FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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April 10, 1996

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON MONTANA STATE DEMOCRATIC CENTRAL COMMITTEE

Attached please find a copy of the final audit report and related documents on Montana State Democratic Central Committee which was approved by the Commission on April 1, 1996.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library

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REPORT OF THE AUDIT DIVISION
ON

Montana State Democratic Central Committee

Approved April 1, 1996

FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.

TABLE OF CONTENTS

MONTANA STATE DEMOCRATIC CENTRAL COMMITTEE

	Page
Executive Summary	1
Final Audit Report	3
Background	3
Findings	5
Legal Analysis	29
Transmittal to Committee	33
Chronology	35

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FINAL AUDIT REPORT
ON
MONTANA STATE DEMOCRATIC CENTRAL COMMITTEE

EXECUTIVE SUMMARY

The Montana State Democratic Central Committee (the Committee) registered with the Comptroller General of the United States on August 24, 1972 and maintains its headquarters in Helena, Montana.

The audit was conducted pursuant to 2 U.S.C. Section 438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The findings of the audit were presented to the Committee at an exit conference held subsequent to the completion of fieldwork and later in an interim audit report. The Committee's response to those findings are included in this final audit report.

The following is an overview of the findings contained in the final audit report.

Use of Funds from a Non-federal Account - 11 CFR Sections 102.5(a) and 106.5(g). Although 11 CFR §106.5(g)(1) requires expenditures for shared federal and non-federal expenses to be paid from a federal account, the Committee paid most shared expenses from a non-federal account. These expenditures from the non-federal account were reported on the Committee's federal disclosure reports. Transfers were made at regular intervals from a federal account to the non-federal account to fund the federal portion of shared expenses. Sufficient funds were transferred to the non-federal account to fund the federal share of joint expenses during the entire audit period.

Committee representatives noted that changes to the Committee's system have been implemented to comply with 11 CFR §106.5.

Excessive Expenditures on Behalf of a Congressional Candidate - 2 U.S.C. Section 441(a). The Audit staff reviewed coordinated expenditures and determined that expenditures were made on behalf of Representative Pat Williams, which exceeded allowable limitations by $7,972. It was also recognized that

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the Pat Williams Campaign Committee donated $39,000 in excess campaign funds to the Committee, and that the Committee could submit a statement designating part of this donation as a refund of the excess contribution.

In response to the interim audit report, the Committee stated that it had received the necessary authority from the national party committee to make additional coordinated expenditures; but no written record of the transfer of this authority could be located. Further, in view of conflicting U.S. Postal regulations, the Committee could only designate a portion ($2,181) of the transfer from the Williams campaign as a refund; thereby, reducing the amount in excess of the expenditure limitation to $5,791.

<u>Disclosure of Financial Activity, Contributions and Disbursements</u> - 2 U.S.C. Sections 434(b)(1)-(5). Reported totals for receipts and disbursements were understated by $33,326 and $229,353 respectively, for the audit period. Beginning and ending cash were also misstated. Further, contributions from individuals in the amount of $11,265 and contributions from political committees in the amount of $11,874 were not itemized as required. Finally, disbursements amounting to $537,081 had not been disclosed as required.

In response to the interim audit report, the Committee filed amended disclosure reports which materially corrected the public record.

<u>Contributions to and/or Expenditures on Behalf of Candidates Resulting from the Committee's Get-Out-The-Vote Activities</u> - 2 U.S.C. Sections 441a(d) and 11 CFR Sections 100.8(b), 106.1 and 106.5. The Audit staff determined that the Committee made contributions to and/or expenditures on behalf of the Pat Williams for Congress which exceeded the allowable limitations; and, that the Committee made unauthorized expenditures on behalf of the Clinton/Gore '92 Committee.

In response to the interim audit report, the Committee noted that there are more than sufficient funds remaining from the $39,000 donation of excess funds from the Williams campaign to offset any amounts exceeding allowable limitations. However, based on the documentation provided, there remained unauthorized expenditures on behalf of the Clinton/Gore '92 Committee totaling $5,528.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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REPORT OF THE AUDIT DIVISION ON THE MONTANA STATE DEMOCRATIC CENTRAL COMMITTEE

I. Background

A. Audit Authority

This report is based on an audit of the Montana State Democratic Central Committee (the Committee), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to 2 U.S.C. §438(b) which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. Audit Coverage

The audit covered the period January 1, 1991 through December 31, 1992. The Committee reported1/ a beginning cash balance on January 1, 1991 of $15,027; total receipts for the period of $910,849; total disbursements for the period of $1,098,648; and an ending cash balance of ($172,772).

C. Committee Organization

The Committee registered with the Comptroller General of the United States on August 24, 1972 and maintains its headquarters in Helena, Montana.

1/ The figures cited in this report are rounded to the nearest dollar.

The Treasurers of the Committee during the period covered by the audit were Kathleen K. Blehm from January 29, 1990 through December 23, 1991, and Torian Donohoe from December 23, 1991 through December 31, 1992. The current Treasurer is Peggy Egan.

To manage its federal financial activity, the Committee utilized nine federal bank accounts during the audit period. From these accounts the Committee made approximately 600 disbursements. Approximately 16,000 contributions (about $580,000) from individuals were received. In addition, the Committee received 211 contributions ($198,000) from political committees as well as offsets to operating expenditures ($86,000), a loan ($5,900) and transfers from its non-federal committees ($1,800) for shared expenses.2/

C. <u>Audit Scope and Procedures</u>

The audit covered the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations;

2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Findings II.D. & E.);

4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.F.);

5. proper disclosure of campaign debts and obligations;

6. accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records (see Finding II.C.);

7. adequate recordkeeping for campaign transactions

2/ As presented at Finding II.C., the Committee's reports overstated receipts and disbursements.

8. proper disclosure of the allocation of costs associated with administrative expenses and activities conducted jointly on behalf of federal and non-federal elections and candidates (see Finding II.F.);

9. contributions to, or expenditures made on behalf of candidates in excess of statutory limitations (see Findings II.B. and II.G.); and

10. other audit procedures that were deemed necessary in this situation, such as the proper accounting and disclosure of shared activity (see Finding II.A.).

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

II. Audit Findings and Recommendations

A. Use of Funds from a Non-federal Account

Sections 102.5(a)(1)(i) and (ii) of Title 11 of the Code of Federal Regulations state, in part, that a political committee shall either: establish a separate federal account in a depository, such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act and all disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account; or, establish a political committee which shall receive contributions subject to the prohibitions and limitations of the Act, regardless of whether such contributions are for use in connection with federal or non-federal elections.

