories	One
• Bank Accounts	Six (One checking and one savings account each for primary, general and recount activity)
Treasurer	
• Treasurer When Audit Was Conducted	Steven Welzer (9/30/2015 – present)
• Treasurer During Period Covered by Audit	John W. Andrews (7/09/2015 – 9/29/2015) Steven Welzer (9/30/2015 – present)
Management Information	
• Attended Commission Campaign Finance Seminar	No
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

⁷ On March 28, 2016, the Candidate submitted a signed letter (dated March 18, 2016 and subsequently revised on April 5, 2016) to the Commission seeking to become eligible to receive Presidential primary matching funds and agreeing that she and her authorized committee would comply with the conditions set forth in 11 CFR §9033.1(b). A threshold submission was submitted on March 28, 2016, and the Commission certified the Candidate as eligible to receive matching funds on April 13, 2016. The period during which the Candidate was eligible for matching funds ended on August 6, 2016, the Candidate's DOI.

⁸ The audit covered the period from JSFP's first bank deposit on January 17, 2015. The Audit staff also conducted limited reviews of receipts and expenditures after December 31, 2016, to determine whether the Candidate was eligible to receive additional matching funds.

Overview of Financial Activity (Audited Amounts)⁹

Cash on hand @ January 17, 2015	\$ 0
Receipts	
○ Contributions from Individuals ¹⁰	11,010,439
○ Matching Funds Received ¹¹	456,035
○ Loans Received	40,000
○ Offsets to Operating Expenditures	716,735
Total Receipts	\$ 12,223,209
Disbursements	
○ Operating Expenditures	11,885,379
○ Transfers to Other Authorized Committees	22,300
○ Fundraising Disbursements	15,156
○ Contribution Refunds	2,465
○ Other Disbursements	250
Total Disbursements	\$ 11,925,550
Cash on hand @ December 31, 2016	\$ 297,659

⁹ These figures contain primary election, general election and recount activity. See Committee Structure on p. 1.

¹⁰ JSFP received approximately 50,924 contributions from 42,486 individuals totaling \$2,135,681 for primary election activity.

¹¹ As of the Candidate's DOI, August 6, 2016, JSFP had received matching funds totaling \$456,036. JSFP received an additional \$134,900 on January 18, 2017, for a total of \$590,936.

Part III

Summaries

Commission Findings

Finding 1. Net Outstanding Campaign Obligations - Surplus

The Audit staff's review of JSFP's financial activity through December 31, 2016, and estimated winding down costs indicated that the Candidate had a surplus of funds, as of her DOI, in the amount of \$200,856. Of this surplus amount, JSFP is required to make a pro rata repayment of \$40,372.

In JSFP's initial Statement of Net Outstanding Campaign Obligations (NOCO) filed during the matching fund period, cash on hand was understated and accounts payable and winding down expenses were both overstated. As such, JSFP's NOCO indicated an apparent deficit position and therefore eligible to receive matching funds. The Audit staff's analysis of the NOCO, however, determined that surplus funds were received and the Candidate was not eligible for all of the matching funds she received. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP disagreed it was in a surplus position and stated if the disallowed ballot access costs and recently updated winding down estimates were considered, it would instead be in a deficit position and therefore not be required to make a repayment. JSFP provided documentation and an updated NOCO to support its position. Based on this documentation and JSFP's 2017 and 2018 reported activity on Schedule B (Itemized Disbursements), the Audit staff updated its NOCO to reflect increased ballot access costs incurred prior to DOI and increased winding down actual costs. These adjustments reduced the repayment amount, but the revised NOCO still reflected a surplus position.

In response to the Draft Final Audit Report, JSFP maintained that it did not owe a repayment. No documentation was provided by JSFP to support this assertion.

The Commission determined that \$40,372 was repayable to the United States Treasury. (For more detail, see p. 8.)

Finding 2. Matching Funds Received in Excess of Entitlement

The Audit staff's NOCO statement, as presented in Finding 1, indicated a surplus position, as of August 6, 2016, the Candidate's DOI. Therefore, JSFP was not entitled to the matching fund payment of \$134,900, it subsequently received on January 18, 2017. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP provided documentation and an updated NOCO, and stated that it was entitled to all matching fund payments due to its increased winding down expenses, even if previously disallowed ballot access and other expenses were not considered. After the Audit staff incorporated the expenses that were documented as pertaining to the primary election into its revised NOCO, JSFP was still in a surplus position and therefore not entitled to the matching fund payment it received after the Candidate's DOI.

In response to the Draft Final Audit Report, JSFP disagreed that the Candidate was in a surplus position. JSFP did not provide any documents to support its assertion.

The Commission determined that \$134,900 was repayable to the United States Treasury. (For more detail, see p. 16.)

Finding 3. Misstatement of Financial Activity

During audit fieldwork, a comparison of JSFP's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for 2015 and 2016 and a misstatement of ending cash on hand in 2016. In 2015, JSFP understated its reported receipts and disbursements by \$31,495 and \$35,042 respectively; and in 2016, JSFP understated its reported receipts, disbursements and ending cash on hand by \$996,384, \$800,310 and \$192,527 respectively. The Preliminary Audit Report recommended that JSFP amend its disclosure reports to correct the misstatements.

In response to the Preliminary Audit Report recommendation and the Draft Final Audit Report, JSFP stated it was in the process of amending its reports to correct the misstatements, but to date, no amended reports have been filed.

The Commission approved a finding that JSFP misstated its financial activity for calendar years 2015 and 2016. (For more detail, see p. 17.)

Finding 4. Disclosure of Debts and Obligations

During audit fieldwork, the Audit staff identified debts totaling \$17,015 not disclosed on Schedule D-P (Debts and Obligations), as required. The Preliminary Audit Report recommended that JSFP amend its reports to disclose the outstanding debt.

In response to the Preliminary Audit Report recommendation and the Draft Final Audit Report, JSFP stated it was in the process of amending its reports to correct the disclosure of debts and obligations, but to date, no amended reports have been filed.

The Commission approved a finding that JSFP did not disclose debts and obligations totaling \$17,015. (For more detail, see p. 20.)

Summary of Amounts Owed to the United States Treasury

Finding 1 (p. 8)	Pro-rata portion of the Surplus Matching Funds	\$ 40,372
Finding 2 (p. 16)	Matching Funds Received in Excess of Entitlement	\$ 134,900
Total Due United States Treasury		\$ 175,272

Part IV

Commission Findings

Finding 1. Net Outstanding Campaign Obligations - Surplus

Summary

The Audit staff's review of JSFP's financial activity through December 31, 2016, and estimated winding down costs indicated that the Candidate had a surplus of funds as of her DOI in the amount of \$200,856. Of this surplus amount, JSFP is required to make a pro rata repayment of \$40,372.

In JSFP's initial Statement of Net Outstanding Campaign Obligations (NOCO) filed during the matching fund period, cash on hand was understated and accounts payable and winding down expenses were both overstated. As such, JSFP's NOCO indicated an apparent deficit position and therefore eligible to receive matching funds. The Audit staff's analysis of the NOCO, however, determined that surplus funds were received and the Candidate was not eligible for all of the matching funds she received. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP disagreed it was in a surplus position and stated if the disallowed ballot access costs and recently updated winding down estimates were considered, it would instead be in a deficit position and therefore, not be required to make a repayment. JSFP provided documentation and an updated NOCO to support its position. Based on this documentation and JSFP's 2017 and 2018 reported activity on Schedule B (Itemized Disbursements), the Audit staff updated its NOCO to reflect increased ballot access costs incurred prior to DOI and increased winding down actual costs. These adjustments reduced the repayment amount, but the revised NOCO still reflected a surplus position.

In response to the Draft Final Audit Report, JSFP maintained that it did not owe a repayment. No documentation was provided by JSFP to support this assertion.

The Commission determined that \$40,372 was repayable to the United States Treasury.

Legal Standard

A. Net Outstanding Campaign Obligations (NOCO). Within 15 days after the candidate's date of ineligibility (see definition below), the candidate must submit a statement of "net outstanding campaign obligations." This statement must contain, among other things:

- The total of all committee assets including cash on hand, amounts owed to the committee and capital assets listed at their fair market value;
- The total of all outstanding obligations for qualified campaign expenses; and
- An estimate of necessary winding-down costs. 11 CFR §9034.5(a).

B. Date of Ineligibility. The date of ineligibility is whichever of the following dates occurs first:

- The day on which the candidate ceases to be active in more than one state;
- The 30th day following the second consecutive primary in which the candidate receives less than 10 percent of the popular vote;
- The end of the matching payment period, which is generally the day when the party nominates its candidate for the general election; or
- In the case of a candidate whose party does not make its selection at a national convention, the last day of the last national convention held by a major party in the calendar year. 11 CFR §§9032.6 and 9033.5.

C. Qualified Campaign Expense. Each of the following expenses is a qualified campaign expense.

- An expense that is:
 - Incurred by or on behalf of the candidate (or his or her campaign) during the period beginning on the day the individual becomes a candidate and continuing through the last day of the candidate's eligibility under 11 CFR §9033.5;
 - Made in connection with the candidate's campaign for nomination; and
 - Not incurred or paid in violation of any federal law or the law of the state where the expense was incurred or paid. 11 CFR §9032.9.
- An expense incurred for the purpose of determining whether an individual should become a candidate, if that individual subsequently becomes a candidate, regardless of when that expense is paid. 11 CFR §9034.4.
- An expense associated with winding down the campaign and terminating political activity. 11 CFR §9034.4(a)(3).

