



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 16, 1999

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA *RJC by HHH 12/16/99*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
REPUBLICANS FOR CHOICE PAC

Attached please find a copy of the final audit report and related documents on Republicans for Choice PAC which was approved by the Commission on December 2, 1999.

Informational copies of the report have been received by all parties involved and the report may be released to the public on December 16, 1999.

Attachment as stated

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

22 " 07 " 025 " 3189

REPORT OF THE AUDIT DIVISION
ON
REPUBLICANS FOR CHOICE PAC

Approved December 2, 1999



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

22.07.025.3191

TABLE OF CONTENTS

REPUBLICANS FOR CHOICE PAC

	PAGE
Executive Summary	1
Final Audit Report	5
Background	5
Findings	7
Transmittal to Committee	23
Chronology	25

2025.07.02.09.54.32



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A97-103

REPUBLICANS FOR CHOICE PAC

EXECUTIVE SUMMARY

The Republicans for Choice PAC registered with the Federal Election Commission on January 29, 1990.

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 arising from the audit were presented to representatives of Republicans for Choice PAC (the Committee) at an exit conference held at the conclusion of fieldwork on August 13, 1998, and later in an interim audit report. The following is an overview of the findings contained in the audit report.

Prohibited Loan -- 2 U.S.C. §§431(8)(A) & (B)(vii), and 441(a), 11 CFR §100.7(b)(11). A review of Schedules D (Debts and Obligations) filed by the Committee during the audit period identified loans apparently received from a corporation - not an institution described at 2 U.S.C. §431(8)(B)(vii). It appeared that Direct Marketing Finance & Escrow, Inc. (DMFE) made loans to the Committee, the first loan originated in August 1991 with additional loans continuing through September 1994.

In response to the interim audit report, Counsel for the Committee cites to Commission determinations in Advisory Opinion 1979-36 and MUR 3027, apparently in an attempt to demonstrate that the transactions at issue were permissible and did not constitute prohibited corporate contributions. The Audit staff disagreed with this contention.

Further, Counsel for the Committee provided a reconstructed detailed schedule of payments made by DMFE [on behalf of the Committee] that demonstrated that DMFE advanced a total of \$1,066,413. Although the Committee did not provide bank statements as recommended in the interim audit report, the Audit staff applied the Committee's fundraising ratios utilized during the audit period (20% federal / 80% non-federal for 1995 and 50% federal / 50% non-federal for 1996) to the DMFE fundraising expenses (loans) incurred from 1991 through 1994. The Audit staff calculated the Committee received \$398,487 in prohibited loans. The non-federal account portion of the loans totaled \$667,926.

2025-02-27 10:53:33

Allocation of Shared Federal and Non-Federal Activities -- 11 CFR §§106.6(b)(2)(i) & (ii), (c)(1) and (2). During the period 1/1/95 through 12/31/96, the Audit staff identified allocable administrative/generic voter drive expenses totaling \$566,462. Using the funds expended method, the Audit staff calculated such cost should have been allocated on a 76% (federal) / 24% (non-federal) ratio for 1995 and on a 99% (federal) / 1% (non-federal) ratio for 1996. Applying the above ratios, the federal account's share totaled \$514,519. However, during this period the federal account paid only \$231,925, which resulted in the federal account underpaying its share of administrative/generic voter drive expenses by \$282,594 (\$514,519 - 231,925).

The Committee filed an amended report disclosing a debt owed to the non-federal account in the amount of \$282,594, representing the federal account's share of the above expenses.

Schedule H Reporting -- 11 CFR §§106.6(e)(1) and 104.10(b)(1) - (4). In calendar year 1995, the Committee did not file Schedule H1 (Method of Allocation for Shared Federal and Non-Federal Administrative Expenses and Generic Voter Drive Costs), Schedule H2 (Allocation Ratios), Receipt Schedule H3 (Transfers From Non-Federal Accounts) or Disbursement Schedule H4 (Joint Federal/Non-Federal Activity Schedule). In calendar year 1996, the Committee did not file Schedules H2 or Receipt Schedules H3, however, the Committee did file Schedules H1 for each reporting period and filed Disbursement Schedules H4 for the period February 1996 through December 1996.

In response to the interim audit report, the Committee filed amended Schedules H1 and H2 which materially disclosed the required information. The Committee also filed amended Disbursement Schedules H4. However, our review indicated that shared expenditures totaling \$115,507 were not reported. The federal and non-federal share of the above expenditures totaled \$35,174 and \$80,333 respectively.

Misstatement of Financial Activity -- 2 U.S.C. §434(b)(1), (2) and (4). The Audit staff's reconciliation of the Committee's reported activity to its bank activity revealed material misstatements.