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations provides that committees that have established separate federal and non-federal accounts under 11 CFR 102.5 shall pay the expenses of joint federal and non-federal activities as follows: (i) pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or (ii) establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activity.

Based on our review of the Committee's financial operations for the audit period, the Audit staff determined that activity from federal and non-federal accounts was included in disclosure reports filed with the Commission. The Committee maintained as many as eight bank accounts (6 federal and 2 non-federal) with Montana financial institutions. In addition, the Committee also maintained three bank accounts in conjunction with a fundraising representative in California (Gordon-Schwenkmeyer).

Although 11 CFR §106.5(g)(1) requires joint expenditures to be paid from a federal account, the Committee paid most shared expenses and other joint campaign activities from a non-federal operating account. These expenditures from the non-federal operating account were disclosed on Schedules H filed as part of Committee disclosure reports. Transfers were made at regular intervals from a Committee federal account to this non-federal operating account to fund the federal portion of shared expenses. These transfers were not included in the Committee's reported activity (see Finding II.C.), nor itemized on Schedules B or H filed as part of its disclosure reports (see Finding II.F.). The Audit staff's analysis indicates that sufficient funds were transferred to the non-federal account by the Committee to maintain a positive (or credit) balance with respect to the federal share of joint expenses during the entire audit period. Some shared operating expenses and other campaign activities were paid directly from the federal accounts. These payments were included as part of Committee disclosure reports and itemized on Schedules B or H.

Federal and non-federal moneys were deposited into appropriate accounts maintained by the Committee. Recordkeeping and documentation with respect to receipts by the Committee were maintained at its Montana headquarters. Moneys raised for the Committee by a California fundraising firm were transferred at regular intervals to one of the Committee's Montana bank accounts. Information relative to a portion of these moneys was maintained by the fundraising firm on a separate data base; supporting documentation was not maintained by the fundraising firm (see Finding II.D.). Committee disclosure reports failed to include activity with respect to some federal accounts and, in limited instances, included information for receipts deposited into non-federal accounts (see Finding II.C.).

Committee representatives advised the Audit staff that changes to the Committee's system have been implemented to comply with 11 CFR §106.5.

Subsequent to the exit conference, the Committee submitted a narrative which notes that the paying of these expenses was "not done to thwart federal campaign law, but resulted from making a consistent procedural error of paying almost all expenses out of the non-federal account (the exact reverse of current law)." The Committee continues by stating that it "transferred allowable federal monies into the non-federal account to cover these expenses."

The interim audit report recommended that, absent a demonstration that it did not make disbursements from its non-federal account for the purpose of financing federal activity, the Committee detail in writing the changes it has implemented to comply with the requirements of 11 CFR §102.5(a)(1) as well as any other comments and documentation it believed relevant to this matter.

In response to the interim audit report, the Committee stated that:

> "In 1994, the Committee hired and trained a full-time bookkeeper to further ensure the Committee's compliance with FEC regulations during the most intense portion of the campaign cycle. The bookkeeper position is now a permanent position within the Committee. The new bookkeeper recently hired for this position went through an extensive one month training with a great deal of focus placed specifically on complying with FEC requirements.
>
> The bookkeeper is responsible for keeping abreast of any changes in reporting statutes, record keeping [sic], as well as working with the Committee's Treasurer and Assistant Treasurer to file reports that are required by the Federal Election Commission. The bookkeeper is also required to be prepared and organized to provide any necessary information requested by the FEC.
>
> In addition, the Committee's new Treasurer and Board members are trained as to the FEC requirements for shared federal/non-federal activity."

B. <u>Excessive Expenditures on Behalf of a Congressional Candidate</u>

Section 441a(d)(1) of Title 2 of the United States Code states, in relevant part, that notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a state committee of a political party, including any subordinate committee of a state committee, may make expenditures in connection with the general election campaign of candidates for federal office, subject to the limitations contained in paragraph (3) of this subsection.

Sections 441a(c) and (d)(3) of Title 2 of the United States Code state, in relevant part, that the national committee of a political party, or a state committee of a political party, including any subordinate committee of a state committee, may not make any expenditure in connection with the general election campaign of a candidate for federal office in a state who is affiliated with such party which exceeds, in the case of a candidate for election to the office of Senator, or of Representative from a state which is entitled to only one Representative, the greater of: (i) 2 cents multiplied by the voting age population of the state; or (ii) $20,000, as adjusted for the increases in the Consumer Price Index.

Section 441a(a)(7)(B)(i) of Title 2 of the United States Code states that expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate.

Section 110.2(b)(1) of Title 11 of the Code of Federal Regulations states that no multicandidate political committee shall make contributions to any candidate, his or or authorized political committees or agents with respect to any election for federal office which, in the aggregate, exceed $5,000.

Beginning in 1991, Montana's congressional districts were reduced from two to one. The 1992 expenditure limitation for a Representative from a state entitled to only one Representative is $55,240.3/

The Audit staff reviewed coordinated expenditures reported by the Committee totaling $50,765, made on behalf of Representative Pat Williams. Documentation supporting these expenditures indicated they were made for the production of two direct mail pieces and the use of space provided by county democratic committees.

Committee records also contained documentation detailing postage costs totaling $17,447, associated with the two direct mail pieces, which were not reported by the Committee as coordinated expenditures made on behalf of a federal candidate.

As a result, the Audit staff determined that coordinated expenditures totaling $68,212 ($50,765 + $17,447) were made on behalf of Representative Pat Williams, which exceeds the expenditure limitation by $12,972 ($68,212 - $55,240). The Audit staff also noted that the Committee could have contributed $5,000 to the Williams campaign but had not. This would decrease the amount in excess of the expenditure limitation to $7,972 ($12,972 - $5,000).

3/ See FEC Record, Vol. 18, No. 3, March 1992. In 1992, states with more than one representative had a 2 U.S.C. §441a(d) limit of $27,620 for each candidate.

The Audit staff presented this matter to Committee representatives at the exit conference. A Committee representative said that the state had gone from two representatives to one, which he believed gave the Committee a higher limit. The Audit staff advised the Committee that the higher limit of $55,240 had been used in our analysis.

Subsequent to the exit conference, the Audit staff was provided with a copy of a letter, dated June 15, 1993, from the Democratic Congressional Campaign Committee (DCCC) to the Commission noting that "the 1992 combined national and state party limit on behalf of a U.S. House candidate for the state of Montana is $110,480."4/

However, as of this date, the Audit staff is unaware of any correspondence authorizing the Committee to avail itself of the national party limit prior to the expenditure limitation being exceeded.

The interim audit report recommended that the Committee demonstrate that expenditures totaling $7,972 made on behalf of Pat Williams were not in excess of the expenditure limitations at 2 U.S.C. §441a(d)(1). Evidence submitted was to include an explanation and documentation to establish the extent of the Committee's coordination with the Williams campaign or its agents with regard to these expenditures, and any other explanation or documentation that the Committee believed was relevant to this issue.

