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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

September 7, 2000

MEMORANDUM

AGENDA ITEM

For Meeting of: 9-12-00

TO: THE COMMISSIONERS

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

FROM: RAY LISI
DEPUTY ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: 2000 GENERAL ELECTION ENTITLEMENT FOR JOHN HAGELIN
AND NAT GOLDHABER

Attached is a report from the Audit Division regarding the eligibility of John Hagelin and Nat Goldhaber to receive general election funding for the 2000 Presidential general election. Attached to the report is a memorandum from the Office of General Counsel which concurs with the recommendation in the report that the Commission make a initial determination that John Hagelin and Nat Goldhaber have not satisfied the eligibility requirements to receive general election funding as the Presidential and Vice Presidential candidates of the Reform Party.

This report is being circulated on a 24 hour tally vote basis. Should you have any questions regarding this matter, please contact Ray Lisi at ext. 1200.

Attachment as stated.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON THE
2000 GENERAL ELECTION ENTITLEMENT
FOR JOHN HAGELIN AND NAT GOLDBABER**

Section 9002(7) of Title 26 of the United States Code defines the term "minor party" to mean, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent of the total number of popular votes received by all candidates for such office.

Candidate is defined at 26 U. S. C. §9002(2) as an individual who, with respect to any presidential election, has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party or has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more states.

Sections 9003(a),(c), and (e) of Title 26, United States Code, and 11CFR §§9003.1 and 9003.2(b) and (c) set forth a series of agreements and certifications which must be executed by a minor party Presidential and Vice Presidential Candidate in order to establish eligibility for general election public funding.

Based on the results of voting in the 1996 general election the Reform Party meets the definition of a minor party. On August 15, 2000, Mr. John Hagelin and Mr. Nat Goldhaber, identifying themselves as candidates of the Reform party, submitted a letter which contains the agreements and certifications specified at 26 U.S.C. §9003(a),(c), and (e) and 11 CFR §§9003.1 and 9003.2(b) and (c) (see copies at Attachment I). The candidates also submitted material to show that they have qualified to appear on the general election ballot, as the Reform party candidates, in ten or more states pursuant to 11 CFR §9002.2(a)(2). The letter and evidence provided by the candidates that they have qualified to appear on the general election ballot in ten or more states have been reviewed by the Commission's Office of General Counsel. The opinion of that office regarding the completeness of the letter and the review of the evidence provided by the candidates appears at Attachment II. As noted in Attachment II it is the opinion of the Office of General Counsel that the candidates have provided

evidence that they qualify to appear on the general election ballot as the Reform Party candidates in only three states. The Audit staff concurs with the Office of General Counsel's opinion.

Pursuant to 11 CFR §9004.2(a)(2) the aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

Section 9005.1(b) of Title 11 of the Code of Federal Regulations states that not later than ten days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR §§9003.1, 9003.2, and 9004.2, the Commission will make an initial determination of the amount if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each state.

Recommendation

The Audit Division recommends that the Commission make an initial determination that Mr. John Hagelin and Mr. Nat Goldhaber do not meet the eligibility requirements under 11 CFR 9003.1(a)(2) and have not established eligibility to receive a payment under 26 U.S.C. §9006(b) from the Presidential Election Campaign Fund. Proposed letters to the candidates advising them of the Commission's initial determination appear at Attachments III and IV.

RECEIVED
FEDERAL ELECTION
COMMISSION
AUDIT DIVISION

AUG 15 11 01 AM '00

August 14, 2000

The Honorable Darryl R. Wold, Chairman
Federal Elections Commission
999 E Street, NW
Washington, DC 20463

Dear Chairman Wold:

Pursuant to 26 U.S.C. § 9003 and 11 C.F.R. § 9003.1, this letter certifies that we, as the candidates (as defined in 26 U.S.C. § 9002(2)(B)) of the Reform Party for President and Vice President of the United States, and our authorized campaign committee(s) for the general election, as a condition to our acceptance of general election financing from the Presidential Election Campaign Fund, will comply with the conditions set forth in 11 C.F.R. § 9003.1(b) as to eligibility for payments from the Presidential Election Campaign Fund as enumerated below:

1. We have the burden of proving that disbursements made by us or any authorized committee or agent thereof are qualified campaign expenses as defined in 11 C.F.R. § 9002.11.
2. We and our authorized committee(s) shall comply with the documentation requirements set forth at 11 C.F.R. § 9003.5.
3. We and our authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by us or our authorized committee(s) and the campaign, if requested by the Commission.
4. We and our authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements, including any books, records (including bank records for all accounts), all documentation required to be maintained by the Commission's Regulations including that documentation required to be maintained under 11 C.F.R. § 9003.5 and other information that the Commission may request. To the extent we maintain or use computerized information containing any of the categories of data listed in 11 C.F.R. § 9003.6(a) our committee(s) will provide computerized magnetic media (such as magnetic tapes or magnetic diskettes) containing the computerized information that meets the requirements of 11 C.F.R. § 9003.6(b) at the times specified in 11 C.F.R. § 9007.1(b)(1). Upon request of the Commission, we agree to provide documentation explaining our computer system's software capabilities and to make available such personnel as are necessary to explain

the operation of the system's software and computerized information prepared or maintained by the committee(s).

5. We and our authorized committee(s) shall obtain and furnish to the Commission upon request all documentation relating to the funds received and disbursements made on our behalf by other political committees and organizations associated with us.
6. We and our authorized committee(s) shall permit an audit and examination pursuant to 11 C.F.R. part 9007 of all receipts and disbursements, including those made by us, any authorized committee and any agent or person authorized to make expenditures on behalf of us or our authorized committee(s). We and our 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 C.F.R. part 9007.
7. The name and mailing address of the person who is entitled to receive payments from the Fund on our behalf is:

Blanche Woodward
PO Box 1900
Fairfield, LA 52556

The name and address of the depository designated by us as required by 11 C.F.R. part 103 and 11 C.F.R. § 9005.2 is :

Iowa State Bank and Trust Company
101 N. Court Street
Fairfield, LA 52556

Payments from the Fund are to be made to the account at Iowa State Bank and Trust Bank Company as depository under the name of "Hagelin 2000".

8. We and our authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 et seq., 26 U.S.C. § 9001 et seq., and the Commission's Regulations at 11 C.F.R. parts 100-116 and 9001-9012.
9. We and our authorized committee(s) shall pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. § 437g against us or our authorized committee(s) or any agent thereof.
10. Any television commercial prepared or distributed by us or our authorized committee(s) will be prepared in a manner that 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.
11. We and our authorized committee(s) will file all reports with the Commission in an electronic format as explained in 11 CFR part 9003.2, that meets the requirements of 11 CFR §104.18 if we and our authorized committee(s) maintain or use computerized information containing any of the information described in 11 CFR §104.3.

Additionally, pursuant to 26 U.S.C. § 9003 and 11 C.F.R. § 9003.2, and under penalty of perjury, we certify to the Commission as a condition to our acceptance of general election financing from the Presidential Election Campaign Fund as follows:

1. Neither of us, nor our authorized committee(s), have incurred nor will incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 C.F.R. part 9004.1;
2. No contributions to defray qualified campaign expenses have been or will be accepted by us or by our authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by us from the Fund under 11 C.F.R. part 9004.2; and
3. We will not knowingly make expenditures from our personal funds, or from the personal funds of our immediate families, in connection with our general election campaign for the Offices of President and Vice President of the United States in excess of \$50,000 in the aggregate, as explained at 11 C.F.R. § 9003.2 (c)(3).

In light of the above, we ask that you certify to the Secretary of the Treasury our eligibility for the payments to which we are entitled under 26 U.S.C. § 9001 et seq. and 11 C.F.R. parts 9001-9005 et seq.

Please notify us if you require any further information in this matter.