In response to the interim audit report, the Committee filed amended reports for calendar years 1995 and 1996 which apparently were intended to supersede the original reports filed. Our review of the amended reports indicated the Committee did not comply with the recommendations.

Disclosure of Occupation/Name of Employer -- 2 U.S.C. §§434(b)(3)(A) & (G) and 431(13)(A). The results of our review indicated that in a material number of instances the contributor's occupation and name of employer was not disclosed on Schedule A for contributions which required itemization.

In response to the interim audit report, the Committee filed amended reports for calendar years 1995 and 1996. Our review of the amended reports indicated the Committee did not comply with the recommendations.

Disclosure of Debts and Obligations -- 2 U.S.C. §434(b)(8), 11 CFR §§104.11(a), 116.2(b), 116.8(a), (b), and (c). The Committee disclosed only the federal portion of debts and obligations incurred and/or paid. The non-federal portion of a debt was never disclosed. At a minimum, \$838,486 was not disclosed.

In response to the interim audit report, the Committee filed amended reports for 1995 and 1996 which materially disclosed the above debts on Schedules D. However, our review of the amended debt schedules indicated that debts to 11 vendors were reduced by \$223,590. The Committee annotated these itemized entries with "Adjusted by Vendor" but did not provide documentation in support of same. Further, the creditors did not notify the Commission by letter of their intent to forgive the above debts. In addition, the Committee did not file amended Schedules C, as recommended, to disclose information related to the DMFE loans.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A97-103

**REPORT OF THE AUDIT DIVISION
ON
REPUBLICANS FOR CHOICE PAC**

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Republicans for Choice PAC (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 Section 438(b) of Title 2 of the United States Code 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, 1995 through December 31, 1996. During this period, the Committee reported a beginning cash balance of \$1,053; total receipts for the period of \$623,979; total disbursements for the period of \$598,027; and an ending cash balance of \$27,005.¹

C. COMMITTEE ORGANIZATION

The Committee registered with the Federal Election Commission on January 29, 1990. The Treasurer of the Committee during the period covered by the audit was Ann E. W. Stone. Ms. Stone continues as Treasurer. The Committee maintains its headquarters in Alexandria, Virginia. The Committee is a nonconnected organization that achieved multi-candidate status on November 19, 1990.

¹ Reported amounts are materially misstated, see Finding II.D.

2025-02-27 09:31:06

To manage its financial activity, the Committee maintained two federal accounts, two non-federal accounts as well as an escrow account, all with the Franklin National Bank. The Committee established the escrow account as a clearing account and did not consider it to be a federal account.

Receipts permissible under the Act were deposited into the escrow account and transferred weekly to the federal account and non-federal accounts based on a 20% (federal) / 80% (non-federal) allocation for 1995 and a 50% (federal) / 50% (non-federal) allocation for 1996. The entire amount deposited into the escrow account was not reported. However, when the Committee received a transfer of funds from the escrow account, the value of the transfer was disclosed as separate transactions involving contributions from individuals (itemized/unitemized), list rental income or refunds/rebates in a similar amount(s). Consequently, for calendar year 1995 and 1996, reports filed by the Committee reflected receipts at 20% and 50% of face value, respectively.

It is the Audit staff's opinion that the escrow account is a federal account of the Committee. Therefore, all receipt and disbursement transactions should have been reported (see Finding II.D.). The Audit staff suggested the Committee take steps to eliminate the escrow account, deposit federal receipts directly into a federal account and non-federal receipts directly into a non-federal account. At the exit conference, the Committee agreed to change its account structure.

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following general categories. It should be noted that the scope of our testing of itemized contributions from individuals was limited due to a lack of any formal aggregation system and maintenance of contributor histories:

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 (see Finding II.A.);
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. & II.E.);
4. Proper disclosure of disbursements including the itemization of disbursements when required, as well as the completeness and accuracy of the information disclosed;
5. Proper disclosure of committee debts and obligations (see Finding II.F.);

- 6. The accuracy of total reported receipts, disbursements and cash balances as compared to committee bank records (see Finding II.D.);
- 7. Adequate recordkeeping of committee transactions;
- 8. Proper reporting and funding of allocable expenses (see Findings II.B. & II.C.); and,
- 9. Other audit procedures that were deemed necessary in the situation.

Unless specifically discussed below, no material non-compliance with statutory or regulatory requirements 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. PROHIBITED LOAN

Section 431(8)(A)(i) of Title 2 of the United States Code states, in part, that the term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.

Section 431(8)(B)(vii) of Title 2 of the United States Code states, in part, that the term "contribution" does not include any loan of money by a State bank, a federally chartered depository institution, or a depository institution the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation made in the ordinary course of business.