Absent a demonstration that the Committee did not exceed the spending limitation, the interim audit report noted the Committee should seek a refund of $7,972 from the Pat Williams campaign. However, that report recognized that the Pat Williams Campaign Committee donated $39,000 in excess campaign funds to the Committee on November 6, 1992, and that the Committee could submit a statement designating part of this donation as a refund of the excess expenditures.

In response to the interim audit report, the Committee stated that:

> "Although the Committee believed it had received the necessary additional authority from the DCCC to make additional coordinated direct mail expenditures (individuals involved in 1992 recollect phone conversations between the Committee and the DCCC to arrange the transfer of this authority) neither the Committee nor the DCCC can find a written record of the transfer of this authority. The Committee notes that its

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4/ The DCCC reported that $24,802 of its $55,240 limitation had been spent as of 12-31-92.

coordinated expenditures, when combined with the DCCC's expenditures,...do not exceed the combined aggregate limit of $110,480 that the national and state party could spend on behalf of a U.S. House candidate in Montana in 1992."

In its response, the Committee also stated that it has designated $2,181 of the Williams donation as a refund for the rent expenditures, which lowers the amount in excess of the expenditure limitation to $5,791 ($7,972 - $2,181).

The Committee's response continued by noting that "United States Postal Service regulations preclude the Committee from seeking a specific designation for any mailing costs done on behalf of the Williams Committee". The Committee has received a not-for-profit mailing permit and is precluded by Section E370.5.7, Domestic Mail Manual, from receiving any funds earmarked for any mailing from any candidate or other outside source, including a local party committee. The Committee, noting the conflicts between the two regulatory schemes, states that if it were to designate a portion of the Williams Committee donation as a refund to the Committee as recommended, it "could result in a serious violation of Postal Service Regulations".

The response further stated that, "based on the foregoing, the Committee believes that the Audit Division may itself give consideration to the excess funds donation without such a designation, and decide to attribute it to the mailing."

Based on its response, the Committee has exceeded the limitation at 2 U.S.C. §441a(d) by $5,791. Notwithstanding the above, if the Williams donation is considered, more than sufficient funds remain to offset the amount in excess of the limitation.

C. Misstatement of Financial Activity

Sections 434(b)(1), (2) and (4) of Title 2 of the United States Code state, in relevant part, that each report shall disclose the amount of cash on hand at the beginning of each reporting period, the total amount of all receipts, and the total amount of all disbursements for the period and calendar year.

The Audit staff's reconciliation of the Committee's reported activity to its bank activity for the audit period indicated the following misstatements:

1. January 1, 1991 through December 31, 1991

a. Receipts

The Committee reported total receipts of $386,654 for 1991. Utilizing bank records, the Audit staff determined that the Committee should have reported total receipts of $347,254. Therefore, the Committee's receipts were overstated by a net amount of $39,400. This overstatement was the result of the following:

° receipts deposited in Unity '90 and Leadership '90 accounts not reported	$ 9,654
° receipts deposited into California Bank Accounts under reported	$141,872
° Refunds and Rebates not reported	$ 405
° mathematical errors	($135,153)
° non-federal receipts reported	($4,383)
° interaccount transfers reported	($50,038)
° miscellaneous reconciling adjustment	($1,757)
Total (Net) Overstatement	($39,400)

b. Disbursements

The Committee reported total disbursements of $393,963 for 1991. Based on our review of bank records, the Audit staff determined that the Committee should have reported total disbursements of $357,000. Therefore, the Committee's reported disbursements were overstated by $36,963. The net overstatement was the result of the following:

° disbursements from Unity '90 and Leadership '90 accounts not reported	$24,080
° disbursements from California bank accounts over-reported	($10,000)
° interaccount transfers reported	($50,038)
° miscellaneous reconciling adjustment	($1,005)
Total (Net) Overstatement	($36,963)

c. Cash on Hand

The Committee reported an ending cash on hand balance on December 31 of $7,719. The Audit staff determined that this was overstated by a net amount of $1,933, which resulted from

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the misstatements detailed above and an understatement ($504) of the cash balance at 1-1-91. The correct ending cash was determined to be $5,786.

2. January 1, 1992 through December 31, 1992

a. Receipts

The Committee reported total receipts of $524,194 for 1992. The Audit staff determined, based upon bank records, that the Committee should have reported total receipts of $530,268. Therefore, the Committee's receipts were understated by a net amount of $6,074. This understatement was the result of the following:

° receipts from Gordon-Schwenkmeyer (CA) Account #3 not reported	$ 9,490
° refunds/rebates not reported	$ 590
° non-federal receipts reported	($5,798)
° miscellaneous reconciling adjustment	$1,792
Total (Net) Understatement	$6,074

b. Disbursements

The Committee reported total disbursements of $704,685 for 1992. The Audit staff's review of bank records determined that the Committee should have reported total disbursements of $512,295. Therefore, the Committee's reported disbursements were overstated by $192,390. The net overstatement was the result of the following:

° Committee transfers to non-federal account not reported	$262,135
° October checks and wire transfers not reported	$103,444
° payments to Gordon-Schwenkmeyer not reported	$ 73,456
° non-federal disbursements reported	($631,157)
° miscellaneous reconciling adjustment	($268)
Total (Net) Overstatement	($192,390)

c. Cash on Hand

The Committee reported an ending cash on hand balance on December 31 of ($172,772). The Audit staff determined that this was understated by a net amount of $196,531, which resulted from the misstatements detailed above and an overstatement ($1,933) of the cash balance at 1-1-92. The correct ending cash was determined to be $23,759.

At the exit conference, the Audit staff explained that these misstatements were caused primarily by the Committee's reporting of non-federal receipts and disbursements; as well as the failure to report some federal receipts and disbursements. Copies of the consolidated bank reconciliations with adjustments were provided to the Committee. Committee representatives agreed to file amended reports.

The interim audit report recommended that the Committee file amended reports for calendar years 1991 and 1992 to correct the misstatements of financial activity described above.

In response to the interim audit report, the Committee filed amended disclosure reports that materially corrected the misstatements of financial activity.

D. Failure to Itemize Contributions from Individuals.

Section 434(b)(3)(A) of Title 2 of the United States Code states that each report under this section shall disclose the identification of each person who makes a contribution during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, or in any lesser amount if the reporting committee should so elect, together with the date and amount of any such contribution.