Sincerely,


John Hagelin


Nat Goldhaber

cc: The Honorable Danny L. McDonald, Vice Chairman
The Honorable David M. Mason, Commissioner
The Honorable Karl J. Sandstrom, Commissioner
The Honorable Bradley A. Smith, Commissioner
The Honorable Scott E. Thomas, Commissioner

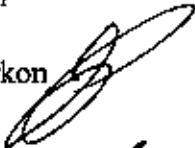



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463


September 7, 2000

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence M. Noble 
General Counsel

Kim Leslie Bright 
Associate General Counsel

SUBJECT: Letter of Candidate Agreements and Certifications
Received from John Hagelin and Nat Goldhaber
(LRA #595)

I. INTRODUCTION

On September 1, 2000, John Hagelin and Nat Goldhaber submitted an application for pre-election funding under the Presidential Election Campaign Fund Act ("the Fund Act"), 26 U.S.C. §§ 9001-9013, as Reform Party candidates. Since Mr. Hagelin and Mr. Goldhaber have applied for funding as the nominees of a minor party, the Commission must determine whether Reform Party candidates qualify for pre-election funding under 26 U.S.C. § 9004(a)(2)(A) and whether John Hagelin and Nat Goldhaber have qualified for pre-election funding as Reform Party candidates. If the Commission decides both questions in the affirmative, the Commission must determine the amount to which the candidates are entitled.

In the following memorandum, the Office of General Counsel concludes that: (1) Reform Party candidates are entitled to pre-election funding; (2) the letters of candidate agreement and certification, along with documents demonstrating Reform Party ballot access in at least ten states, submitted by Mr. Hagelin and Mr. Goldhaber do not meet the applicable requirements of the Fund Act and the Commission's regulations; and (3) the Commission should make an initial determination that John Hagelin and Nat Goldhaber are not entitled to pre-election public funding.

Memorandum to Robert J. Costa
Letter of Candidate Agreements --
John Hagelin and Nat Goldhaber (LRA #595)
Page 2

II. PROCEDURE

Unlike the major party candidates, the Commission must make an initial determination regarding the amount of a minor party candidate's entitlement pursuant to 11 C.F.R. § 9005.1(b). Under 11 C.F.R. § 9005.1(b), not later than ten days after a minor or new party candidate has met all of the applicable conditions for eligibility to receive payments, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each state. 11 C.F.R. § 9005.1(b)(1). In notifying the candidate, the Commission will provide the legal and factual reasons for its initial determination and advise the candidate of the evidence on which the determination is based.¹ 11 C.F.R. § 9005.1(b)(1). Within 15 days after the Commission's initial determination, the candidate may submit written legal or factual materials to demonstrate that a redetermination is appropriate. 11 C.F.R. § 9005.1(b)(2). The Commission will consider any written legal and factual materials timely submitted by the candidate in making its final determination. 11 C.F.R. § 9005.1(b)(3). A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action.² 11 C.F.R. § 9005.1(b)(3).

III. ELIGIBILITY FOR PRE-ELECTION FUNDING

A. Pre-Election Funding for Reform Party Candidates

The Fund Act provides that the eligible candidates of a minor party in a presidential election shall be entitled to pre-election funding. See 26 U.S.C. § 9004(a)(2)(A); 11 C.F.R. § 9004.2(b). In the 1996 Presidential election, the Reform Party candidate received 8.4% of the general election vote, thereby achieving minor party status. 26 U.S.C. § 9002(7); 11 C.F.R. § 9002.7. As a result of the Reform Party receiving over 5% of the popular vote in 1996, a Reform Party Presidential candidate is eligible for pre-election funding if he or she meets the other requirements for eligibility under the Fund Act.³ Accordingly, pursuant to 26 U.S.C. § 9004(a)(2)(A), this Office believes that the candidates of the Reform Party qualify for pre-election funding.

¹ The Audit Division's eligibility report and this memorandum include the bases for the Commission's decision. Therefore, the provision of the Audit Division's eligibility report to the candidates, along with this memorandum, will satisfy the requirement that the candidate be provided with the legal and factual bases for the initial determination.

² This Office will prepare the draft final determination and statement of reasons for Commission approval once the candidates submit their response to the initial determination.