D. Value of Capital Assets. The fair market value of capital assets is 60% of the total original cost of the assets when acquired, except that assets that are received after the date of ineligibility must be valued at their fair market value on the date received. A candidate may claim a lower fair market value for a capital asset by listing the asset on the NOCO statement separately and demonstrating, through documentation, the lower fair market value. 11 CFR §9034.5(c)(1).

E. Winding Down Costs. A primary election candidate who runs in the general election must wait until 31 days after the general election before using any matching funds for winding down costs, regardless of whether the candidate receives matching funds for the general election.

11 CFR §9034.11(d).

F. Documentation of Disbursements. Each candidate shall have the burden of proving that disbursements made by the candidate and/or her authorized committee are qualified campaign expenses. 11 CFR §9033.11.

G. Surplus. The Commission may determine through audits and examinations that the candidate's net outstanding campaign obligations, as defined in 11 CFR §9034.5, reflect a surplus. When a surplus is identified, the candidate shall, within 30 days of the ineligibility date, repay to the United States Treasury an amount which represents the

amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to total deposits made to the candidate's accounts. The Commission will provide the candidate with a written notice of its repayment determination.

11 CFR §§9038.2(b)(1)(ii) and (c)(1) and 9038.3(c)(1).

H. Entitlement to Matching Payments after Date of Ineligibility. If, on the date of ineligibility a candidate has net outstanding campaign obligations, as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31st of the Presidential election year, provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

Facts and Analysis

A. Facts

The Candidate's DOI was August 6, 2016. The Audit staff reviewed JSFP's financial activity through December 31, 2016; analyzed actual and projected winding down costs;¹² and prepared the NOCO that appears below.

Jill Stein for President
Statement of Net Outstanding Campaign Obligations
As of August 6, 2016
As determined at August 31, 2018

Assets

Cash in Bank	\$ 792,935 [a]	
Accounts Receivable	13,289	
Physical Assets @ 60% depreciation	<u>4,200</u>	
Total Assets		\$ 810,424

Liabilities

Accounts Payable for Qualified Campaign Expenses as of 8/6/16	\$ (237,602)	
Loan Payable as of 8/6/2016	(40,000)	
Actual Winding Down Costs (12/9/16 – 8/31/18)	(262,611)	
Estimated Winding Down Costs (9/1/18 – 7/31/2019)	<u>(69,355) [b]</u>	
Total Liabilities		\$ (609,568)

Net Outstanding Campaign Obligations – Surplus **\$ 200,856**

Footnotes to NOCO Statement:

- [a] Amount includes contributions dated prior to DOI and deposited after DOI.
- [b] Estimated winding down costs for future reportable periods only. This amount will be compared to actual winding down costs and will be adjusted accordingly. Estimated winding down presented in the Preliminary Audit Report was reduced from \$100,880 to \$69,335 to reflect the remaining winding down period.

¹² The actual winding down costs were reviewed through August 31, 2018, the last date JSFP provided banking and disbursement documentation to support its actual winding down expenses.

i. Surplus Pro-Rata Repayment Calculation

The Audit staff's NOCO calculations indicated there were surplus funds of \$200,856 as of DOI. Of this amount, \$40,372 ($\$200,856 \times .2010^{13}$) is the pro-rata portion of the surplus that is repayable to the United States Treasury.

ii. NOCO Differences: The primary differences between JSFP's NOCO and the NOCO prepared by the Audit staff are discussed below:

a. Cash In Bank

The primary difference between the assets section of the NOCO presented above and those prepared by JSFP is the cash in bank balance. JSFP understated cash by \$313,079. Most of the understatement of cash represented funds received prior to the Candidate's DOI, but deposited after, with a majority consisting of contributions less than \$200 made by credit card. Further, a majority of these credit card contributions were included in JSFP's receipts database as contributions made to the primary election and were reported as unitemized contributions. The remaining difference pertained to outstanding disbursement checks that had not cleared the bank as of DOI that were not included in JSFP's cash in bank calculation. The understatement of assets caused the NOCO statements to show a larger deficit and matching fund entitlement than was the case.

b. Accounts Payable for Qualified Campaign Expenses

1. Ballot Access Petitioning Expenses

The primary difference between the accounts payable section of the NOCO presented on the previous page and those prepared by JSFP is with the amount of ballot access petitioning expenses.¹⁴ JSFP included all ballot access petitioning expenses, including those incurred after DOI, thus overstating the amount calculated by the Audit staff by \$255,671.¹⁵ As noted in the legal standards above, only expenses incurred on or before DOI can be considered qualified campaign expenses. Therefore, the Audit staff did not include ballot access petitioning expenses incurred after DOI in its calculation of the NOCO. Furthermore, in many instances, the incurrence dates of the ballot access petitioning expenses were not sufficiently documented by JSFP and JSFP made no additional documentation available. Due to the lack of documentation, the Audit staff also did not include these undocumented expenditures in its NOCO calculations.

¹³ This figure (.2010), calculated pursuant to 11 CFR §9038.3(c)(1), represents JSFP's repayment ratio and was calculated by dividing the total matching funds received as of DOI (\$456,035) by the adjusted total deposits made to the candidate's accounts as of DOI (\$2,269,118). Therefore, the repayment ratio was $\$456,035/\$2,269,118 = 20.10\%$.

¹⁴ Ballot access petitioning is required for all states when a minor party candidate seeks to be included on the general election ballot for the state. Each state has unique petitioning requirements and cutoff dates, and some dates were subsequent to the Candidate's DOI.

¹⁵ The Audit staff's review of all disbursements paid post DOI also resulted in the identification of additional expenses unrelated to ballot access that were not included in JSFP's NOCO accounts payable section.

2. Winding Down Expenses

The Audit staff's initial calculation of actual winding down expenses excluded expenses that were not adequately documented by JSFP. As of the date of the Preliminary Audit Report, JSFP had not provided banking and supporting disbursement documentation for winding down expenses made after August 1, 2017. Therefore, the winding down expenses for the months not documented were initially reflected on the NOCO as \$0.¹⁶ Estimated monthly winding down expenses only include future reporting periods.

JSFP's NOCO also included winding down expenses that were incurred after DOI but before the end of the expenditure report period, December 9, 2016, totaling \$42,727. Since the Candidate participated in the general election, the Audit staff considered disbursements on or before December 9, 2016¹⁷ to be expenses pertaining to the general election, in accordance with 11 CFR §§9002.12(a) and 9034.11(d), and therefore did not include them on the NOCO as winding down expenses for the primary election.

Both winding down expense adjustments discussed above reduce the amount of liabilities on the NOCO and therefore reduce the amount of the matching funds entitlement.

B. Preliminary Audit Report & Audit Division Recommendation

The Audit staff presented a preliminary NOCO statement and related work papers to the JSFP representative at the exit conference. The JSFP representative stated he would need to review the work papers to determine why all credit card contributions had not been included in the cash on hand in the NOCO. He also stated he disagreed with how the ballot access petitioning costs were allocated on the NOCO and stated he based this on previous audit reports. The representative stated it was his understanding that all ballot access costs were primary election expenses regardless of the date they were incurred. In response to the exit conference, the JSFP representative provided documentation to support that certain ballot access petitioning costs were incurred prior to DOI.

Subsequent to the exit conference, JSFP requested early consideration of two legal questions raised during the audit. The first question pertained to whether the Commission's original determination of the Candidate's DOI was proper. The second question was whether committees should be permitted to incur winding down expenses and other primary expenses after the DOI if they are clearly incurred to improve compliance with existing laws and regulations or if they are clearly required in the course of seeking the qualification for the ballot in various states.¹⁸

¹⁶ As of the date of the Preliminary Audit Report, the excluded months were August 2017 through July 2018.

¹⁷ General election date = November 8, 2016 + 31 days = December 9, 2016.

¹⁸ Although JSFP's request purported to identify three separate questions for review, two of the questions raised the same essential issue, which is whether the Commission's original DOI determination was proper. Therefore, those two questions were consolidated into a single question.

The Commission concluded, by a vote of 4-0, to reaffirm JSFP's original DOI as August 6, 2016.¹⁹

The Preliminary Audit Report recommended that JSFP provide evidence that the audited NOCO was not in a surplus position. Absent such evidence, the Audit staff stated it would recommend that the Commission make a determination that \$66,196, representing the pro-rata portion of the surplus, was repayable to the United States Treasury.

C. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report recommendation, JSFP continued to maintain its position that ballot access laws in each state should dictate which expenses qualify as qualified campaign expenses for the primary election, and not necessarily the candidate's DOI. The Commission, however, concluded by a vote of 4-0 that JSFP's DOI was August 6, 2016. As noted in the legal standards above, only expenses incurred on or before DOI can be considered qualified campaign expenses. Therefore, the Audit staff did not include ballot access petitioning expenses incurred after DOI in its calculation of the NOCO.

JSFP also provided documentation and an updated NOCO, which, when compared to its initial NOCO, reflected an overall increase in total assets of \$332,051, the majority of which included an increase in cash on hand of \$314,561. The Audit staff concurred with \$313,079, with the difference of \$1,482 being JSFP's overstatement of cash on hand.