Section 431(13) of Title 2 of the United States Code states that the term "identification" means: in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

During fieldwork, the Audit Staff's limited review of contributions from individuals identified contributions from 18 individuals, totaling $11,265, which were not itemized as required. The Audit staff could not discern the reason these receipts were not itemized, but noted that these contributions all occurred during 1992.

At the exit conference, Committee representatives were provided with schedules listing the contributions from individuals that were not itemized. Committee representatives indicated appropriate amendments would be filed.

The interim audit report recommended that the Committee file Schedules A to amend its disclosure reports to correctly itemize the above noted contributions.

In response to the interim audit report, the Committee filed the recommended Schedules A.

E. Failure to Itemize Contributions from Political Committees

Section 434(b)(3) of Title 2 of the United States Code, states, in relevant part, that each report under this section shall disclose the identification of each: political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution; and affiliated committee which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, regardless of whether such committees are affiliated, together with the date and amount of such transfer.

Section 431(13) of Title 2 of the United States Code states that the term "identification" means: in the case of any person, other than an individual, the name and the address of such person.

During fieldwork, the Audit staff reviewed 212 contributions totaling $198,078 from political action committees, party committees, and other political committees. Of these contributions, the Committee failed to itemize 105 contributions totaling $11,874. Many of these receipts were transfers from democratic county committees of individual memberships to the Democratic Party solicited for the Committee. It is likely these receipts were recorded on the Committee's database as from the individual members.

At the exit conference, the Audit staff gave Committee representatives a copy of a schedule identifying the contributions that were not itemized to assist when filing their amendments. Committee officials made no direct response to this matter, but later stated they were willing to file all necessary amendments.

The interim audit report recommended that the Committee file Schedules A to amend its disclosure reports to itemize the contributions. In response, the Committee filed the recommended Schedules A.

F. Reporting of Disbursements

Sections 434(b)(5)(A) and (C) of Title 2 of the United States Code state, in part, that each report shall disclose the name and address of each person to whom an expenditure in an aggregate amount or value in excess of $200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expenditure. Further, each report shall disclose any affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of affiliation, together with the date and amount of transfers.

Section 106.5(g)(1) of Title 11 of the Code of Federal Regulations provides that committees that have established separate federal and non-federal accounts under 11 CFR 102.5 shall pay the expenses of joint federal and non-federal activities as follows: (i) pay the entire amount of an allocable expense from its federal account and shall transfer funds from its non-federal account to its federal account solely to cover the non-federal share of that allocable expense; or (ii) establish a separate allocation account into which funds from its federal and non-federal accounts shall be deposited solely for the purpose of paying the allocable expenses of joint federal and non-federal activities.

The Audit staff noted that during 1991, the Committee made 29 transfers totaling $200,894 from its federal accounts to its non-federal account that were not itemized as required.

During 1992, the Committee made 27 such transfers totaling $260,468 that were not itemized. In addition, the Committee made 34 expenditures to vendors totaling, $75,719, from its federal account, which were not itemized.

The noted errors resulted from the Committee's reporting of disbursements made from a non-federal account used for joint expenses and other campaign related activity; as such the disbursements were considered interaccount transfers and not reported (see Finding II.A.).

The Audit staff discussed these matters with Committee representatives at the exit conference, who indicated amendments would be filed.

The interim audit report recommended that the Committee file:

- Schedules H-4 (for Line 21a) itemizing only expenditures for joint expenses disbursed from federal accounts;
- Schedules B (for Line 21b) itemizing all transfers from the federal account to the non-federal account; and
- (Memo) Schedules H-4 which detail all joint expenses disbursed from the non-federal account (to support the transfers from the federal account to be reported on Schedule B for Line 21b).

In response, the Committee filed the recommended Schedules H-4 and Schedules B.

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G. Contributions to and/or Expenditures on behalf of Candidates Resulting From the Committee's Get-Out-the Vote Activities

Section 441a(d)(1) of Title 2 of the United States Code states that notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a state committee of a political party, including any subordinate committee of a state committee, may make expenditures in connection with the general election campaign of candidates for federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection. Section 441a(d)(3) of Title 2 of the United States Code states, in relevant part, that the national committee of a political party, or a state committee of a political party, including any subordinate committee of a state committee, may not make any expenditure in connection with the general election campaign of any candidate for federal office in a state who is affiliated with such party which exceeds, in the case of a candidate for the election to the office of Representative from a state which is entitled to only one Representative, the greater of: (i) 2 cents multiplied by the voting age population of the state as certified; or, $20,000, as adjusted for the increases in the Consumer Price Index provided for under 2 U.S.C. §441a(c).

Sections 100.8(b)(16)(i),(ii),(iii),(iv) and (vii) of Title 11 of the Code of Federal Regulations provide, in relevant part, that the payment by a state or local committee of a political party of the costs of campaign materials (such as handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure, provided that the following conditions are met:

- Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this section, the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

- The portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

- Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office.

- Such materials are distributed by volunteers and not by commercial or for-profit organizations.

- Campaign materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

Sections 100.8(b)(18)(i), (ii), (iv), (v) and (vii) of Title 11 of the Code of Federal Regulations state, that the payment by a state or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the purpose of influencing the election of such candidates provided that the following conditions are met:

- Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of this section, the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

- The portion of the costs of such activities allocable to federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

- If such activities include references to any candidate(s) for the House or Senate, the costs of such activities which are allocable to that candidate(s) shall be an expenditure on behalf of such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

- Payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not an expenditure when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR section 104.3.

- Payments made from funds donated by a national committee of a political party to a state or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

Section 106.1 of Title 11 of the Code of Federal Regulations provides, in relevant parts, that expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived, to include payments made for the cost of certain voter registration and get-out-the-vote activities exempted by 11 CFR §100.8(b)(18) which contain references to any candidate(s) for the House of Representatives or Senate of the United States, unless such reference is incidental to the overall activity. Clearly identified means: the candidate's name appears; a photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference.

Section 106.5(e) of Title 11 of the Code of Federal Regulations provides, in relevant part, that each state party committee shall allocate its expenses for activities exempt from the definition of expenditure under 11 CFR 100.8(b)(18), when conducted in conjunction with non-federal election activities, according to the proportion of time or space devoted in a communication. In the case of a publication, this ratio shall be determined by the space devoted to federal candidates or elections as compared to the total space devoted to all federal and non-federal candidates or elections. In the case of a phone bank, the ratio shall be determined by the number of questions or statements devoted to federal candidates or elections as compared to the total number of questions or statements devoted to all federal and non-federal candidates or elections.

1. <u>Background</u>

During fieldwork, the Audit staff obtained a copy of the Committee's Coordinated Campaign plan (CC Plan) for 1992. In addition, telephone scripts and disbursement records were available for our review. The CC Plan described the planned use of both phone banks and direct mail in support of the Committee's nominees.