Section 100.7(b)(11) of Title 11 of the Code of Federal Regulations states, in part, that any loan of money by a State bank, a federally chartered depository institution, or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. (Also see Advisory Opinion 1994-26).

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in Congress are to be voted for.

A review of Schedules D (Debts and Obligations) filed by the Committee, during the audit period, identified loans apparently received from a corporation - not an institution described above at 2 U.S.C. §431(8)(B)(vii). It appeared that Direct Marketing

03 " 07 " 09 " 31 " 99

Finance & Escrow, Inc. (DMFE) made loans to the Committee, the first loan originated in August 1991 with additional loans continuing through September 1994.

According to its President, DMFE is a finance company that makes loans to direct marketing agencies that need money to pay the up-front costs of the direct mail services of their respective clients. A review of disclosure reports filed by the Committee from 1991 through 1994 revealed that the Committee never reported the receipt of the loans on Schedule A. Apparently, DMFE made payments directly to vendors for postage and list rentals on behalf of the Committee. The Committee incorrectly reported these transactions as a disbursement to DMFE with the purpose listed as postage and list rental. Each disbursement by DMFE directly to vendors constituted a loan that was not reported when received as either a receipt on Schedule A or a loan on Schedule C. Furthermore, it should be noted that DMFE does not qualify as a depository institution under 11 CFR §100.7(b)(11).

The August 1991 Finance and Escrow Agreement was between DMFE and Ann E. W. Stone and Associates identified as Agency and the Committee identified as Client. According to the Finance and Escrow Agreement, DMFE agreed to provide "from time to time upon application of Client and/or Agency" funding for "postage loans and list prepayment loans financing housefile and/or prospect package mailings of Republican for Choice as requested." The terms required the Agency and/or Client [the Committee] to pay monthly interest at 6.75% or 81% annually. This agreement also specified "Agency liability limited to 80% max[imum] due to federal & some state law."

An Agreement Regarding Consolidation And Repayment Of Republicans For Choice (RFC) Loans, dated April 23, 1993, provided, in part, that DMFE loaned a total of \$529,246 for postage loans and/or list prepayments to the Committee to conduct direct mail fundraising programs. "The aforesaid outstanding loan indebtedness shall be consolidated into one single loan sum to be designated the RFC Consolidated Loan". The terms required repayment over 48 months at 4.5% monthly interest rate or 54% annually.

As previously noted, the initial loan document dated in August 1991 was annotated agency liability limited to 80%. According to the Treasurer, the federal account's liability was 20% and the non-federal account's liability was 80%. The remaining three loan documents made available for review did not contain any such annotation. These documents were signed by the Treasurer of RFC and the President of DMFE. It is possible that the 80% / 20% ratio represented the Committee's 1991 fundraising allocation ratio which would be applied to all (1991) fundraising expenses including DMFE loan repayments.²

During the period August 1991 through September 1994, DMFE made payments directly to vendors on behalf of the Committee totaling \$657,627. A review of Committee payments made to DMFE during this period appeared to indicate that the Committee could not keep up with the agreed payment structure. In September 1994 DMFE

² During the audit period the Committee's allocation ratio for funds received was 20% federal / 80% non-federal in 1995 and 50% federal / 50% non-federal in 1996.

and the Committee signed an "Addendum to DMFE Finance & Escrow Agreement". First, the Committee agreed to repay \$669,445 (principal and certain interest) at 3.5% monthly or 42% annually over a 5 year period. Second, the Committee agreed to pay all outstanding accrued interest, \$144,538, at 0% interest over a 5 year period.

Finally, a document entitled "RFC Loan Settlement and Repayment Agreement" made on May 22, 1997 and signed by the Treasurer of RFC and President of DMFE on May 26, 1997 amended all previous agreements. This agreement considered a "full, fair and final settlement of all outstanding indebtedness" existing between the parties, required the outstanding balance, principal and interest, to be paid off in ten years at a 10% annual interest rate.

It should be noted that an unrelated DMFE loan was addressed in MUR 3027.³ In that matter the Public Affairs Political Action Committee (PAPAC) contracted with The Viguerie Company (TVC), an entity that provides fundraising services. TVC then subcontracted with DMFE for a postage loan in the amount of \$11,375. The loan was repaid in full, with interest, by PAPAC directly to DMFE. On February 5, 1990, DMFE was notified that the Commission found reason to believe that DMFE violated 2 U.S.C. §441b(a). DMFE argued that it did not make a loan to PAPAC. According to DMFE, the legal obligation to repay the loan rested exclusively with TVC, and that DMFE "did not recognize 'PAPAC Quayle Media Bias Pkg' to be a political action committee." The Commission ultimately approved the Office of General Counsel's recommendation to take no further action against PAPAC and DMFE for a violation of 2 U.S.C. §441b(a).