JSFP's updated NOCO also included an overall increase in total obligations of \$294,820, all of which pertained to "estimated winding down expenses" that JSFP's NOCO reflected as \$516,789. JSFP did not provide a listing to support all of the winding down expenses to justify an increase. JSFP provided bank statements for primary and general election bank accounts only, some check copies written on primary, general and recount bank accounts, and accounting and payroll listings of selected expenses paid in 2017 and 2018. However, none of this documentation included election designation information. This was important because JSFP paid certain winding down expenses, such as salary, that were fully documented with payroll processing reports but those reports did not include the amount allocated to the primary election for each pay-period and/or employee. To supplement JSFP's documentation, the Audit staff used its reports filed with the Commission to calculate the amount allocated by JSFP to the primary election. The Audit staff's analysis resulted in additional actual winding down expenses of \$123,967 and a reduction in the estimated winding down expenses of \$31,525.

In addition to the analysis of winding down expenses, the Audit staff also reviewed invoices that were previously submitted and identified additional accounts payable expenses totaling \$36,035.

¹⁹ JSFP presented no argument in its Request for Consideration of a Legal Question regarding the second question, however, the response to this question is addressed directly in the Commission's regulations. The regulations provide for the payment of winding down costs, i.e. costs associated with the termination of political activity, including compliance with statutory post-election requirements and other specifically defined administrative costs. 11 CFR §§ 9034.4(a)(3) and 9034.11. Because the regulations directly address the payment of winding down costs, there was no need for the Commission to reach a determination on the second question in the request.

Although the Audit staff could not confirm JSFP's total obligations increase, it did verify additional accounts payable based on invoices, totaling \$36,035, additional actual winding down expenses totaling \$123,967, and a reduction in estimated winding down expenses of \$31,525, for a net increase in obligations of \$128,477 ($\$36,035 + 123,967 - 31,525$), and updated the NOCO above accordingly.

The updated NOCO reduced the amount of the surplus from \$329,333 to \$200,856 however, a pro-rata repayment of the surplus was still required.

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged JSFP's response to the Preliminary Audit Report. Based on that response the Audit staff updated the NOCO, which reduced the amount of the surplus. The Audit staff calculated a pro-rata repayment of the surplus as \$40,372 ($\$200,856 \times .2010$).

E. Committee Response to Draft Final Audit Report

In response to the Draft Final Audit Report, JSFP maintained that it did not owe a repayment. According to JSFP, if the audited NOCO had included additional winding down costs, totaling \$258,973, the Candidate's NOCO would have reflected a deficit amount totaling \$58,117, and ultimately no repayment to the United States Treasury would be required. No documentation was provided by JSFP to support its assertion.

Commission Conclusion

On March 27, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission make a determination that a pro rata repayment of \$40,372 is repayable to the United States Treasury.²⁰

The Commission approved the Audit staff's recommendation.

²⁰ JSFP also requested that the Commission delay making a repayment determination to give it an opportunity to work with the Audit staff to resolve discrepancies it purports exist in the NOCO statement. The Commission rejected this request for a delay.

Finding 2. Matching Funds Received in Excess of Entitlement

Summary

The Audit staff's NOCO statement, as presented in Finding 1, indicated a surplus position, as of August 6, 2016, the Candidate's DOI. Therefore, JSFP was not entitled to the matching fund payment of \$134,900, it subsequently received on January 18, 2017. The Preliminary Audit Report recommended that JSFP provide evidence that the Candidate did not have surplus funds as of her DOI.

In response to the Preliminary Audit Report recommendation, JSFP provided documentation and an updated NOCO, and stated that it was entitled to all matching fund payments due to its increased winding down expenses, even if previously disallowed ballot access and other expenses were not considered. After the Audit staff incorporated the expenses that were documented as pertaining to the primary election into its revised NOCO, JSFP was still in a surplus position and therefore not entitled to the matching fund payment it received after the Candidate's DOI.

In response to the Draft Final Audit Report, JSFP disagreed that the Candidate was in a surplus position. JSFP did not provide any documents to support its assertion.

The Commission determined that \$134,900 was repayable to the United States Treasury.

Legal Standard

A. Entitlement to Matching Payments after Date of Ineligibility. If, on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31st of the Presidential election year, provided that he or she still has net outstanding campaign debts on the day when the matching payments are made. 11 CFR §9034.1(b).

B. Repayments. The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding obligations. 11 CFR §§9034.5 and 9038.2 (b)(1)(i).

Facts and Analysis

A. Facts

On January 18, 2017, JSFP received its only post-DOI matching fund payment of \$134,900. The Audit staff's NOCO calculations indicated, however, that JSFP was in a surplus position as of DOI and was not entitled to receive additional matching funds (see Finding 1, p. 8). Therefore, JSFP is required to make a dollar for dollar repayment of this entire matching fund payment to the United States Treasury.

B. Preliminary Audit Report & Audit Division Recommendation

The Audit staff presented this matter to the JSFP representative at the exit conference in conjunction with the presentation of the audit calculated NOCO discussed in Finding 1 above. JSFP's response pertaining to receipt of matching funds in excess of entitlement is also detailed in Finding 1 above.

The Preliminary Audit Report recommended that JSFP provide evidence that it did not receive matching funds in excess of entitlement. Absent such evidence, the Audit staff stated it would recommend that the Commission make a determination that \$134,900 was repayable to the United States Treasury.

C. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report recommendation, JSFP provided documentation and an updated NOCO, and stated that even if all ballot access and other previously disallowed expenses were not considered primary election expenses, JSFP was still entitled to all matching fund payments it received due to its updated projections for winding down expenses

D. Draft Final Audit Report

The Draft Final Audit Report acknowledged JSFP's response but the Audit staff continued to disagree that JSFP was entitled to the matching fund payment it received after DOI. As discussed in Finding 1 above, after the Audit staff incorporated the expenses that could be documented as pertaining to the primary election into its revised NOCO, JSFP was still in a surplus position and therefore not entitled to the matching fund payment of \$134,900, it received after the Candidate's DOI.

E. Committee Response to Draft Final Audit Report

In response to the Draft Final Audit Report, JSFP disagreed that the Candidate was in a surplus position. JSFP explained that it experienced confusion with respect to initial bank balances, ballot access costs and its calculation of winding down expenses at the time it submitted its last matching fund request, but JSFP still considered the NOCO balance to be in a deficit position. JSFP did not provide any documents to support its assertion.

Commission Conclusion

On March 27, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission make a determination that \$134,900 is repayable to the United States Treasury.

The Commission approved the Audit staff's recommendation.

Finding 3. Misstatement of Financial Activity

Summary

During audit fieldwork, a comparison of JSFP's reported financial activity with its bank records revealed a misstatement of receipts and disbursements for 2015 and 2016 and a misstatement of ending cash on hand in 2016. In 2015, JSFP understated its reported receipts and disbursements by \$31,495 and \$35,042 respectively; and in 2016, JSFP

understated its reported receipts, disbursements and ending cash on hand by \$996,384, \$800,310 and \$192,527 respectively. The Preliminary Audit Report recommended that JSFP amend its disclosure reports to correct the misstatements.

In response to the Preliminary Audit Report recommendation and the Draft Final Audit Report, JSFP stated it was in the process of amending its reports to correct the misstatements, but to date, no amended reports have been filed.

The Commission approved a finding that JSFP misstated its financial activity for calendar years 2015 and 2016.

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 calendar year;
- the total amount of disbursements for the reporting period and for the calendar year;
- 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

As part of audit fieldwork, the Audit staff reconciled JSFP's reported activity²¹ with its bank records for calendar years 2015 and 2016. The reconciliation revealed that JSFP misstated its receipts and disbursements for both years. The following charts outline the discrepancies between JSFP's disclosure reports and its bank records.

2015 Reported Activity to Bank Activity			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2015	\$0	\$0	\$0
Receipts	\$244,196	\$275,691	\$31,495 Understated
Disbursements	\$221,985	\$257,027	\$35,042 Understated
Ending Cash on hand @ December 31, 2015	\$22,211	\$18,664	\$3,547 Overstated

The understatement of receipts resulted from the following:

• Contributions from individuals not on reports	+ \$43,877
• Unexplained difference	- <u>12,382</u>
Net Understatement of Receipts	+ <u>\$31,495</u>

²¹ Due to JSFP's consolidated reporting as one entity for primary, general and recount activity; the incorrect identification of election designations on the reports; the missing election designation information in some of the database records; and the large volume of transactions not required to be itemized, it was impossible for the Audit staff to exclude the general and recount activity from this reconciliation, especially during the post DOI period, which was August 7, 2016 through December 31, 2016.

The understatement of disbursements resulted from the following:

• Payments for salaries and wages not reported	+	\$45,364
• Disbursements reported but did not clear the bank	-	14,903
• Credit card fees not reported	+	4,455
• Miscellaneous disbursements not reported	+	126
Net Understatement of Disbursements	+	<u>\$35,042</u>

The \$3,547 overstatement of the ending cash on hand resulted from the misstatements described above.

2016 Reported Activity to Bank Activity ²²			
	Reported	Bank Records	Discrepancy
Beginning Cash on hand @ January 1, 2016	\$22,211	\$18,664	\$3,547
Receipts	\$10,951,133	\$11,947,517	\$996,384 ²³ Understated
Disbursements	\$10,868,212	\$11,668,522	\$800,310 ²⁴ Understated
Ending Cash on hand @ December 31, 2016	\$105,132	\$297,659	\$192,527 Understated

The understatement of receipts resulted from the following:

• Contributions from individuals not reported	+	\$565,893
• Contributions from individuals reported, not supported by bank deposit	-	128,420
• Offsets to operating disbursements not reported	+	6,328
• In-kind contributions not reported as a receipt	+	247
• Interest Income underreported	+	25
• Unexplained difference ²⁵	+	<u>552,311</u>
Net Understatement of Receipts		<u>\$996,384</u>

The understatement of disbursements resulted from the following:

• Credit card fees not reported	+	\$451,344
• Disbursements to vendors not reported	+	365,676
• Disbursements reported but did not clear the bank	-	74,774
• Disbursements directly from Paypal receipts, not reported	+	35,762
• Payments for salaries and wages, not reported	+	27,000
• In-kind contributions not reported as disbursement	+	247
• Unexplained difference	-	4,945
Net Understatement of Disbursements		<u>\$800,310</u>

²² This activity represents primary election, general election and recount activity. See Committee Structure, p. 1.