According to the CC Plan, the objective of the phone banks was to "enhance voter identification, follow-up on absentee ballot applications, poll for legislative candidates and make election day GOTV calls." Phone banks would be operated in Montana's twelve largest counties, with a long distance phone bank out of Helena. "This phone bank will operate with more paid phoners and will allow for better polling...In August, paid phone bank supervisors and volunteer phoners will be hired and trained. Legislative candidates will provide volunteers for the phone banks in their area. When necessary, paid phoners will be hired to keep the phone banks operating at full capacity five nights a week. The phone banks will begin operation the first week in September and continue through the election."

In September and early October, the primary purpose of the phone banks was to be voter identification. After absentee ballots were mailed October 1, the phone bank was to follow up on these ballots and begin persuasion and polling calls. Voter ID was to continue whenever the phone banks were available. GOTV reminder calls were to be made the week before the election to identified Democrats who did not apply for the absentee ballots. Paid phoners would be hired only if the phone banks are being run by volunteers at less than 70% of the planned level.

A chart in the CC Plan projects the use of 40 phones; 500 calls per hour of which 400 per hour are completed; 1,500 calls per night; for 60,000 total calls of which 48,000 are completed. This was expected to identify 20,400 Democrats of which 9,600 would be reached prior to election with GOTV reminder calls. The Committee budgeted $36,000 for the phone banks.

With respect to the Committee's phone bank efforts, two documents were provided. One document is entitled "Polling Script for Phone Banks" and the other, "Persuasion Call Instructions".

The script for the first effort (Polling Script for Phone Banks) begins with the caller stating they are "with Northwest Research"5/; and then asking for a choice if the election were held today between George Bush the Republican or Bill Clinton the Democrat. The same is done for Williams or Marlenee (House) and Bradley or Racicot (Governor). The fourth question asks which of four positions on abortion most closely matches your position. Next is a question on Party affiliation and whether that affiliation is "strong" or "just leaning". Finally, a verification of the correct mailing address is made, and, if not available, the birth year is requested.

5/ Northwest Research is an assumed business name registered with the Secretary of State of Montana by the Montana Democratic Party on September 9, 1992. The registration is to expire September 9, 1997.

The second effort (Persuasion Call Instructions) consists of three separate scripts to be used dependent upon whether the calls are made for Clinton, Williams or Bradley. The Williams and Bradley scripts contain two sets of questions, one for pro-choice voters and the other for all other voters. The attached instructions note that volunteers for Williams or Bradley should use their respective scripts; and all others should be asked to use the Clinton script. In addition, fact sheets are provided for each of the candidates detailing their positions on various issues. The caller identifies the candidate on whose behalf they are calling, presents the candidate's position on certain issues, then asks "..can we count on you on Tuesday?"

According to the CC Plan, the voter file would be used to target independent and persuadable voters. The phone banks would be used to identify voters and target persuasion mail. The CC Plan notes at least two pieces of persuasion mail would be developed. A direct mail consultant was to be retained to help produce materials and give direction to the project. Use of the party's bulk mail permit would allow a cost effective means of delivering the message to Montana voters.

In addition to the copy of the Committee's CC Plan, the Audit staff obtained copies of printed materials distributed by the Committee, as well as a cost analysis of the printed matter. This analysis included ratios allocating the cost of these materials (to include applicable postage costs) between the federal and non-federal accounts.

The Audit staff notes that all scripts make specific reference to the candidate for the House of Representatives by name. Further, printed matter sent out based on information developed from the phone banks not only mentions the House candidate by name, but also includes a picture as well as information about the candidate.

As discussed in Finding II.F., most shared expenses, to include coordinated campaign expenditures, were paid from the non-federal account. Deposited into this account during the period 8/92 to 11/92 were moneys totaling $70,783 received from the DNC Non-federal Individual Account; transfers from the Committee's federal account ($93,102); and, contributions from individuals, other committees, and refunds ($169,648).

The Audit staff performed an analysis of the source of funds received by all accounts during the period 8/92 to 11/92 and their application to disbursements made during the period.

Our analysis6/ indicated that no national party funds were used for expenses governed by 11 CFR §100.8(b).

2. <u>Phone Banks</u>

The Audit staff identified phone bank expenses totaling $37,852 paid during the period 8/92 to 11/92. Of these expenses, $8,786 is identified as for "phoners".

At the time of the audit fieldwork, the Audit staff was of the opinion that, based upon the above, the exemption granted under 11 CFR §100.8(b)(18) had been voided:

(1) by the use of paid callers, as evidenced by the payments noted above for "phoners"; and

(2) by the inclusion of non-incidental references to the House candidate;

The absence of information during fieldwork, such as time sheets for all callers, as well as information associating which script was used; and, the number of phone calls made with respect to each script, precluded a precise calculation of the amount of expenditures made on behalf of the two federal candidates (Clinton and Williams). However, under 11 CFR §106.5(e), as cited above, the costs were allocated equally to each candidate: 1/3 to Clinton/Gore; 1/3 to Williams; and, 1/3 to Bradley. This resulted in a $12,617 contribution to each candidate.

At that time, it was concluded that all contributions resulting from the phone bank with respect to the general election made on behalf of Clinton ($12,617) were unauthorized expenditures.7/ Based on the Committee's excessive coordinated campaign contributions already presented at Finding II.B., any additional contributions and/or expenditures on behalf of Pat Williams for Congress arising from the phone banks ($12,617) exceed the allowable limitations. The Audit staff notes that Pat Williams Campaign Committee donated $39,000 in excess campaign funds to the Committee by check dated 11-6-92. At the exit conference, the Audit staff apprised Committee representatives of these matters.

6/ This analysis does not consider other factors such as budgeting and the Committee's knowledge that party funds would be available. Nor does the analysis consider the impact of these factors on the Committee's decision making process.

7/ There is no evidence that the Committee was authorized by the DNC under 11 CFR §110.7(a)(4) to avail itself of DNC's spending limitation. Through 3-31-94 the DNC had used $9,802,789 of its $10,331,703 limitation.

Subsequent to the exit conference, the Committee submitted a narrative response to clarify and address concerns relative to its coordinated campaign effort.

According to the Committee's response, phone banks were used to accomplish three tasks:

(a) Voter identification and polling: "Montana has no voter registration by party so in the election cycle when partisan interest is high the party ran phone banks to identify voter preference on candidates, issues and party. This information is used both for voter contact in the nearest and all future elections and general Party building, appealing to likely supporters to become members of the Party and to attend future Democratic events.