In a letter dated November 7, 1991, DMFE was notified of the Commission's determination. The letter stated, in part, "the Commission reminds you that arrangements in which third party, non-banking lenders finance the activities of federal political committees appear to violate 2 U.S.C. §441b(a). You should take immediate steps to insure that this activity does not occur in the future."

It is apparent that DMFE did not take immediate steps to insure that it did not finance the activities of federal political committees. The loans at issue were made directly to the Committee, DMFE dealt directly with the Committee's Treasurer; there was no third party involved⁴. All loan documents were signed by the Treasurer on behalf of the Committee⁵. The initial loans occurred while MUR 3027 was ongoing; new loans were

³ In an OGC brief, AO 1979-36 was addressed. OCG noted that in the AO the Commission said a direct mail firm could advance the start-up costs of the mailing. However, the issue of a third party lender was not addressed.

⁴ It is acknowledged that the August 1991 agreement was signed by Ann Stone (for Agency) and the Treasurer of the Committee (for Client) and specified the Agency liability at 80%. However, subsequently all outstanding loans, including accrued interest were consolidated with the Committee named as the sole debtor.

⁵ See footnote 4.

made during a three year period subsequent to Commission notification to DMFE of its final decision. Accordingly, it is the opinion of the Audit staff that the Committee received and DMFE made a prohibited contribution of at least \$813,983 (\$669,445 - principal + 144,538 - accrued interest).

This amount (\$813,983) represented the highest loan balance the Audit staff was able to verify and included outstanding principal and accrued interest. Given this amount is allocable between the federal and non-federal accounts in proportion to the funds ultimately deposited into each account arising from the associated direct mail efforts, the amount of the apparent prohibited contribution attributable to the Committee is only a portion of this amount. The Audit staff was able to verify that in calendar year 1995 the Committee allocated 20% of all fundraising receipts to the federal account and 80% to the non-federal account. In calendar year 1996 the fundraising allocation was 50% federal and 50% non-federal. If those ratios were applicable to the 1991/1992 and 1993/1994 cycles, it would be the Audit staff's opinion that DMFE loans should be allocated in a similar manner.⁶ According to the Treasurer, all records relating to the above cycles were destroyed. In an effort to determine the allocation ratios employed by the Committee in calendar years 1991 through 1994 disclosure reports were reviewed. However, since the non-federal transactions were not reported, the federal/non-federal allocation could not be determined.

When informed of the apparent prohibited contribution, the Treasurer stated she was advised by counsel that the loans from DMFE were permissible and that a majority of records relative to DMFE transactions were destroyed when a storage room flooded in 1994.

In the interim audit report, the Audit staff recommended that the Committee provide documentation that demonstrated it did not receive a prohibited contribution from DMFE. Within the same response period provide evidence which documented the Committee's fundraising allocation ratios for calendar years 1991 through 1994. For example, a representative sample of bank statements for each account (federal, non-federal, and escrow) for calendar years 1991 through 1994. Finally, provide from DMFE a complete schedule including the date and amount of all payments made directly to vendors on behalf of the Committee.

In response to the interim audit report, Counsel for the Committee stated in relevant part that:

"DMFE and numerous comparable entities provide valuable and indispensable commercial services to nonprofit organizations (including political committees) and/or to their direct mail agencies. Those services are to provide the necessary goods and services which must be purchased in advance of mailing solicitations for contributions through the United States

⁶ In calendar year 1991 the Committee filed Schedule H1 which reflected its administrative/generic voter drive costs allocation ratio of 20% federal and 80% non-federal. However, the Committee did not file Schedule H2 (fundraising allocation ratio) in calendar years 1991 through 1994.

Postal Service. Goods and services which must be paid in advance could include, for example, mailing lists, printing and mail shop services from vendors who do not extend credit in the ordinary course of their businesses...

...Vendors such as DMFE, of which there are many, fill the void by buying postage and other direct response marketing services for their customers. They either contract directly with the organization or with the direct mail agency which produces the mail for the organization. In either event, the vendor normally draws checks payable to the Postal Service or to the organization's mail shop which then uses the funds for postage. The typical terms of credit, regardless whether the contract is with the organization or the agency, require the credit to be repaid from the contributions received from the mailing for which the credit was extended, together with interest expressed as a percentage per month instead of per annum...

Twenty years ago, the Federal Election Commission concluded that the extension of credit by a commercial vendor to pay the cost of preparing and mailing fundraising materials of a political committee would not be considered to be a campaign contribution if (1) the credit arrangement is normal industry practice and that type of credit is extended in the ordinary course of that vendor's business with terms substantially similar to those given to nonpolitical, as well as political, debtors of similar risk and size of obligation; and (2) the costs charged the political committee for that service are at least the normal charge for services of that type. That conclusion was reached by the Commission in Advisory Opinion 1979-35 [1979-36]; that being a landmark advisory opinion which had a significant influence over industry practices, contracts and extensions of credit in the direct response marketing industry.