²³ General election and recount activity represents \$815,959, or 82% of the understated receipts totals.

²⁴ General election and recount activity represents \$688,355 or 86% of the understated disbursement totals.

²⁵ Due to the volume of contributions and an incomplete receipts database from JSFP, the specific individual contributors could not be identified; however, it appeared that the majority of this unexplained difference pertained to deposits in the bank made after the general election.

The \$192,527 understatement of the ending cash on hand resulted from the misstatements described above.

B. Preliminary Audit Report & Audit Division Recommendation

The Audit staff presented this matter to the JSFP representative at the exit conference along with schedules detailing the discrepancies. During the exit conference, the JSFP representative stated he had no explanation for the discrepancies but would research and determine if there was a pattern that would explain the cause. In its response to the exit conference, JSFP made no comment on this finding.

The Preliminary Audit Report recommended that JSFP amend its disclosure reports to correct the misstatements.

C. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report recommendation, JSFP stated it was in the process of making the necessary amendments to correct the misstatements.

D. Draft Final Audit Report

The Draft Final Audit Report outlined that no amended reports had been filed to correct the misstatement.

E. Committee Response to Draft Final Audit Report

In response to the Draft Final Audit Report, JSFP stated it was in the process of amending its reports to correct the misstatements, but to date, no amended reports have been filed.

Commission Conclusion

On March 27, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that JSFP misstated its financial activity for calendar years 2015 and 2016.

The Commission approved the Audit staff's recommendation.

Finding 4. Disclosure of Debts and Obligations

Summary

During audit fieldwork, the Audit staff identified debts totaling \$17,015 not disclosed on Schedule D-P (Debts and Obligations), as required. The Preliminary Audit Report recommended that JSFP amend its reports to disclose the outstanding debt.

In response to the Preliminary Audit Report recommendation and the Draft Final Audit Report, JSFP stated it was in the process of amending its reports to correct the disclosure of debts and obligations, but to date, no amended reports have been filed.

The Commission approved a finding that JSFP did not disclose debts and obligations totaling \$17,015.

Legal Standard

A. Continuous Reporting Required. An authorized committee must disclose the amount and nature of outstanding debts and obligations until those debts are extinguished. 52 U.S.C. §30104(b)(8) and 11 CFR §§104.3(d) and 104.11(a).

B. Separate Schedules. An authorized committee must file separate schedules for debts owed by and to the committee with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. 11 CFR §104.11(a).

C. Itemizing Debts and Obligations.

- Once it has been outstanding 60 days from the date incurred, a debt of \$500 or less must be reported on the next regularly scheduled report.
- A debt exceeding \$500 must be disclosed in the report that covers the date on which the debt was incurred, except reoccurring administrative expenses (such as rent) shall not be reported as a debt before the payment due date. 11 CFR §104.11(b).

D. Disputed Debts. A disputed debt is a bona fide disagreement between the creditor and the committee as to the existence of a debt or the amount owed by the committee. Until the creditor and committee resolve the dispute (assuming the creditor did provide something of value), the committee must disclose:

- The amount the committee admits it owes;
- The amount the creditor claims is owed; and
- Any amounts the committee has paid the creditor. 11 CFR §116.10.

Facts and Analysis

A. Facts

During audit fieldwork, the Audit staff used the available disbursement records to reconcile the accounts of JSFP's largest primary election vendors, including accounts payable expenses for the NOCO. The Audit staff identified debts owed to these vendors totaling \$17,015, that were not disclosed on Schedule D-P, as required. For one transaction, totaling \$13,114, the majority of the error pertained to the disputed debt with one advertiser that was initially invoiced to JSFP for services in August 2016 and was ultimately paid in January 2017. During audit fieldwork, a JSFP representative stated the amount of this invoice had been in dispute, but agreed that this debt should have been reported until the final invoice amount was negotiated and paid.

B. Preliminary Audit Report & Audit Division Recommendation

The Audit staff presented this matter to the JSFP representative at the exit conference and provided schedules detailing the unreported debts for each relevant reporting period. This matter was discussed with the JSFP representative during fieldwork and at the exit conference. The representative stated he was familiar with the matter and understood the finding. In its response to the exit conference, JSFP made no comment on this finding.

The Preliminary Audit Report recommended that JSFP provide documentation demonstrating that the amount owed, of \$17,015, did not require reporting as debt on

Schedule D-P. Absent such documentation, the Preliminary Audit Report recommended that JSFP amend its reports to disclose the outstanding debt and continue to disclose it until extinguished.

C. Committee Response to Preliminary Audit Report

In response to the Preliminary Audit Report recommendation, JSFP stated it was in the process of making the necessary amendments to correct the disclosure of debts and obligations.

D. Draft Final Audit Report

The Draft Final Audit Report indicated that no amended reports had been filed to correct the disclosure of debts and obligations.

E. Committee Response to Draft Final Audit Report

In response to the Draft Final Audit Report, JSFP related it was in the process of amending its reports to correct the disclosure of debts and obligations, but to date, no amended reports have been filed.

Commission Conclusion

On March 27, 2019, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that JSFP did not disclose debts and obligations totaling \$17,015.

The Commission approved the Audit staff's recommendation.



FEDERAL ELECTION COMMISSION

Washington, DC 20463

DATE & TIME OF TRANSMITTAL: Thursday, March 01, 2018 11:00

BALLOT DEADLINE: Wednesday, March 14, 2018 4:00

COMMISSIONER: HUNTER, PETERSEN, WALTHER, WEINTRAUB

SUBJECT: **Request for Consideration of a Legal Question Submitted by Jill Stein for President (LRA # 1021)**
Memorandum to the Commission dated February 27, 2018

- () I approve the recommendation(s).
- () I object to the recommendation(s).
- () I object defensively to the recommendation(s).
- () I object for the record.
- () I am recused from voting.
- () No vote by ballot.

COMMENTS: _____

DATE: _____

SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

February 28, 2018

MEMORANDUM

TO: The Commission

FROM: Erin Chlopak *EC*
Acting Associate General Counsel
Policy Division

Lorenzo Holloway *LH*
Assistant General Counsel
Compliance Advice

Joshua Blume *JB*
Attorney

SUBJECT: Request for Consideration of a Legal Question Submitted by Jill Stein for President (LRA # 1021)

I. INTRODUCTION

On January 19, 2018, the Commission received a Request for Consideration of a Legal Question (“Request”) from Jill Stein for President (the “Committee”), the principal campaign committee of former presidential candidate Dr. Jill Stein. *See* Attachment 1.

The Request raises two questions: (1) whether the Commission’s original determination of Dr. Stein’s date of ineligibility (“DOI”) was proper, and (2) whether committees should be permitted to incur winding down expenses and other primary expenses after the DOI if they are clearly incurred to improve compliance with existing laws and regulations or if they are clearly required in the course of seeking the qualification for the ballot in various states.¹ A DOI marks the formal end of the period of time within which an otherwise eligible presidential candidate may receive public funds for use during the candidate’s campaign for the nomination of a party (or parties).

¹ Although the Request purports to identify three separate questions for review, two of the questions raise the same essential issue, which is whether the Commission’s original DOI determination was proper. We have therefore consolidated those two questions in a single question addressed by this memorandum.

The Committee presents no argument in its Request regarding the second question, however, the response to this question is addressed directly in the Commission's regulations. The regulations provide for the payment of winding down costs, *i.e.* costs associated with the termination of political activity, including compliance with statutory post-election requirements and other specifically defined administrative costs. 11 C.F.R. §§ 9034.4(a)(3); 9034.11. Because the regulations directly address the payment of winding down costs, there is no need for the Commission to reach a determination on the second question in the Request. We will, however, inform the Committee of the applicable regulations in the letter that notifies the Committee of the Commission's decision regarding the first question.

Regarding the first question, the Commission has already determined that Dr. Stein's DOI is August 7, 2016. *See* Attachment 2. The Committee argues, however, that the DOI should be a later date, because it had to incur expenses to support Dr. Stein's efforts to obtain a position on the general election ballot of several states after August 7th. The deadlines for obtaining ballot access in these states ranged from August 10, 2016 to September 9, 2016. *See* Attachment 1, at 2. The Committee argues that Commission advisory opinions have concluded that the efforts of non-major party presidential candidates to obtain positions on the general election ballot are considered expenses relating to the primary election, *see, e.g.*, Advisory Opinion 1995-45 (Hagelin for President), and that because of this, such expenses should be considered qualified campaign expenses.

We have considered the Committee's arguments and the relevant law regarding the first question, and we recommend that the Commission reaffirm its determination that the candidate's DOI is August 7, 2016.