To avoid biasing responses we did not refer to the Democratic Party as the sponsor of these calls, and used a registered DBA (Northwest Research) if asked the source of the calls. No attempt was made in the call to persuade the respondent to vote in a particular manner." The Committee notes that paid supervisors and volunteer callers were used to make calls from the end of August 1992 through Friday, October 30th.

(b) Persuasion calls: "Beginning Saturday, October 31 and running through Monday, November 2, the Committee ran persuasive phone banks to convince voters to support Clinton/Gore, Rep. Williams or the candidate for [G]overnor". Volunteers for Williams and the governor called for their respective candidates and the scripts they used made no mention of any other candidates. Volunteers for Clinton/Gore were joined by paid callers to do persuasion calls. The Committee spent approximately $1,447.23 on paid callers who made Clinton/Gore calls. We now believe this expense was made in error and is not allowable."

(c) Get-out-the-vote calls: "The Committee made calls to voters on election day Tuesday, November 3, to remind them to vote. No mention of any candidate was allowed on these calls. Paid supervisors were used with volunteer and paid callers."

In addition to its narrative response, the Committee submitted a copy of a response to an inquiry made by the Committee to Counsel at the DNC concerning the Committee's CC Plan as presented above.

DNC representatives also advised the Committee that the exemption for phone banks is available only with respect to activity on behalf of the presidential and vice-presidential candidates. Phone banks on behalf of other federal candidates and the cost of paid phone banks undertaken on behalf of the presidential and vice-presidential candidates would constitute expenditures on behalf of those candidates. However, phone bank costs for voter identification and polling activity would not constitute a contribution or expenditure on behalf of any specific candidate since the Democratic Party was not mentioned, nor was there express advocacy of the defeat or election of a candidate.

The interim audit report recommended that the Committee submit any additional documentation and/or an explanation detailing why the use of paid callers and the specific references to the House candidate do not void the exemption from the expenditure limitations provided under 11 CFR §100.8(b)(18).

It was further recommended that the Committee provide documentation for phone bank projects to include but not be limited to:

- scripts used for the voter identification and get-out-the-vote phases of the CC Plan;
- time sheets for all paid callers;
- information associating each paid caller with a specific script or phase of the CC Plan;
- an allocation of phone bank costs, including supporting documentation, to each phase of the program (polling, voter identification, get-out-the vote and voter persuasion) based on the number of calls made for each phase. For phases of the program that utilized more than one script, the cost should be allocated to each script; and
- information detailing how the results of the polling and voter identification phases were utilized.

The interim audit report also recommended that for those expenditures on behalf of the House candidate, the Committee amend its reports and disclose these as 2 U.S.C. §441a(d) expenditures.

Finally, the interim audit report, as noted in Finding II.B., recognized that the Pat Williams Campaign Committee donated $39,000 in excess campaign funds to the Committee on November 6, 1992. Absent a demonstration that the Committee did not make contributions and/or expenditures on behalf of Pat Williams for Congress, which exceeded allowable limitations, it was noted that the Committee could submit a statement designating part of this donation as a refund of the excess expenditures.

In its response to the interim audit report, the Committee acknowledged that unauthorized expenditures may have been made on behalf of federal candidates. With respect to those expenditures on behalf of Pat Williams, the response noted that "[r]egardless of the amount that the Audit Division deems allocable to the Williams Committee from the phone bank program there are more than sufficient funds remaining in the 1992 donation to offset that amount."

The Committee's response continued by disputing the total cost attributed to the phone bank by the Audit staff. The Committee identified an expenditure ($1,750), included in the Audit staff's analysis, for a mailing list which was not received nor utilized until after the election. This would lower the total cost of the phone bank program to $36,102.

The Committee's response also provided scripts used for the GOTV and voter identification phases; information associating paid callers with specific scripts or phases of the CC Plan; and a reasonable allocation of all costs associated with the CC Plan. The response reiterated that the phone bank program lasted for 72 days and involved three distinct phases:

- the polling/voter identification phase from August 24 through October 30, 1992 (68 days), which was used for "...its general mission of 'party building' and to further enhance its already existing voter file";
- the persuasion phase from October 31 through November 2, 1992 (3 days), made calls on behalf of the three above mentioned candidates; and
- the generic GOTV phase on November 3, 1992 (1 day), made calls which made no mention of specific candidates.

The Committee's response concluded by stating that it "believes that the costs associated with the voter identification phase of its phone [bank] program should be deemed as an administrative cost" and as such no candidate allocation is necessary; however, if the Audit Division determined that a portion of the first phase of the program is allocable to federal candidates, the Committee offered its analysis of such costs based upon the approach taken within the Commission's MUR (Matter Under Review) 2581. The MUR utilized an allocation formula for the development costs of a voter file based upon the number of names used.

Based on its calculations, the Committee believed it may have made unauthorized expenditures on behalf of Clinton/Gore totaling $3,510 and excessive expenditures on behalf of Williams totaling $4,550.

The Audit staff has reviewed the materials presented by the Committee and has prepared a revised analysis. The documentation provided clearly indicates paid callers were used for each of the three phases of the phone bank program.

The Committee asserted that the polling/voter identification phase was for party building and to enhance its existing voter file. Further, the Committee noted that the script used during this phase contained "no express advocacy or electioneering." The Committee believes the costs of enhancing their voter file are administrative in nature and fall within the purview of 11 CFR §106.5(a)(2)(i). As such, they would not be allocable to any specific candidates. However, later in its response, the Committee acknowledged that the voter file was used during the persuasion and GOTV phases of this program.

The Audit staff finds no merit in the Committee's argument that, under 11 CFR §106.5, these are administrative costs and therefore not allocable to any specific candidate. This section addresses the allocation of four categories of disbursements, made by committees in connection with both Federal and non-Federal elections. Although one of these categories discusses administrative costs, it seems clear that, based upon the examples provided under this section (rent, utilities, supplies and salaries; except for such expenses directly attributable to a clearly identified candidate), the costs of enhancing a voter list were not contemplated as administrative. Regardless, this section does not address the issue of allocating costs among candidates.

It is the Audit staff's opinion that the costs of the polling/voter identification phase should be apportioned to the other two phases of the CC Plan which made use of the enhanced voter file. The Audit staff's revised analysis utilized the number of calls made with respect to the persuasion and the GOTV phases to apportion the costs of the polling/voter identification phase between those phases. The Committee's response does not note any other use for the information developed at that stage.

The Audit staff's revised analysis further allocated the costs associated with the persuasion phase to each of three candidates identified in the scripts, based on the number of phone calls made.

The total costs associated with the GOTV phase of the phone bank program were allocated to each of the three candidates using the ballot composition method, based on percentages developed during audit fieldwork.

As a result, the Audit staff's revised analysis of costs associated with the phone bank program determined that contributions/expenditures were made on behalf of Williams in an amount which exceeded allowable limitations by $10,667.