...Nevertheless, we assert that the conclusion reached in Advisory Opinion 1979-36 was not expressly or implicitly restricted in its applicability to direct mail firms. If the Commission believed it should have been so limited, the Commission could have so stated. The issue was again squarely presented to the Commission in MUR 3027. There, the Commission voted to approve the Office of General Counsel's recommendation to take no further action against DMFE. The facts in MUR 3027 were similar to those hand: DMFE advanced postage for use by a political committee on terms of credit similar to the terms extended to Republicans for Choice PAC. If the Commission believed in 1991 that DMFE violated 2 U.S.C. 441(b)(a), it should have voted differently in MUR 3027...it could have enacted a regulation that proscribed extensions of credit by third-party vendors such as DMFE."

With respect to the production of bank documentation, Counsel for the Committee provided a letter from a bank representative, dated July 26, 1999, which gave an

2025-07-22 09:07:02

estimated cost for research including check copies for 60 months from 1991 - 1996 and stated it would take approximately four to six weeks.

Finally, Counsel for the Committee stated that:

“...During the period September 17, 1991 through March 3, 1994, the Committee acquired \$1,066,413.20 of goods and services through DMFE in return for which the Committee paid DMFE \$1,315,258.50 through 1994.”

Counsel for the Committee in his response cites to Commission determinations in Advisory Opinion 1979-36 and MUR 3027, apparently in an attempt to demonstrate that the transactions at issue were permissible and did not constitute prohibited corporate contributions. The Audit staff disagrees. In the instance case, the facts presented in Advisory Opinion 1979-36 are distinguishable.⁷ Advisory Opinion 1979-36 addressed an agreement between a direct mail firm and a political committee. That particular agreement addressed the cost to develop and operate a direct mail program, the fee for such program, the frequency of billing, the method of payment to the direct mail firm, and a alternative payment provision that protects the vendor should the vendor determine during the initial testing period that the program was less successful than anticipated. The Advisory Opinion also referred to an affidavit which states that “...within the direct mail industry the proposed type of financing agreement represents an ordinary mode of operation.” In the matter at hand, DMFE issued checks directly to vendors on behalf of the Committee and considered such payments as loans to the Committee. The Advisory Opinion described the relationship between a direct mail fundraising and marketing organization and a political committee. DMFE is in the business of securing financing and escrow services for the needs of the direct marketing industry.

The action taken by the Commission in MUR 3027 is described above. That matter addressed an unrelated DMFE loan. A political committee contracted TVC to provide fundraising services. DMFE loaned TVC money for postage. The political committee repaid the loan directly to DMFE. In this instance, DMFE was a third party lender. In brief, the Commission found reason to believe DMFE violated 2 U.S.C. §441b(a). In part, DMFE responded that it did not know it was lending money to a political committee, since the loan in question was made to TVC and the legal obligation to repay the loan rested exclusively with TVC. As a result, the Commission voted to take no further action against DMFE for a violation of 2 U.S.C. §441b(a). Finally, the Commission advised DMFE that arrangements in which third party, non-banking lenders finance the activities of federal political committees appear to violate 2 U.S.C. §441b(a), and that DMFE should take immediate steps to insure that this activity does not occur in the future.

⁷ 2 U.S.C. §437f(c)(1)(B) states that any advisory opinion rendered by the Commission under subsection (a) of this section may be relied upon by any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

Finally, Counsel for the Committee appears to be suggesting that since DMFE loaned the Committee \$1,066,413 and the Committee repaid \$1,315,259 through 1994 there is no outstanding balance and that apparently the loans were paid in full. The Committee filed amendments for calendar years 1995 and 1996. Such amendments disclosed a debt owed to DMFE on Schedule D (as of January 1, 1995) of \$186,325 and an adjustment to the beginning balance of (\$186,325) with a notation indicating that "(Amount adjusted for payments made 1/91 - 12/94)".

Documentation made available during the audit fieldwork demonstrated that the DMFE loans (\$805,100) were still outstanding. On May 26, 1997, the President of DMFE (Raymond J. Bowie) and the Chairman/Treasurer of the Committee (Ann E. W. Stone) signed an agreement entitled "RFC Loan Settlement and Repayment Agreement". The agreement stated that the original principal of \$805,100 was still owed and to be repaid over a 10 year period.

Although the Committee did not provide bank statements as recommended, the Audit staff applied the Committee's fundraising ratios utilized during the audit period (20% federal / 80% non-federal for 1995 and 50% federal / 50% non-federal for 1996) to the DMFE fundraising expenses (loans) incurred from 1991 through 1994.