II. THE COMMISSION SHOULD REAFFIRM ITS EARLIER DETERMINATION THAT AUGUST 7, 2016 IS THE CANDIDATE'S DATE OF INELIGIBILITY

A candidate eligible to receive public matching funds to use for the purpose of seeking nomination may receive them, but only for only a limited amount of time. This time is known as the "matching payment period."² *See* 26 U.S.C. § 9032(6). While this period always begins on the start of the calendar year during which the general election will occur, the end of the period, otherwise known in Commission regulations as the "date of ineligibility" or "DOI," *see* 11 C.F.R. § 9033.5(c), depends upon the nomination process the candidate undergoes. If a party nominates a candidate during a national convention, then the matching payment period ends on the date the candidate is nominated. 26 U.S.C. § 9032(6); 11 C.F.R. § 9032.6(a). If a party does not use a national nominating convention to nominate its candidate, then the period ends either on the date the party nominates the candidate or on the last day of the last national convention

² Candidates may continue to receive matching payments after this period for the sole purpose of paying debt incurred during the matching payment period. 11 C.F.R. §§ 9033.5, 9034.5.

held by a major party during the election year, whichever is earlier.³ 26 U.S.C. § 9032(6)(A), (B).

The Request questions the manner in which the Commission applied this standard to the facts presented by Dr. Stein's campaign. Dr. Stein planned to seek not only the nomination of the national committee of the Green Party at its national convention, but also that of several unaffiliated state Green parties lacking positions on their states' ballots for their candidates. She also planned to seek the nomination of a separate state party at a separate national convention to be held on a later date than the Green Party national convention. Attachment 3, at 3. In the case of the independent state Green parties, nomination was to be achieved by an independent petitioning process, and certain of these states maintained ballot access deadlines later than the date of the Green Party's national convention.

The Commission has applied the standard set forth in section 9032(6) to several non-major party and independent presidential candidates in a series of advisory opinions.⁴ Where a candidate seeks the nomination of several non-major parties, the Commission has looked to the last nomination date of those non-major parties not nominating candidates in a national convention and then compared that date to the last day of the last major party presidential convention to determine which date is earlier in order to establish the end of the matching payment period. *See* Advisory Opinions 1984-11 (Serrette), 1984-25 (Johnson), 2000-18 (Nader 2000). The Commission has reasoned that "neither the [Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031 et seq. ("Matching Payment Act")], nor the Commission's regulations, required that the matching payment period for one non-major party Presidential candidate be shorter than that of another such candidate solely for the reason that one was seeking a national party nomination by national convention, and the other candidate was seeking nomination by several State political parties." Advisory Opinion 2000-18 (Nader 2000). Therefore, the Commission has applied the "same range of alternatives for the determination of their matching payment periods." *Id.* (*quoting* Advisory Opinion 1984-25 (Johnson)).

The Commission has also applied this standard in situations where the candidate seeks the nomination of a party that nominates its candidate at a national convention and also seeks the nomination of other independent parties. In Advisory Opinion 1984-25 (Johnson), like here, the requestor sought the nomination of a political party that nominated its candidates through a national convention and at the same time sought the nomination of other, independent state parties that were scheduled to hold their elections and conventions on later dates. The Commission concluded that the candidate should receive the benefit of the later independent State party nomination dates rather than the earlier date of the of the national nominating

³ The DOI may occur sooner if the candidate publicly announces an intent to cease actively campaigning for the nomination, the Commission has otherwise made this determination, or the candidate garners an insufficient number of votes in two consecutive primary elections. 11 C.F.R. § 9033.5(a), (b). However, these conditions do not apply to the facts of this Request.

⁴ *See* Advisory Opinions 1984-11 (Serrette), 1983-47 (Johnson), 1984-25 (Johnson), 1995-45 (Hagelin for President), and 2000-18 (Nader 2000). Also of some relevance is Advisory Opinion 1975-44 (Socialist Workers 1976 National Campaign Committee), which concludes that contributions made for the purpose of helping the candidate meet expenses incurred to obtain positions on state general election ballots for non-major party presidential candidates are considered related to the primary election rather than to the general election.

convention, *provided that such dates were not later than the date of the last day of the last major party nominating convention*. Advisory Opinion 1984-25 (Johnson), at 2. The proviso is important because we believe that the Commission sought to ensure parity of treatment for all presidential candidates, regardless of the method of nomination, in the application of section 9032(6). *See* Advisory Opinion 1984-25 (Johnson), at 2 (“In the case of presidential candidates seeking political party nominations, other than the nomination of either of the two major political parties, the Matching Payment Act appears to at least contemplate, if not require, that such a candidate have an opportunity to establish eligibility and collect matchable contributions for a period of time that closely approximates the period available to major, party candidates.”).

In this case, Dr. Stein’s DOI was calculated as August 7, 2016, because this is the date upon which she received the nomination of a party that nominates its candidate at a national convention. 26 U.S.C. § 9032(6). Because of the possibility created by Advisory Opinion 1984-25 (Johnson) that a later date might apply on account of Dr. Stein’s simultaneous quest for the nomination of parties that did not use national conventions for the nominating process, the Commission also considered whether she should receive the benefit of any of the later State nomination or ballot access dates. However, that possibility was foreclosed in this case because the last date of the last major party nominating convention in 2016 was July 28. Thus, while Dr. Stein may have incurred primary related expenses after this date, taxpayer funds cannot be used for those expenses because the Committee incurred them after both of the two dates that could have applied here – the date of the national nominating convention, August 7, the date actually fixed by the Commission, and the date of the last major party nominating convention, July 28. Advisory Opinion 1984-25 (Johnson), at 2.⁵ Attachment 2.

The Committee argues that the ballot access costs should be qualified campaign expenses based on Commission advisory opinions concluding that such ballot access expenses are considered primary election-related expenses. *See* Advisory Opinion 1995-45 (Hagelin for President) (noting long-held view of Commission that process undergone by non-major party presidential candidates to obtain general election ballot access status are deemed primary election-related expenses). *See also* Advisory Opinion 1975-44 (Socialist Workers 1976 National Campaign Committee) (concluding that contributions for this purpose are deemed primary election rather than general election contributions under the laws and regulations governing contribution periods). The Committee, therefore, argues that the status of an expense as a primary election-related expense is both a necessary and sufficient condition for it to be considered a qualified campaign expense.

We disagree. The fact that ballot access expenses are related to the primary election campaign, while a necessary condition of their being qualified campaign expenses, *see* 26 U.S.C. § 9032(9)(A), is not a sufficient condition. The timing of the expense is the other necessary condition. The definition of qualified campaign expense is further conditioned by the constraint that such expenses must be incurred during the candidate’s period of eligibility. 11 C.F.R.

⁵ In assigning the date of nomination at the national nominating convention as the DOI, the Commission was therefore giving the Committee the benefit of the later of the two dates that would have been available to it under section 9032(6).

§ 9032.9(a)(1); Advisory Opinion 1984-11 (Serrette). The Commission has noted that “[s]ince an individual’s candidacy for presidential nomination in essence ends on the date of ineligibility, any expenditures made after that date, except for winding down costs under § 9034.4(c), cannot be considered to be incurred by the candidate “in connection with” his or her campaign for nomination.” Presidential Election Campaign Fund and Presidential Primary Matching Fund, 44 Fed. Reg. 20336-37 (Apr. 4, 1979). Thus, the date upon which the ability of a candidate to use taxpayer funds to finance the primary campaign ends is fixed. That a presidential candidate may need to incur additional expenses historically associated with the primary election cannot amend or alter this determination.⁶ The dates upon which the Committee incurred these additional expenses are after both the dates of Dr. Stein’s nomination at the national nominating convention and that of the last major party nominating convention. Advisory Opinion 1984-25 (Johnson), at 2.

III. RECOMMENDATION

For the reasons noted above, we recommend that the Commission reaffirm its earlier determination that August 7, 2016 is the Candidate’s date of ineligibility in this matter.

Attachments

Attachment 1 – Letter from Matt Kozlowski, Director of Compliance, Jill Stein for President to Federal Election Commission (Jan. 12, 2018).

Attachment 2 – Vote Certification, Jill Stein for President (LRA 1021) (Aug. 12, 2016) and Memorandum from Adav Noti to Commission, Date of Ineligibility – Jill Stein for President (LRA 1021) (Jul. 29, 2016).

Attachment 3 – Letter from Dr. Jill Stein, Candidate, and Steven Welzer, Treasurer, Jill Stein for President, to The Honorable Matthew S. Petersen, Chairman, Federal Election Commission (Apr. 4, 2016).

⁶ In one specific circumstance, the Commission has permitted a presidential candidate to continue to campaign with *private funds* after losing eligibility for public funding by reason of having failed to garner a sufficient percentage of the popular vote in two consecutive primary elections without incurring a repayment obligation for doing so. See Public Financing of Presidential Primary and General Election Candidates, 56 Fed. Reg. 35898, 35905 (Jul. 29, 1991) (discussing ability of candidate to use private funds to continue to campaign after eligibility has been terminated by reason of failure to garner sufficient percentage of popular vote); 11 C.F.R. §§ 9033.5(d), 9034.4(a)(3). In this circumstance, the candidate may continue to submit post-ineligibility contributions for public matching, but the award of public matching funds based on these contributions is contingent upon the candidate’s re-establishing his or her eligibility to receive them.



JILL STEIN FOR PRESIDENT
PO BOX 260197
MADISON, WI 53726

January 12, 2018

Federal Election Commission
ATTN: Mary Moss
999 E Street, NW
Washington, DC 20463

The Jill Stein for President Campaign submits the enclosed response to the Preliminary Audit Findings dated November 30, 2017.

While the Committee agrees with most of the findings and recommended remedies, the Committee is requesting consideration of a single item and makes a few proposals herein.

If you have any questions concerning this response, please contact us at Finance@Jill2016.com or Treasurer@Jill2016.com.