The Audit staff concurs that more than sufficient funds remain from the 1992 donation from the Williams campaign to designate as offsetting the contributions/expenditures which exceeded the limitation. Finally, this analysis indicates unauthorized expenditures were made on behalf of Clinton/Gore totaling $5,528.

3. <u>GOTV Direct Mail</u>

Based on available records, the Committee used Artcraft Printers to print 11 brochures/inserts. Of these 11, four (4) do not benefit specific federal candidates. The remaining seven (7) brochures are directed, to varying degrees, at two federal candidates and the candidate for governor.

The Audit staff reviewed printing and postage costs totaling $78,484, as well as the allocation percentages developed by the Committee for these seven brochures. The only problem noted was with some of the allocation percentages developed by the Committee. The Audit staff calculated its percentages for allocating costs based on the proportion of space devoted to each of the candidates within the brochure in accordance with 11 CFR §106.5(e).

As noted above in the Audit staff's analysis, if the mailings are part of a GOTV program conducted under 11 CFR §100.8(b)(18), then use of the House candidate's name and likeness on the printed matter constitutes more than an incidental reference to the candidate and also voids the exemption provided under 11 CFR §100.8(b)(18).

In that case, the Audit staff determined that:

° The Committee made expenditures on behalf of Dorothy Bradley, candidate for Governor, totaling $12,648;

° the Committee made exempt expenditures on behalf of Clinton/Gore totaling $45,190; and,

° the Committee made contributions to and/or expenditures on behalf of Pat Williams for Congress totaling $20,645, which exceed the allowable limitations.

The Audit staff advised Committee representatives that, based on our analysis of their printed materials during fieldwork, it appeared that the Committee made contributions to and/or expenditures on behalf of Pat Williams for Congress in an amount which exceeded allowable limitations by $20,645; in addition to the $12,617 arising from the phone banks and the $7,972 noted in Finding II.B.8/

Subsequent to the exit conference, the Committee submitted a narrative response to clarify and address concerns relative to its coordinated campaign effort.

With respect to the direct mail program, the Committee stated that it "paid for the layout and printing of these pieces, but used mailing lists that the Committee developed to print our own labels and used volunteers to put on the labels and sort the mailing." The Committee acknowledged that these "mailings included persuasive material in support of Clinton/Gore, Rep. Williams and the candidate for Governor, Dorothy Bradley."

In addition to its narrative response, the Committee submitted a copy of a response to an inquiry made by the Committee to Counsel at the DNC concerning the Committee's CC Plan as presented above.

With respect to direct mail pieces, DNC advised there can be persuasive pieces that are not considered a part of GOTV efforts provided that the conditions set forth in Commission's regulations [11 CFR §§ 100.7(b)(15)and 100.8(b)(16)] are met. These conditions do not restrict the content of such materials or the timing of their distribution. Mail targeted at a Congressional candidate would be exempt if the conditions set forth in the regulations are met.

The interim audit report recommended that the Committee submit any additional documentation and/or an explanation detailing why the specific references to the House candidate do not void the exemption from the expenditure limitations provided under 11 CFR §100.8(b)(18); and, (2) why Committee GOTV activities, which fall within the purview of 11 CFR §100.8(b)(18), should be viewed relative to the provisions of 11 CFR §100.8(b)(16).

The interim audit report also recommended that for those expenditures on behalf of the House candidate, the Committee should amend its reports and disclose them as 2 U.S.C. §441a(d) expenditures.

Finally, as noted in Finding II.B., the interim audit report recognized that the Pat Williams Campaign Committee donated $39,000 in excess campaign funds to the Committee on November 6, 1992. Absent a demonstration that the Committee did

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8/ The Audit staff notes that Pat Williams Campaign Committee donated $39,000 in excess campaign funds to the Committee by check dated 11-6-92.

not make contributions and/or expenditures on behalf of Pat Williams for Congress, which exceeded allowable limitations, the Committee was advised that it could submit a statement designating part of this donation as a refund of the excess expenditures.

The Committee states it "cannot find, and is unaware of any objective standards set forth by the FEC that would distinguish a volunteer mail piece as being campaign materials or GOTV."

Further, it is the Committee's belief that its activity was properly designated as campaign materials activity under section 100.8(b)(16), which does not restrict the content of such materials or the timing of their distribution. As such, the mention of the House candidate is not relevant to the disposition of this recommendation.

The Audit staff acknowledges that some activities that a party committee engages in can be viewed under either the provisions of 11 CFR §100.8(b)(16) or (b)(18), and that in such cases the regulation provides no guidance to determine which provisions should be applied. It is further acknowledged that if the direct mail program is viewed seperately from other portions of the CC plan, it could be analyzed under either provision. Analyzed under 11 CFR §100.8(b)(16), the direct mail program does not constitute a contribution to any candidate.

Rec'd in Audit
3/22/96

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 21, 1996

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

Abel P. Móntez
Attorney

SUBJECT: Proposed Final Audit Report on Montana State Democratic Central Committee (LRA #460)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report on the Montana State Democratic Central Committee ("the Committee") submitted to this Office on January 31, 1996.[1] The following memorandum summarizes our comments on the proposed report. We concur with findings in the proposed report which are not

[1] Because the proposed Final Audit Report does not include any matters exempt from public disclosure under 11 C.F.R. § 2.4, we recommend that the Commission's discussion of this document be conducted in open session.

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discussed separately in the following memorandum. If you have any questions concerning our comments, please contact Abel P. Móntez, the attorney assigned to this audit.

II. EXCESSIVE EXPENDITURES ON BEHALF OF A CONGRESSIONAL CANDIDATE (II.B.)

The Interim Audit Report found that the Committee made coordinated expenditures totaling $68,212 on behalf of Representative Pat Williams ("the Williams Committee"), which exceeded the expenditure limitation by $7,972. Documentation indicated that the Committee expended funds on the production of two direct mail pieces and for the use of space provided by county Democratic committees. According to audit workpapers, of the $68,212, the Committee spent $17,447 in postage costs associated with these two direct mail pieces.

The Interim Audit Report recommended that the Committee demonstrate that expenditures were not in excess of the limitation at 2 U.S.C. § 441a(d)(1) by submitting an explanation and documentation to establish the extent of the Committee's coordination with the Williams Committee with regard to these expenditures. If the Committee could not make this demonstration, the Interim Audit Report noted that it should seek a refund of $7,972 from the Williams Committee. However, the Interim Audit Report acknowledged that the Williams Committee donated $39,000 in excess campaign funds to the Committee on November 6, 1992. The Interim Audit Report noted that the Committee could submit a statement designating part of this donation as a refund to the Committee of the excess expenditures.