Based on documentation provided that demonstrated that DMFE advanced a total of \$1,066,413,⁸ the Audit staff calculated the Committee received \$398,487 in prohibited loans. The non-federal account portion of the loans totaled \$667,926.

B. ALLOCATION OF SHARED FEDERAL AND NON-FEDERAL ACTIVITIES

Section 106.6(b)(2)(i) and (iii) of Title 11 of the Code of Federal Regulations states, in part, that nonconnected committees that make disbursements in connection with federal and non-federal elections shall allocate administrative expenses including rent, utilities, office supplies, and salaries, except for such expenses directly attributable to a clearly identified candidate as well as the cost of generic voter drives including voter identification, voter registration and get-out-the vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate.

Sections 106.6(c)(1) and (2) of Title 11 of the Code of Federal Regulations state, in part, that nonconnected committees shall allocate their administrative expenses and costs of generic voter drives, as described in paragraph (b) of this section, according to the funds expended method. Under this method, expenses shall be allocated based on the ratio of federal expenditures to total federal and non-federal disbursements made by the committee during the two-year federal election cycle. This ratio shall be estimated and reported at the beginning of each federal election cycle, based upon the committee's federal and non-federal disbursements in a prior comparable federal election cycle or upon the

⁸ In response to the interim audit report, Counsel for the Committee provided a reconstructed detailed schedule of payments made by DMFE [on behalf of the Committee].

committee's reasonable prediction of its disbursements for the coming two years. In calculating its federal expenditures, the committee shall include only amounts contributed to or otherwise spent on behalf of specific federal candidates. Calculation of total federal and non-federal disbursements shall also be limited to disbursements for specific candidates, and shall not include overhead or other generic costs. On each of its periodic reports, the committee shall adjust its allocation ratio to reconcile it with the ratio of actual federal and non-federal disbursements made, to date. If the non-federal account has paid more than its allocable share, the committee shall transfer funds from its federal to its non-federal account, as necessary, to reflect the adjusted allocation ratio. The committee shall make note of any such adjustments and transfers on its periodic reports.

In calendar year 1995 the Committee allocated 20% of administrative and generic voter drive expenses to the federal account and 80% to the non-federal account. In calendar year 1996, the Committee allocated such expenses on a 50% (federal) / 50% (non-federal) basis. The Committee could not provide documentation to support its calculation of either ratio. The Treasurer did provide the Audit staff with a memorandum explaining its efforts on the "Federal side" and "State side" as follows:

"Federal side - identify, recruit, advise and fund candidates and in some cases actually send staff into races to help their campaigns. Also we track some federal issues.

State side - identify, recruit, advise and sometimes fund candidates. Spend a great deal of phone time in researching issues for them and helping them reach educated positions... We have also sent in staff (i.e. Whitman) and help with 'on the ground' public relations (i.e. Gilmore). We work with them on state legislative issues and advise them of good common ground policy they should consider.

...Another major project for RFC since 1995 that has been non federal has been the launch and promotion of the Common Ground movement with the GOP. This has involved attending conferences, setting up meetings with Governors and GOP Party officials...

...Also starting in 1994 we began a special project in the state of Virginia to retake the party from the so called Christian Right. The entire operation was run out of our offices..."

During the period 1/1/95 through 12/31/96, the Audit staff identified allocable administrative/generic voter drive expenses totaling \$566,462. Using the funds expended method, the Audit staff calculated such cost should have been allocated on a 76% (federal) / 24% (non-federal) ratio for 1995 and on a 99% (federal) / 1% (non-federal) ratio for 1996. Applying the above ratios, the federal account's share totaled \$514,519. However, during this period the federal account paid only \$231,925, which resulted in the federal account

underpaying its share of administrative/generic voter drive expenses by \$282,594 (\$514,519 - 231,925).

In developing these ratios,⁹ the Audit staff considered only amounts contributed to or otherwise spent on behalf of specific candidates and did not include payments for overhead and other generic costs.

In the interim audit report the Audit staff recommended that the Committee demonstrate that the federal account did not underpay its share of administrative/generic voter drive expenses or reimburse the non-federal account \$282,594 and provide evidence of such reimbursement. If funds were not available to make the reimbursement, this amount was to be disclosed as a debt owed to the non-federal account.

Counsel for the Committee stated that while the Treasurer believed that her rationale was reasonable and that it fairly reflected the activities of the Committee, the Treasurer now understands and in the interest of concluding this audit, now accepts the Commission's method of developing and applying allocation ratios to administrative and generic voter drive expenses.

The Committee filed an amended report disclosing a debt owed to the non-federal account in the amount of \$282,594, representing the federal account's share of the above expenses.