Sincerely,

Matt Kozlowski
Director of Compliance
Jill Stein for President



The Jill Stein for President Committee (hereafter “the Committee”) requests consideration of the following response to the Preliminary Audit Findings dated November 30, 2017.

I. Background

The Jill Stein for President Campaign disputes preliminary finding 1 “Matching Funds Received in Excess of Entitlement” contained within the Preliminary Audit Findings presented during the Audit Exit Conference. This dispute arises from the determination of the Committee’s Date of Ineligibility (“DOI”) and the relevant Primary costs incurred in relation to and after this date.

II. Determination of Date of Ineligibility

In the course of operating, the Committee anticipated that its costs for Ballot Access expenses and the related organizational costs incurred as a direct result of Ballot Access expenses would be considered Qualified Primary Expenses and would be considered in determining the Committee’s DOI. This assumption was based largely on Advisory Opinion 1995-45 which finds that:

It has long been the view of the Commission that, for non-major party candidates, the process by which they satisfy the requirements of State law governing qualification for a position on the general election ballot serve purposes similar to a primary election or other nominating process. This view is supported by the Commission regulations defining the term “election,” which state that, for non-major party and independent candidates, the day prescribed by applicable State law as the last day to qualify for a position on the general election ballot may be designated as the primary election for such candidate. 11 CFR 100.2(c)(4)(i). AO 1995-45

In the 2016 Presidential Election cycle, the following states had State deadlines and qualifications after the date of the Green Party’s Presidential Nominating Convention and DOI:

Alabama – August 18 th , 2016	Alaska – August 10 th , 2016
Arizona – September 9 th , 2016	California – August 12 th , 2016
Colorado – August 10 th , 2016	Connecticut – August 10 th , 2016
Delaware – August 20 th , 2016	Florida – September 1 st , 2016
Hawaii – August 10 th , 2016	Idaho – August 30 th , 2016
Iowa – August 19 th , 2016	Kentucky – September 9 th , 2016
Louisiana – August 19 th , 2016	Minnesota – August 23 rd , 2016
Mississippi – September 9 th , 2016	Montana – August 17 th , 2016
New Hampshire – August 10 th , 2016	North Dakota – September 5 th , 2016
Ohio – August 10 th , 2016	Oregon – August 30 th , 2016
Rhode Island – September 9 th , 2016	Tennessee – August 18 th , 2016
Utah – August 15 th , 2016	Virginia – August 26 th , 2016
Wyoming – August 29 th , 2016	



In this election cycle, the Committee was successful in attaining many of the above deadlines prior to the Green Party Convention date, but the remaining states with deadlines after the DOI required a significant majority of the Committee's resources in order to successfully qualify. These resources include, but are not limited to, monetary resources to pay for ballot petitioning and related expenses, staff time to coordinate such efforts nationally, fundraising efforts, and administrative resources.

As of the DOI, the Committee was still actively petitioning in the following states:

Alabama, Connecticut, Idaho, Iowa, Kentucky, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Rhode Island, South Dakota, Utah, Virginia, and Wyoming.

III. Impacts of Early DOI Date and Calculation of Expenses

Under the current DOI and the calculation of incurred expenses as applied in the Preliminary Audit Findings report, there are a large number of expenses that are clearly primary-related ballot access expenses and other primary-related expenses that have not been recognized for the full cost incurred by the Committee. It is the view of the Committee that this rule, as applied, causes de facto discrimination against non-major party candidates utilizing the Primary Matching Funds program as it forces committees to act in the following potential ways that are inconsistent with existing regulations and conventional campaign practices:

1. Forces committees to fundraise for primary expenses after the DOI has passed;
2. Forces committees to fundraise excessively in advance of determining campaign needs;
3. Incur clearly primary-related expenses without the ability to properly utilize the program;
4. Delay practical expenses and preparations for FEC Audits, winding down planning, and other actions which increase efficiency and timeliness of compliance with regulations and other requirements; and/or
5. Undertake operations in a way that inherently weakens the committee's ability to attain ballot access in states with later petitioning or qualification deadlines.

All of these scenarios (or any combination of these scenarios) have the inherent effect of causing non-major party committees to use public funds in an inefficient manner, fundraise under questionable pretenses, blur the line between primary election and general election fundraising and expenses, or suffer electoral consequences for compliance with existing rules as applied.

While the Committee acknowledges that the findings in the Audit Division's Preliminary Audit Findings clearly allow varying percentages of expenses incurred after the DOI, it excludes significant portions of these expenses and outright disallows other clearly primary-related expenses.



IV. Statement of Questions for Legal Consideration

The Committee asks that the Commission consider the following questions:

1. Are clearly primary-related expenses (such as ballot access expenses) incurred after a convention date qualified primary expenses under the Primary Matching Funds program?
2. Should committees be allowed to incur Winding Down expenses and other Primary expenses after the DOI if they are clearly incurred to improve compliance with existing laws and regulations or if they are clearly required in the course of seeking the qualification for the ballot in various states?
3. Should the DOI be applied as of the dates of conventions, or in the case of non-major party candidates, as the last dates by which they are seeking qualification for the ballot in a state?

V. Suggested Remedies

In order to accurately and fairly assess the costs of the Committee and determine the Net Outstanding Campaign Obligations and any corresponding repayment order, the Committee suggests one of the following approaches or a combination thereof:

1. Count all clearly primary-related expenses as 100% primary, regardless of the determined incurred date of the expense.
2. Re-examine the eligibility of various expenses post-DOI in order to assess a fair calculation of their relevance to the primary.
3. Re-examine the Committee's DOI based on the states where ballot access petitioning efforts were in effect and their corresponding deadlines.

VI. Conclusion

Thank you for the opportunity to respond to the Audit Division's findings and recommendations. The Committee fully intends to continue to comply and cooperate with the Commission's recommendations and determinations. The Committee extends its warmest thanks and appreciation to the Audit Division for their understanding, assistance, and professional demeanor in handling fieldwork and post-fieldwork.

Sincerely,

Jill Stein for President

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) LRA 1021
Date of Ineligibility -- Jill Stein for)
President)

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on August 12, 2016, the Commission decided by a vote of 6-0 to take the following actions in LRA 1021:

1. Determine that the date of ineligibility for Jill Stein and Jill Stein for President is the date on which the Green Party of the United States nominates its candidate.
2. Approve the appropriate letter.

Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

Attest:

August 12, 2016
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2016 JUL 29 AM 11:44

MEMORANDUM

TO: The Commission

FROM: Adav Noti *AN*
Acting Associate General Counsel
Policy Division

Lorenzo Holloway *LH by mgf*
Assistant General Counsel
For Compliance Advice

Margaret J. Forman *mgf*
Attorney

SUBJECT: Date of Ineligibility -- Jill Stein for President (LRA 1021)

I. INTRODUCTION

The Commission determined that Jill Stein was eligible to receive public funds, and she has received public funds for her primary election campaign. The Office of General Counsel recommends that the Commission determine that Dr. Stein's date of ineligibility is the date that the Green Party of the United States nominates its presidential candidate at its national convention. See 11 C.F.R. §§ 9033.5(c), 9032.6.

II. DATE THAT A NATIONAL COMMITTEE NOMINATES ITS CANDIDATE FOR PRESIDENT IS THE DATE OF INELIGIBILITY

The date of ineligibility is the date that the Commission will use to calculate the amount of the candidate's net outstanding campaign obligations, which is necessary to determine her remaining entitlement, if any, to matching funds. See 11 C.F.R. §§ 9033.5, 9034.1(b), 9034.5. A candidate's date of ineligibility, at the latest, is the end of the matching payment period. 11 C.F.R. §§ 9033.5(c), 9032.6.

The Commission uses two methods to determine the end of the matching payment period. For a party that nominates its candidate at a national convention, the matching payment period ends on the date when the party nominates its presidential candidate. 11 C.F.R. § 9032.6(a). For a party that does not nominate its candidate at a national convention, the end of the matching payment period is the earlier of (1) the date the party nominates its presidential candidate, or (2) the last day of the last national convention

held by a major party in the presidential election year. 26 U.S.C. § 9023(6); 11 C.F.R. § 9032.6(b).

The factors applicable to Dr. Stein's candidacy raise the issue of which method should be used because she is seeking both the nomination from a national committee at a national convention, and the nomination of parties that do not nominate candidates at a national convention. 11 C.F.R. §§ 9032.6(a) and (b). We believe that the Commission should apply the date that her party nominates its candidate at the national convention.

In situations where a candidate is seeking the nomination of several non-major parties, the Commission has looked to the last nomination date of those non-major parties not nominating candidates in a national convention, in determining the first prong under 11 C.F.R. § 9032.6(b), then compared that date to the last day of last major party national convention to determine which date is "earlier" for the end of the matching payment period and the date of ineligibility. *See* Advisory Opinion 1984-11 (Serrette), Advisory Opinion 1984-25 (Johnson), Advisory Opinion 2000-18 (Nader). The Commission has reasoned "that neither the Matching Act, nor the Commission's regulations, required that the matching payment period for one non-major party Presidential candidate be shorter than that of another such candidate solely for the reason that one was seeking a national party nomination by national convention, and the other candidate was seeking nomination by several State political parties." Advisory Opinion 2000-18 (Nader). Therefore, the Commission has applied "the same range of alternatives for the determination of their matching payment periods." *Id.* (*quoting* Advisory Opinion 1984-25 (Johnson)).