³ On November 22, 1999, the Commission certified \$2,468,291 to the Reform Party 2000 Convention Committee. Subsequent to this certification, party unrest led to a conflict over the convention funds. On April 3, 2000, United States District Judge Norman K. Moon issued an order awarding the Reform Party's convention funds to a group headed by Convention Committee Chair/Treasurer Gerald Moan. See *Reform Party of the United States v. Gargan*, 89 F.Supp. 2d. 751 (W.D. Va. 2000).

B. Hagelin/Goldhaber Application for Pre-Election Funding

The Fund Act defines a "candidate" as an individual who has qualified to have his or her name on the election ballot as the candidate of a political party in ten or more states. 26 U.S.C. § 9002(2)(B); 11 C.F.R. § 9002.2. Under the Commission's regulations, minor party or new party candidates have 14 days after they have qualified to appear on the general election ballot in ten or more states to submit a candidate letter of agreements and certifications.⁴ 26 U.S.C. § 9003(c); 11 C.F.R. § 9003.1. On August 14, 2000, Mr. Hagelin and Mr. Goldhaber submitted letters of candidate agreements and certifications. In a letter dated August 24, 2000, the Commission requested that the candidates provide evidence demonstrating that they had qualified to appear on the general election ballot in ten or more states as nominees of the Reform Party and outlined the requirements for such documentation. Subsequently, on August 30 and 31, 2000 and September 1, 2000, the candidates submitted documentation indicating that they have qualified to appear on the general election ballots in at least ten states. *See* 11 C.F.R. § 9003.1(a)(2); *see also* 11 C.F.R. § 9002.2(a)(2). These states include Colorado, Illinois, Washington, Tennessee, Oregon, Arizona, New Mexico, Idaho, Ohio, Utah and Wyoming. However, only certifications from Colorado, Illinois and Washington demonstrate that John Hagelin and Nat Goldhaber are candidates of the Reform Party on these states' general election ballots. The documents submitted for the eight other states fail to demonstrate that Mr. Hagelin and Mr. Goldhaber will be listed on the general election ballot as Reform Party candidates in the following respects: (1) Tennessee will list Mr. Hagelin as an Independent candidate affiliated with the Reform Party; (2) the Oregon submission was a web page copy lacking certification by any state official; and (3) six states (Arizona, New Mexico, Idaho, Ohio, Utah and Wyoming) will list Mr. Hagelin as the candidate of the Natural Law Party.

Mr. Hagelin asserts that the affiliated state party organization of the Reform Party of the United States of America is named the Natural Law Party in Arizona, New Mexico, Idaho, Ohio, Utah and Wyoming. However, the Natural Law Party and the Reform Party are two distinct and separate political parties which have attained "political party" and "national committee" status under the Federal Election Campaign Act of 1971. *See* Advisory Opinion 1992-30 (the Natural Law Party manifested sufficient activity to qualify as a political party and as a national committee of a political party); Advisory Opinion 1998-02 (Commission recognized the Reform Party as a political party and a national committee of a political party). Each of these parties has state affiliates which, by virtue of the party's bylaws or constitution, is responsible for the day-to-day operation of the party at the state level. 26 U.S.C. § 431(15); 11 C.F.R. § 100.14. However, none of the state Natural Law Parties in question have submitted amended Statements of

⁴ September 15, 2000 appears to be the last date by which a state requires candidates to be certified by their parties or by petition for placement on the general election ballot. The candidate would then have 14 days to submit a letter of candidate agreements and certifications to the Commission. 11 C.F.R. § 9003.1(a)(2). However, the Commission, on written request by a minor party candidate may extend the deadline for filing such letter as long as the deadline is prior to the date of the general election. *Id.*

Organization confirming their association with the Reform Party.⁵ Nor has any evidence been provided by any of the state Reform Parties or Natural Law Parties demonstrating that they are established, financed, maintained or controlled by the same person or group of persons as defined by the Commission's regulations. 11 C.F.R. § 110.3(b). Furthermore, this Office notes that in at least two of the states where Mr. Hagelin asserts Reform Party/Natural Law Party affiliation, Reform Party state chairmen have certified Patrick Buchanan and Ezola Foster as the Reform Party Presidential and Vice Presidential candidates and Mr. Hagelin and Mr. Goldhaber will be listed on the general election ballots as Natural Law Party candidates.⁶

Thus, based upon our review of the letters and supporting documentation, this Office concurs with the Audit Division that John Hagelin and Nat Goldhaber have not established their eligibility to receive pre-election payments under 26 U.S.C. § 9006.