C. SCHEDULE H REPORTING

Section 106.6(e)(1) of Title 11 of the Code of Federal Regulations states, in relevant part, that committees that have established separate federal and non-federal accounts, shall pay the expenses of joint federal and non-federal activities by either of the following: The committee shall 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 the committee shall 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.

Sections 104.10(b)(1) and (2) of Title 11 of the Code of Federal Regulations state, in part, that in the first report in a calendar year disclosing a disbursement for administrative expenses or generic voter drives, the committee shall state the allocation ratio to be applied to these categories of activity, and the manner in which it was derived. In each subsequent report in the calendar year itemizing an allocated disbursement for administrative expense or generic voter drives, the committee shall state the category of activity for which each allocated disbursement was made, and shall summarize the total amount spent by the federal and non-federal accounts that year, to date, for each such category. Non-connected

⁹ It was noted that the ratios used by the Committee were the same ratios it used to allocate correctly fundraising expenses for calendar years 1995 and 1996.

committees that have allocated expenses according to the funds expended method shall also report in a memo entry the total amounts expended in donations and direct disbursements on behalf of specific state and local candidates, to date, in that calendar year. Further, in each report disclosing a disbursement for the direct costs of a fundraising program or an exempt activity, the committee shall assign a unique identifying title or code to each such program or activity, shall state the allocation ratio calculated for the program or activity and shall explain the manner in which the ratio was derived.

Sections 104.10(b)(3) and (4) of Title 11 of the Code of Federal Regulations state, in part, that a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall report each transfer of funds from its non-federal account to its federal account or to its separate allocation account for the purpose of paying such expenses. Further, a political committee that pays allocable expenses in accordance with 11 CFR 106.5(g) or 106.6(e) shall also report each disbursement from its federal account or its separate allocation account in payment for a joint federal and non-federal expense or activity.

The Committee did not establish an allocation account nor did it pay all shared expenses from its federal accounts and seek reimbursement from the non-federal accounts. Instead, for all shared expenses, the Committee issued vendors two checks, one from a federal account and another from a non-federal account, which purportedly represented their respective share.

Schedule H Filing

In calendar year 1995, the Committee did not file Schedule H1 (Method of Allocation for Shared Federal and Non-Federal Administrative Expenses and Generic Voter Drive Costs), Schedule H2 (Allocation Ratios), Receipt Schedule H3 (Transfers From Non-Federal Accounts) or Disbursement Schedule H4 (Joint Federal/Non-Federal Activity Schedule). In calendar year 1996, the Committee did not file Schedules H2 or Receipt Schedules H3, however, the Committee did file Schedules H1 for each reporting period and filed Disbursement Schedules H4 for the period February 1996 through December 1996.

Itemization of Shared Disbursements

As previously stated, the Committee did not file Disbursement Schedules H4 until February 1996 and paid shared expenses with separate checks from the federal and non-federal accounts. Prior to filing Disbursement Schedules H4, the Committee disclosed on Schedule B (Itemized Disbursements) only the amount of the check issued from the federal account representing the federal share of a fundraising, administrative or generic voter drive expense. The amount of the check issued from the non-federal account for the non-federal share of the same expense was never disclosed.

Even though in February 1996 the Committee began filing Disbursement Schedules H4 and disclosed the federal and non-federal account's share of allocable

expenses, it continued to disclose the federal account's share on Schedule B. The above practices resulted in numerous portions of shared expenses either not being reported as was the case from January 1995 through January 1996 or being reported twice as was the case from February 1996 through December 1996.

The Committee was informed of all reporting deficiencies/errors noted above and agreed to file the necessary amendments for 1995 and 1996.

In the interim audit report the Audit staff recommended that, the Committee file amendments for 1995 and 1996 to correct the reporting deficiencies/errors noted above, including the duplicate reporting of certain shared expenses on Schedules B. The amendments should have included the following:

- Schedules H1 for 1995 and 1996 disclosing the allocation ratio to be applied to all payments for shared administrative/generic voter drive expenses and the manner in which it was derived.
- Schedules H2 for 1995 and 1996 disclosing a unique identifying title or code to each such program or activity, including the allocation ratio calculated for the program or activity and the manner in which the ratio was derived. Further, a summary of the total amounts spent by the federal and non-federal accounts that year, to date, for each such program or activity.
- Disbursement Schedules H4 for 1995 and 1996 disclosing all shared federal and non-federal activity, to include the full name, address of each person to whom the disbursement was made, and the date, amount and purpose of each such disbursement, along with the total amount expended by the committee that year, to date, for each category or activity.