Dr. Stein's 2016 letter of candidate agreements and certifications ("9033 Letter") state that she is seeking the nomination of a number of parties, including The Green Party of the United States, a national committee which will be holding its national convention in Austin, Texas on August 4-7, 2016. 52 U.S.C. § 30101(14); *see* Advisory Opinion 2001-13 (Green Party of the United States); Green Party of the United States FEC Form 1, filed May 29, 2012, *available at* <http://docquery.fec.gov/pdf/322/12951903322/12951903322.pdf>. In her 9033 Letter, Dr. Stein certifies that she is also seeking the nomination of several unaffiliated state green parties without ballot lines, with ballot access deadlines of June 1, 2016 (Kansas), July 11, 2016 (South Dakota), August 1, 2016 (Vermont), and August 15, 2016 (Utah). Dr. Stein also certifies that she is seeking the nomination of the Peace and Freedom Party, which is not a national committee, and will be holding its state nominating convention in California on August 13, 2016. The last day of the last national convention held by a major party in 2016 is July 28, 2016.

Thus, as a candidate for the nomination of the Green Party of the United States, Dr. Stein's date of ineligibility would be when that party's national nominating convention nominates its candidate, which will occur between August 4-7. Her dates of ineligibility for the other nominations she seeks would range from June 1 (for the Green Party in Kansas) to July 28, when the final major party convention concludes.

The Office of General Counsel recommends that the Commission determine that Jill Stein's date of ineligibility is the date that the Green Party of the United States nominates its presidential candidate at its national convention.¹ See 11 C.F.R. §§ 9032.6, 9033.5(c). This would be consistent with the Commission's regulations and past practice to apply the date that results in the candidate receiving the full benefit of the longest permissible matching payment period to which she is entitled, rather than artificially shortening that period merely because the candidate also seeks nominations that are decided at earlier dates.² Here, the applicable date of ineligibility is the date the Green Party of the United States nominates its candidate at its nominating convention during August 4-7, 2016.

III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Determine that the date of ineligibility for Jill Stein and Jill Stein for President is the date on which the Green Party of the United States nominates its candidate; and
2. Approve the appropriate letter.

¹ The candidate's date of ineligibility may pass prior to the Commission's determination of this date. The candidate has been apprised of the date recommended by the Office of General Counsel but cautioned that the Commission must determine the actual date of ineligibility. The candidate must submit a statement of net outstanding campaign obligations ("NOCO statement") within 15 days after her date of ineligibility. 11 C.F.R. § 9034.5(a). Should the date of ineligibility be determined to be another date, the Office of General Counsel recommends extending the NOCO statement deadline to 15 days after notification of such date. A payment to the candidate from the United States Treasury, based on her continuing eligibility, is due in approximately late July, and could potentially result in a later repayment obligation, depending on the Commission's determination of the date of ineligibility and the amount of net outstanding campaign obligations. See 11 C.F.R. § 9038.2(b)(1)(i).

² A similar scenario existed in 2012 with regard to the same candidate as here, Dr. Stein. In 2012, Dr. Stein was nominated as candidate for president by the Green Party of the United States on July 14, 2012. The Green Party of the United States held its national nominating convention on July 12-15, 2012. Dr. Stein was also seeking the nomination of several other unaffiliated state Green Parties, the Green New Deal Party in several states, the Progressive Party, and also was attempting to petition on to the ballot as an independent candidate in several states. The petition for ballot access deadlines for the unaffiliated state Green parties and other parties were on various dates, with the last two dates being the unaffiliated state Green party in Alabama on September 6, 2012 and the Progressive Party deadline in Vermont on September 20, 2012. September 6, 2012 was also the last day of the last national convention held by a major party in 2012. The Commission determined that since the latest permissible date of ineligibility among these nominations was the last day of the last major party convention – September 6, 2012 – that date determined the end of Dr. Stein's matching payment period for the 2012 presidential election. The Commission did not apply the earlier July 14, 2012 date of the national convention of the Green Party of the United States. See 11 C.F.R. § 9032.6(a); Advisory Opinion 1984-25 (Johnson); Advisory Opinion 2000-18 (Nader).



JILL STEIN FOR PRESIDENT
PO Box 260197
MADISON, WI 53726

April 4, 2016

The Honorable Matthew S. Petersen
Chairman, Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Mr. Chairman,

Jill Stein, a candidate for nomination of the Green Party of the United States for President of the United States, in an effort to become eligible to receive Primary Matching Funds, I certify and agree to the following per 11 CFR § 9033.1 & 9033.2:

- 1) Pursuant to 11 CFR § 9033.2(b)(2), I and/or my authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the expenditure limitations prescribed by 26 USC § 9035 and 11 CFR Part 9035.
- 2) In accordance with 11 CFR § 9033.1(b)(1), I acknowledge that I have the burden of proving that disbursements made by me, or any of my authorized committee(s) or agents are qualified campaign expenses as defined by 11 CFR § 9032.9.
- 3) In accordance with 11 CFR § 9033.1(b)(2), I and my authorized committee(s) will comply with the documentation requirements set forth in 11 CFR § 9033.11.
- 4) Upon the request of the Commission, I and my authorized committee(s) will supply an explanation of the connection between any disbursement made by me or my authorized committee(s) and the campaign as prescribed by 11 CFR § 9033.1(b)(3).
- 5) In accordance with 11 CFR § 9033.1(b)(4), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and supporting documentation and other information that the Commission may request.
- 6) As provided at 11 CFR § 9033.1(b)(5), I and my authorized committee(s) agree to keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section (including those required to be maintained under 11 CFR § 9033.11), and other information that the Commission may request. If I or my authorized committee(s) maintains or uses computerized information containing any of the categories of data listed in 11 CFR § 9033.12(a), the committee(s) will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR § 9033.12(b). Upon request, documentation explaining the computer system's software capabilities shall be provided and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee(s) shall be made available.
- 7) As prescribed at 11 CFR § 9033.1(b)(6), I and my authorized committee(s) will obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on my behalf by other political committees and organizations associated with me.

Jill Stein for President | PO Box 260197, Madison, WI 53726
www.Jill2016.com | Finance@Jill2016.com

Attachment at 1



JILL STEIN FOR PRESIDENT
PO BOX 260197
MADISON, WI 53726

- 8) In accordance with 26 USC § 9038 and 11 CFR § 9033.1(b)(7), I and my authorized committee(s) shall permit an audit and examination pursuant to 11 CFR Part 9038 of all receipts and disbursements, including those made by me, all authorized committee(s) and any agent or person authorized to make expenditures on my behalf or on behalf of my authorized committee(s). I and my authorized committee(s) shall also provide any material required in connection with an audit, investigation, or examination conducted pursuant to 11 CFR Part 9039. I and my authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Part 9038 and 11 CFR Part 9039.
- 9) Pursuant to 11 CFR § 9033.1(b)(8), the person listed below is entitled to receive matching fund payments on my behalf, which will be deposited into the listed depository, which I have designated as the campaign depository. Any change in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by me or the Treasurer of my authorized principal campaign committee.

Name of Person: Matthew Kozlowski
Mailing Address: PO Box 260197
Madison, WI 53726

Designated Depository: Summit Credit Union
Depository Address: 307 E Wilson St
Madison, WI 53703

- 10) Pursuant to 11 CFR § 9033.1(b)(9), 11 CFR § 9033.1(b)(10), and 11 CFR § 9033.1(b)(11), I and my authorized committee(s) will:
- a. Prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order, including the provision of any magnetic media pertaining to the matching fund submissions and which conforms to the requirements specified at 11 CFR § 9033.12
 - b. Comply with the applicable requirements of 52 USC § 30101 et seq. 26 USC § 9031 et seq. And the Commission's regulations at 11 CFR Parts 100-300 and 9031-9039
 - c. Pay any civil penalties included in a conciliation agreement or otherwise imposed under 52 USC § 30109 against myself, any of my authorized committee(s) or any agent thereof.
- 11) Pursuant to 11 CFR § 9033.1(b)(12), any television commercial prepared or distributed by me or my authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.
- 12) In accordance with 11 CFR § 9033.2(b)(3), my authorized committee certifies that it has received matchable contributions totaling more than \$5,000 in each of at least 20 States and contributions received were only from individuals who are residents of the State for which their contributions are submitted.



JILL STEIN FOR PRESIDENT
PO BOX 260197
MADISON, WI 53726

Additionally, according to 11 CFR § 9033.2(b)(1) and 11 CFR § 9033.2(b)(3), I certify that I am:

- 1) seeking the nomination of the Green Party of the United States for election to the Office of the President of the United States in more than one State. The nominating convention of the Green Party of the United States is from August 4th-7th, 2016;
- 2) seeking the nomination of several unaffiliated State Green Parties without ballot lines. Those unaffiliated State Green Parties, which designate nominees using the applicable state's independent candidate petitioning deadlines as their cut-off dates for formal nominations are:
 - a. Kansas (independent candidate petitioning deadline: 6/1/16);
 - b. South Dakota (independent candidate petitioning deadline: 7/11/16);
 - c. Vermont (independent candidate petitioning deadline: 8/1/16);
 - d. Utah (independent candidate petitioning deadline: 8/15/16)
- 3) seeking the nomination of the Peace and Freedom Party, which will host its nominating convention on August 13th, 2016.