In its response to the Interim Audit Report, the Committee designated $2,181 of the Williams Committee donation as a refund for rental space that the Committee paid on behalf of the Williams Committee. Thus, in the proposed report, the Audit Division lowered the amount in excess of the expenditure limitation to $5,791 ($7,972-$2,181). For the remaining amount of $5,791, the Committee did not designate part of the Williams donation as a refund for postage costs associated with the mail pieces. The Committee stated that it was reluctant to do so because it would violate United States Postal Regulations governing special nonprofit bulk rates. In any event, the Audit Division stated, "if the Williams donation is considered, more than sufficient funds remain to offset the amount in excess of the limitation."

As a state committee of a political party, the Committee qualified for a permit that authorizes it to mail material at special bulk rates. *See* Domestic Mail Manual

§§ E370.3.1-.3.2 (Issue 49, September 1, 1995).[2] An organization authorized to mail at the special bulk rates may mail only its own matter at those rates. DMM § E370.5.1. An authorized organization may not delegate or lend the use of its authorization to mail at the special bulk rates to any other person or organization. *Id.* Political mailings may not be made at the special rates whenever a political candidate or anyone else not authorized to mail at the special rates assists the qualifying political committee with the preparation or mailing of the material in question, or pays any of the costs of preparation or mailing, or provides any consideration whatsoever to the qualifying political committee in return for the mailing being made. DMM § E370.5.9.

If the Committee in a written statement were to designate that the Commission should offset the excessive amount with a portion of Williams donation, then the Committee may violate DMM § E370.5.9(c). An offset to the Committee that represents the costs paid for postage will result in the Williams Committee paying for the postage to mail the material. *See* DMM § E370.5.9. Therefore, the Office of General Counsel understands the Committee's refusal to designate $5,791 of the Williams Committee donation as an offset of postage costs. However, the failure to recognize this offset will cause the Committee to make an expenditure to the Williams Committee in excess of the limitation at 2 U.S.C. § 441a(d)(1). Nevertheless, in light of the conflict with the postal regulations for special bulk rates, the Office of General Counsel believes that the Commission should not pursue this matter with the Committee.

III. THE COMMITTEE'S GET-OUT-THE-VOTE ACTIVITIES (II.G.)

The Interim Audit Report found that from August 1992 to November 1992, the Committee spent $37,852 on phone bank expenses on behalf of three candidates. Pursuant to 11 C.F.R. § 106.5(e), the Interim Audit Report allocated the costs between three candidates: the Clinton/Gore campaign committee ($12,617), Congressman Pat Williams ($12,617), and a candidate for governor ($12,617). The Interim Audit Report recommended that the Committee submit information to demonstrate that the Committee did not make contributions or expenditures on behalf of the Federal candidates that exceeded the allowable limitations. The Interim Audit Report also recommended that the Committee submit a statement designating part of the Williams donation as a refund of the excessive expenditures.

Because the Committee submitted information in response to the Interim Audit Report to lower the total cost of the phone bank program by $1,750, the proposed Final Audit Report concludes that the actual cost was $36,102. The Committee also submitted information that revised the overall allocation of costs for the phone bank. Therefore, the

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[2] Political organizations, other than the national committee of a political party, a state committee of a political party, and the national Congressional and Senatorial campaign committees of both major parties, do not qualify for special bulk rates. DMM § E370 4.1 (g)

proposed Final Audit Report concludes that the Committee made unauthorized expenditures on behalf of Clinton/Gore totaling $5,528 and excessive contributions or expenditures on behalf of the Williams Committee totaling $10,087. The Committee acknowledged that sufficient funds existed in the Williams campaign donation to offset the excessive amount. Therefore, the proposed Final Audit Report concludes that the excessive amount of $10,087 is no longer outstanding.

The Office of General Counsel concurs with the Audit Division's allocation of costs for the phone bank. However, this Office believes it is necessary to comment on an issue raised by the Committee. The Committee states that its phone bank program lasted 72 days and involved three distinct phases: (1) polling/voter identification phase for 68 days to enhance its existing voter file; (2) persuasion phase for three days to call on behalf of the three candidates; and (3) phase to get-out-the-vote for one day (with no mention of specific candidates). The Committee argues that its polling/voter identification phase was an "administrative expense" under 11 C.F.R. § 106.5(a)(2)(i), because its purpose was to enhance its existing voter file. Therefore, the Committee contends that no allocation between the candidates is necessary for this phase.

We concur with the Audit Division's analysis that the polling/voter identification phase of the phone bank does not fall within 11 C.F.R. § 106.5(a)(2)(i). Pursuant to 11 C.F.R. § 106.5(a)(2)(i), committees that make disbursements in connection with federal and non-federal elections are required to allocate "administrative expenses including rent, utilities, office supplies, and salaries." The Commission's regulations do not specifically define the term "administrative expenses," but provide a list of examples. The Office of General Counsel believes that the expenses paid for the enhancement of voter files through a phone bank are not similar to "rent, utilities, office supplies and salaries." 11 C.F.R. § 106.5(a)(2)(i). The examples set forth as administrative expenses relate to the ministerial functions of an office. There is no indication that costs for polling/voter identification are the same type of expenses.

We note that the Committee's expenses to enhance its voter files through a phone bank may qualify as "generic voter drive" expenses under 11 C.F.R. § 106.5(a)(2)(iv). Generally, state and local party committees are required to allocate generic voter drive expenses (and administrative expenses) according to the ballot composition method. 11 C.F.R. § 106.5(d)(1). However, the Office of General Counsel understands that the Committee has not provided the necessary documents and information to allow the Audit Division to determine the allocation, i.e., the number of calls actually associated with voter identification and get-out-the-vote drives that did not reference a specific candidate. 11 C.F.R. § 106.5(a)(2)(iv).

AK007809

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 2, 1996

Ms. Peggy Egan, Treasurer
Montana State Democratic
 Central Committee
Steamboat Block, Room 306
Helena, MT 59624

Dear Ms. Egan:

Attached please find the Final Audit Report on Montana State Democratic Central Committee. The Commission approved the report on April 1, 1996.

The Commission approved final audit report will be placed on the public record on April 10, 1996. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 219-4155. Any questions you have related to the matters covered during the audit or in the report should be directed to Alex Boniewicz or Joe Stoltz of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

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Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

CHRONOLOGY

MONTANA STATE DEMOCRATIC CENTRAL COMMITTEE

Audit Fieldwork	3/8/94 - 3/25/94
Interim Audit Report to the Committee	6/6/95
Response Received to the Interim Audit Report	8/29/95
Final Audit Report Approved	4/1/96

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FEC
DOCUMENT
SEPARATOR