IV. INITIAL DETERMINATION REGARDING THE AMOUNT OF THE ENTITLEMENT

Under 26 U.S.C. § 9004(a)(2), the amount of the Reform Party candidates' entitlement would be the proportionate amount of the funding available for major party general election candidates, based on the ratio of the total popular votes received by the Reform Party in 1996, compared to the average of the total popular votes received by the major party candidates for President in that election. See 26 U.S.C. § 9004(a)(2); 11 C.F.R. § 9004.2(b). By limiting the entitlement to an aggregate amount, 26 U.S.C. § 9004(a)(2)(A) establishes one sum of money for the candidates of a minor party. Using this formula, the Reform Party's ratio of popular votes received as compared to those received by the major party candidates is approximately .1867 (or 18.67%). Applying this ratio toward the amounts to which the major party candidates are entitled (.1867 x \$67,560,000), the Reform Party candidates' entitlement will be \$12,613,452.

V. ADDITIONAL ISSUES

As a result of a competing application for Reform Party pre-election funding and various news reports, several issues have been raised regarding the Commission's certification of the public funds for the Reform Party candidates. First, in addition to John Hagelin and Nat Goldhaber, Patrick Buchanan and Ezola Foster also have submitted candidate agreement and certification letters pursuant to 26 U.S.C. § 9003.⁷ It appears that Mr. Buchanan and Ms. Foster

⁵ Statements of Organization filed by state party affiliates are signed under penalty of perjury. Of the six state Natural Law Parties listed by Mr. Hagelin, it appears that three are registered with the Commission but do not indicate a relationship with the Reform Party in their Statements of Organization, one state Natural Law Party has been terminated, and two do not have state Natural Law Party affiliates registered with the Commission.

⁶ This Office's research reveals that in some states both Mr. Hagelin and Mr. Buchanan may appear as Reform Party presidential candidates. For example, Minnesota's ballot access laws allow two candidates for the same office to appear under the same party affiliation.

⁷ On August 25, 28, and 29, 2000, Mr. Buchanan and Ms. Foster submitted documentation to the Commission in order to confirm their access to ten state general election ballots as the Reform Party Presidential and

met the applicable conditions to receive Reform Party payments on August 29, 2000.⁸ 11 C.F.R. § 9005.1(b). However, Mr. Hagelin and Mr. Goldhaber have not provided documentation that demonstrates their access to ten or more state general election ballots as the Presidential and Vice Presidential candidates for the Reform Party, nor does the Commission possess evidence of such access. See 26 U.S.C. § 9002(2)(B); 11 C.F.R. § 9002.2(a)(2).

Second, concerns exist about the validity of state ballot access procedures and Reform Party rules as they pertain to selecting a Reform Party nominee. The Fund Act's definition of "candidate" explicitly requires the Commission to rely on the states' determinations of who appears on the general election ballot for each party. See 26 U.S.C. § 9002(2)(B); 11 C.F.R. § 9002.2(a)(2). In our view, the Commission should not entangle itself in the complexities of party rules or procedures as the Fund Act does not define eligibility in terms of a political party's actions. Thus, the Commission should not substitute its own judgment for that of a state with regard to who should appear on a state ballot as a party nominee.