Signed: Jill Stein 4/5/2016
 Dr. Jill Stein, Candidate Date

Signed: Steven Welzer 4-4-16
 Steven Welzer, Treasurer Date



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

April 24, 2018

TO: The Commission

FROM: Erin Chlopak
Acting Associate General Counsel
Policy Division

Lorenzo Holloway 
Assistant General Counsel
Compliance Advice

Joshua Blume  for JB
Attorney

SUBJECT: Correction to Memorandum on Request for Consideration of a Legal Question by Jill Stein for President (LRA # 1021)

This memorandum serves to inform the Commission of an error in a recent audit recommendation approved by the Commission, and to recommend Commission action to correct the error.

On February 28, 2018, the Office of General Counsel (“OGC”) circulated a Memorandum regarding the Request for Consideration of a Legal Question Submitted by Jill Stein for President. The memorandum acknowledged the Commission’s prior determination that Jill Stein’s date of ineligibility to receive public matching funds (“DOI”) was August 7, 2016, and recommended that the Commission reaffirm that determination, which was based on the date the candidate received the Green Party’s nomination for President. On April 11, 2018, the Commission voted to approve OGC’s recommendation.¹

We have since clarified that the Green Party nominated Dr. Stein one day earlier, on August 6, 2016. OGC’s February 28 memorandum explains why Dr. Stein’s DOI is the date that

¹ Jill Stein received public funds as a candidate in the 2016 primary elections, and as a result, her committee, Jill Stein for President (“Committee”), was subject to a mandatory audit. At the close of the audit fieldwork, the Committee filed a Request for Consideration of a Legal Question. In this request, the Committee asked whether the Commission’s earlier DOI determination was proper.

she received the Green Party's nomination. Accordingly, OGC is correcting its recommendation in that memorandum to reflect that Dr. Stein's DOI is August 6, 2016, not August 7, 2016.

RECOMMENDATION

We recommend that the Commission revise its prior determination and conclude that August 6, 2016 is the candidate's date of ineligibility in this matter.



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DATE & TIME OF TRANSMITTAL: Friday, July 29, 2016 12:00

BALLOT DEADLINE: Wednesday, August 10, 2016 4:00

COMMISSIONER: GOODMAN, HUNTER, PETERSEN, RAVEL, WALTHER, WEINTRAUB

**SUBJECT: Date of Ineligibility – Jill Stein for President (LRA 1021)
Memorandum from the Acting Associate General Counsel,
Policy Division dated July 29, 2016**

- I approve the recommendation(s).
- I object to the recommendation(s).
- I object for the record.
- I am recused from voting.
- No vote by ballot.

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated. Please return ONLY THE BALLOT to the Commission Secretary. Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2016 JUL 29 AM 11:44

MEMORANDUM

TO: The Commission

FROM: Adav Noti *AN*
Acting Associate General Counsel
Policy Division

Lorenzo Holloway *LH by mgf*
Assistant General Counsel
For Compliance Advice

Margaret J. Forman *mgf*
Attorney

SUBJECT: Date of Ineligibility -- Jill Stein for President (LRA 1021)

I. INTRODUCTION

The Commission determined that Jill Stein was eligible to receive public funds, and she has received public funds for her primary election campaign. The Office of General Counsel recommends that the Commission determine that Dr. Stein's date of ineligibility is the date that the Green Party of the United States nominates its presidential candidate at its national convention. See 11 C.F.R. §§ 9033.5(c), 9032.6.

II. DATE THAT A NATIONAL COMMITTEE NOMINATES ITS CANDIDATE FOR PRESIDENT IS THE DATE OF INELIGIBILITY

The date of ineligibility is the date that the Commission will use to calculate the amount of the candidate's net outstanding campaign obligations, which is necessary to determine her remaining entitlement, if any, to matching funds. See 11 C.F.R. §§ 9033.5, 9034.1(b), 9034.5. A candidate's date of ineligibility, at the latest, is the end of the matching payment period. 11 C.F.R. §§ 9033.5(c), 9032.6.

The Commission uses two methods to determine the end of the matching payment period. For a party that nominates its candidate at a national convention, the matching payment period ends on the date when the party nominates its presidential candidate. 11 C.F.R. § 9032.6(a). For a party that does not nominate its candidate at a national convention, the end of the matching payment period is *the earlier of* (1) the date the party nominates its presidential candidate, or (2) the last day of the last national convention

held by a major party in the presidential election year. 26 U.S.C. § 9023(6); 11 C.F.R. § 9032.6(b).

The factors applicable to Dr. Stein's candidacy raise the issue of which method should be used because she is seeking both the nomination from a national committee at a national convention, and the nomination of parties that do not nominate candidates at a national convention. 11 C.F.R. §§ 9032.6(a) and (b). We believe that the Commission should apply the date that her party nominates its candidate at the national convention.

In situations where a candidate is seeking the nomination of several non-major parties, the Commission has looked to the last nomination date of those non-major parties not nominating candidates in a national convention, in determining the first prong under 11 C.F.R. § 9032.6(b), then compared that date to the last day of last major party national convention to determine which date is "earlier" for the end of the matching payment period and the date of ineligibility. *See* Advisory Opinion 1984-11 (Serrette), Advisory Opinion 1984-25 (Johnson), Advisory Opinion 2000-18 (Nader). The Commission has reasoned "that neither the Matching Act, nor the Commission's regulations, required that the matching payment period for one non-major party Presidential candidate be shorter than that of another such candidate solely for the reason that one was seeking a national party nomination by national convention, and the other candidate was seeking nomination by several State political parties." Advisory Opinion 2000-18 (Nader). Therefore, the Commission has applied "the same range of alternatives for the determination of their matching payment periods." *Id.* (*quoting* Advisory Opinion 1984-25 (Johnson)).

Dr. Stein's 2016 letter of candidate agreements and certifications ("9033 Letter") state that she is seeking the nomination of a number of parties, including The Green Party of the United States, a national committee which will be holding its national convention in Austin, Texas on August 4-7, 2016. 52 U.S.C. § 30101(14); *see* Advisory Opinion 2001-13 (Green Party of the United States); Green Party of the United States FEC Form 1, filed May 29, 2012, *available at* <http://docquery.fec.gov/pdf/322/12951903322/12951903322.pdf>. In her 9033 Letter, Dr. Stein certifies that she is also seeking the nomination of several unaffiliated state green parties without ballot lines, with ballot access deadlines of June 1, 2016 (Kansas), July 11, 2016 (South Dakota), August 1, 2016 (Vermont), and August 15, 2016 (Utah). Dr. Stein also certifies that she is seeking the nomination of the Peace and Freedom Party, which is not a national committee, and will be holding its state nominating convention in California on August 13, 2016. The last day of the last national convention held by a major party in 2016 is July 28, 2016.

Thus, as a candidate for the nomination of the Green Party of the United States, Dr. Stein's date of ineligibility would be when that party's national nominating convention nominates its candidate, which will occur between August 4-7. Her dates of ineligibility for the other nominations she seeks would range from June 1 (for the Green Party in Kansas) to July 28, when the final major party convention concludes.

The Office of General Counsel recommends that the Commission determine that Jill Stein's date of ineligibility is the date that the Green Party of the United States nominates its presidential candidate at its national convention.¹ *See* 11 C.F.R. §§ 9032.6, 9033.5(c). This would be consistent with the Commission's regulations and past practice to apply the date that results in the candidate receiving the full benefit of the longest permissible matching payment period to which she is entitled, rather than artificially shortening that period merely because the candidate also seeks nominations that are decided at earlier dates.² Here, the applicable date of ineligibility is the date the Green Party of the United States nominates its candidate at its nominating convention during August 4-7, 2016.

III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Determine that the date of ineligibility for Jill Stein and Jill Stein for President is the date on which the Green Party of the United States nominates its candidate; and
2. Approve the appropriate letter.

¹ The candidate's date of ineligibility may pass prior to the Commission's determination of this date. The candidate has been apprised of the date recommended by the Office of General Counsel but cautioned that the Commission must determine the actual date of ineligibility. The candidate must submit a statement of net outstanding campaign obligations ("NOCO statement") within 15 days after her date of ineligibility. 11 C.F.R. § 9034.5(a). Should the date of ineligibility be determined to be another date, the Office of General Counsel recommends extending the NOCO statement deadline to 15 days after notification of such date. A payment to the candidate from the United States Treasury, based on her continuing eligibility, is due in approximately late July, and could potentially result in a later repayment obligation, depending on the Commission's determination of the date of ineligibility and the amount of net outstanding campaign obligations. *See* 11 C.F.R. § 9038.2(b)(1)(i).

² A similar scenario existed in 2012 with regard to the same candidate as here, Dr. Stein. In 2012, Dr. Stein was nominated as candidate for president by the Green Party of the United States on July 14, 2012. The Green Party of the United States held its national nominating convention on July 12-15, 2012. Dr. Stein was also seeking the nomination of several other unaffiliated state Green Parties, the Green New Deal Party in several states, the Progressive Party, and also was attempting to petition on to the ballot as an independent candidate in several states. The petition for ballot access deadlines for the unaffiliated state Green parties and other parties were on various dates, with the last two dates being the unaffiliated state Green party in Alabama on September 6, 2012 and the Progressive Party deadline in Vermont on September 20, 2012. September 6, 2012 was also the last day of the last national convention held by a major party in 2012. The Commission determined that since the latest permissible date of ineligibility among these nominations was the last day of the last major party convention – September 6, 2012 – that date determined the end of Dr. Stein's matching payment period for the 2012 presidential election. The Commission did not apply the earlier July 14, 2012 date of the national convention of the Green Party of the United States. *See* 11 C.F.R. § 9032.6(a); Advisory Opinion 1984-25 (Johnson); Advisory Opinion 2000-18 (Nader).