Next, in light of competing factions of the party, a question has arisen as to whether a Reform Party exists, and if it does, which faction is the "true" Reform Party. The Commission's regulations indicate that a "political party" is an association that nominates or selects an individual for federal office whose name appears on the general election ballot as the candidate for that association. See 11 C.F.R. § 9002.15. As Mr. Hagelin and Mr. Goldhaber have obtained access to the ballot in Colorado, Illinois and Washington as Reform Party candidates, the Reform Party, under whose designation they run, meets the definition of a "political party." By certifying Mr. Hagelin and Mr. Goldhaber as the Presidential and Vice Presidential nominees of the Reform Party on the general election ballot, these states have recognized that faction of the Reform Party.

Finally, questions about whether the Commission should even make a determination on Mr. Hagelin and Mr. Goldhaber's application have arisen. The Commission has the statutory obligation to certify to the Secretary of the Treasury payment to eligible candidates in the full amount to which they are entitled not later than 10 days after they have met all applicable conditions for eligibility under the Fund Act. 26 U.S.C. § 9005(a). See also 11 C.F.R. § 9005.1(b). The statute provides that the Commission "shall certify to the Secretary of the Treasury for payment" to such candidates who are eligible to receive funds under the Fund Act. It is well established law that the use of "shall" in a statute is mandatory and not merely directive

Vice Presidential candidates. Additionally, this Office is in receipt of requests by the American Reform Party to split the Reform Party federal funds among three candidates: John Hagelin, Patrick Buchanan and Ralph Nader. This Office has yet to receive an application for general election public funding from Mr. Nader or certifications from ten states where Mr. Nader is on the general election ballot as a Reform Party Presidential candidate.

⁸ In light of the last state's deadline for candidate certification by party or by petition for the general election ballot, Mr. Hagelin's attempt to submit documentation of his ballot status as the Reform Party Presidential candidate could continue as late as 14 days after September 15, 2000. However, the Commission, on written request by Mr. Hagelin, may extend the deadline for filing such letter as long as the deadline is prior to the date of the general election.

when applied to action by a public agency or official.⁹ There is no legislative history or established Commission practice indicating that the ten day time period is not mandatory. Moreover, the courts have held that the Commission cannot delay certification of eligible candidates for public funds absent patent irregularities suggesting the possibility of fraud in view of the fundamental First Amendment rights of free speech that are at stake. *See In re Carter-Mondale v. FEC*, 642 F.2d 538, 553 (D.C. Cir. 1980); *Committee to Elect Lyndon LaRouche v. FEC*, 613 F.2d 834, 843 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980). In our view, the Fund Act and the Commission's regulations obligate the Commission to make an initial determination on Mr. Hagelin and Mr. Goldhaber's application. *See* 26 U.S.C. § 9005; 11 C.F.R. § 9005.1(b). Mr. Hagelin and Mr. Goldhaber assert that they submitted sufficient documentation to accompany their pre-election funding application on September 1, 2000. Therefore, we believe that the Commission has a duty to make initial and final determinations on that application. Any Commission action on the application can be appealed to the United States Court of Appeals for the District of Columbia Circuit.¹⁰ 26 U.S.C. § 9011(a).

VI. CONCLUSION

To date, Mr. Hagelin and Mr. Goldhaber have not submitted certification that they are on the ballot as Reform Party candidates in ten or more states. *See* 26 U.S.C. § 9002(2); 11 C.F.R. § 9002.2(a)(2). Accordingly, this Office advises that the Audit Division recommend that the Commission make an initial determination that Mr. Hagelin and Mr. Goldhaber are not entitled to pre-election funding.¹¹

⁹ *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (shall is mandatory, "which normally creates an obligation impervious to judicial discretion," citing *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947)); *Association of Civilian Technicians, Montana Air Chapter No. 29 v. Federal Labor Relations Authority*, 22 F.3d 1150, 1153 (D.C. Cir. 1994) ("The word 'shall' generally indicates a command that admits no discretion on the part of the person instructed to carryout the directive. *See Eportal Ltd. v. United States*, 902 F.2d 45, 50 (D.C. Cir. 1990"). *Cf. Buckley v. Valeo*, 519 F.2d 821, 893 (D.C. Cir. 1975) *aff'd in part and rev'd in part on other grounds* (Even though FECA says "shall" at 2 U.S.C. § 437g(a)(7), Attorney General still has discretion whether to take referrals from FEC.)

¹⁰ A memorandum from the Office of General Counsel regarding certain litigation issues that have been raised will be separately circulated to the Commission.

¹¹ This Office has also advised that the Audit Division recommend that the Commission make an initial determination that Mr. Buchanan and Ms. Foster are entitled to \$12,613,452. Assuming all other requirements for eligibility are met, certification to the United States Treasury will be made once the procedures under 11 C.F.R. § 9005.1(b) have been satisfied. If Mr. Hagelin and Mr. Goldhaber were to establish their listing as the Reform Party candidates in ten or more states prior to the Commission's final determination regarding Mr. Buchanan's entitlement to federal funding, such a situation would raise the issue of whether the funds should be split between the two sets of candidates. As the Fund Act creates one sum of money for the Reform Party candidates, once the Commission makes a final determination regarding the full amount of those funds, any subsequent application for those funds could not be certified. This memorandum will also serve as notice to Mr. Hagelin that another candidate has submitted a complete application for pre-election funding as a Reform Party candidate.

Memorandum to Robert J. Costa
Letter of Candidate Agreements --
John Hagelin and Nat Goldhaber (LRA #595)
Page 7

Therefore, the Office of General Counsel concludes that: (1) Reform Party candidates are entitled to pre-election funding; (2) the letters of candidate agreements and certifications, along with documents demonstrating Reform Party ballot access in at least ten states, submitted by Mr. Hagelin and Mr. Goldhaber do not meet the applicable requirements of the Fund Act and the Commission's regulations; and (3) the Commission should make an initial determination that John Hagelin and Nat Goldhaber are not entitled to pre-election public funding for the general election.

Staff Assigned:

Rhonda J. Vosdingh
Angela Whitehead Quigley
Holly J. Baker

September , 2000

Mr. John Hagelin
c/o Hagelin 2000
P. O. Box 1900
Fairfield, Iowa 52556

Dear Mr. Hagelin:

This letter is to advise you that on <date>, the Federal Election Commission made an initial determination that you as a Presidential candidate in the 2000 general election and Mr. Nat Goldhaber as the Vice Presidential candidate do not meet the eligibility requirements under 11 CFR §9003.1(a)(2) and have not established eligibility to receive a payment under 26 U. S. C. §9006(b) from the Presidential Election Campaign Fund. Attached is a copy of the staff report upon which the Commission based its decision and which contains the legal and factual reasons for its determination as required by 11 CFR §9005.1(b)(1).

Under 11 CFR §9005.1(b)(2) and (3) you may submit within 15 days, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if you so desire. The Commission will consider any written legal or factual materials timely submitted in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action.

Should you have any questions regarding this matter, please contact Mr. Raymond Lisi of the Audit Division at 202-694-1200 or toll free at (800) 424-9530.

Sincerely,

Darryl R. Wold
Chairman

Enclosure as stated

Attachment IV

September , 2000

Mr. Nat Goldhaber
c/o Hagelin 2000
P. O. Box 1900
Fairfield, Iowa 52556

Dear Mr. Goldhaber:

This letter is to advise you that on <date>, the Federal Election Commission made an initial determination that you as a Vice Presidential candidate in the 2000 general election and Mr. John Hagelin as the Presidential candidate do not meet the eligibility requirements under 11 CFR §9003.1(a)(2) and have not established eligibility to receive a payment under 26 U. S. C. §9006(b) from the Presidential Election Campaign Fund. Attached is a copy of the staff report upon which the Commission based its decision and which contains the legal and factual reasons for its determination as required by 11 CFR §9005.1(b)(1).

Under 11 CFR §9005.1(b)(2) and (3) you may submit within 15 days, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if you so desire. The Commission will consider any written legal or factual materials timely submitted in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action.

Should you have any questions regarding this matter, please contact Mr. Raymond Lisi of the Audit Division at 202-694-1200 or toll free at (800) 424-9530.

Sincerely,

Darryl R. Wold
Chairman

Enclosure as stated