In response to the interim audit report, the Committee filed amended Schedules H1 and H2 which materially disclosed the required information. The Committee also filed amended Disbursement Schedules H4. However, our review indicated that shared expenditures totaling \$115,507 were not reported. The federal and non-federal share of the above expenditures totaled \$35,174 and \$80,333 respectively (see Finding II.D.).

D. MISSTATEMENT OF FINANCIAL ACTIVITY

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

As previously stated, receipts permissible under the Act were deposited into an escrow account and transferred weekly to federal and non-federal accounts based on a 20% (federal) / 80% (non-federal) allocation in calendar year 1995 and on a 50% (federal) /

50% (non-federal) allocation in calendar year 1996. The Committee disclosed only the federal allocable share. The Audit staff considered the escrow account as a federal account. As a result, the Audit staff's reconciliation of the Committee's reported activity to its bank activity revealed material misstatements.

For calendar year 1995, beginning cash on hand was understated \$9,098 and total receipts were understated \$480,606, both figures for the most part were understated because the Committee did not disclose the full value of receipts deposited into the escrow account. In a similar vein disbursements were understated by \$488,811; the Committee did not disclose the full value of disbursements made from the escrow account.

For calendar year 1996 receipts were understated by \$308,207 and disbursements were understated by \$333,772, due primarily to the Committee not disclosing the full value of the individual transactions in the escrow account. Ending cash on hand was overstated by \$24,291, the net result of the reporting errors.

Furthermore, with respect to itemized receipts, the Committee disclosed only 20% of the amount in 1995 and 50% in 1996. As a consequence, every itemized entry was understated.

The Committee was provided a schedule of all reporting errors and agreed to file amendments for 1995 and 1996 to correct the public record.

In the interim audit report the Audit staff recommended that the Committee file amended reports for 1995 and 1996 to correct the reporting deficiencies noted above.

In response to the interim audit report, the Committee filed amended reports for calendar years 1995 and 1996 which apparently were intended to supersede the original reports filed. Our review of the amended reports indicated the Committee did not comply with the recommendations as follows:

Beginning Cash on Hand and Receipts

- The understatement of reported cash on hand (\$9,098) at January 1, 1995 has not been corrected.
- The Committee reported on line 18 transfers from the non-federal account for joint activity totaling \$112,014 for calendar year 1995 and \$208,251 for calendar year 1996. The Committee also filed supporting Receipt Schedules H3. However, no such transfers were made by the non-federal account or received by the Committee during the audit period. It appears these transfers were meant to offset \$112,014 and \$208,251 in expenses paid directly by the non-federal account but included in the amended reports as if paid by the federal account.

- The Committee did not disclose the amount (\$9,706) of dividends and/or interest or the amount (\$3,856) of refunds/rebates received in 1995 and 1996.
- Finally, a material amount of contributions from individuals, aggregating in excess of \$200, were not itemized on Schedule A.

Disbursements

- The Committee under-reported the amount of transfers to affiliated/other party committees by \$29,623 for calendar year 1995.
- Although disclosed on the original reports, the amount (\$30,574) of contributions to federal candidates/committees and other political committees was not disclosed on the amended reports for 1995 and 1996.
- Although disclosed on the original reports, the amount (\$27,279) of other federal operating expenditures was not reported on the amended reports for 1996.
- For calendar year 1995 shared expenditures disclosed on Disbursement Schedule H4 totaling \$303,348 were not included or otherwise accounted for in the reported totals. Additionally, for both calendar years 1995 and 1996, our review identified shared expenditures totaling \$115,507 (\$35,174 paid from the federal account and \$80,333 paid from the non-federal account) that were not itemized on Disbursement Schedules H4 or properly accounted for in the reported totals.

E. DISCLOSURE OF OCCUPATION/NAME OF EMPLOYER

Section 434(b)(3)(A) and (G) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person who makes a contribution or provides any dividend, interest, or other receipt to the reporting committee during the reporting period, in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution/receipt.

Section 431(13)(A) of Title 2 of the United States Code defines identification in the case of any individual, as the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

The results of our review indicated that in a material number of instances the contributor's occupation and name of employer was not disclosed on Schedule A for contributions which required itemization. In almost every instance, the missing contributor information was found in the Committee's records; the information was included on a solicitation response device completed by the contributor. In lieu of disclosing such

information, the itemized entries generally included the term "Best Efforts." Since the occupation/name of employer information was apparently received at the same time as the associated contribution, inclusion of the term "Best Efforts" as part of the entry for a given contribution was inaccurate at best. The Committee did not know why the contributor's occupation and name of employer was not disclosed on its reports.

In the interim audit report, the Audit staff recommended that the Committee file amended Schedules A for 1995 and 1996 to disclose the contributor information contained within its records.

The Committee filed amended reports for calendar years 1995 and 1996. However, the amendments did not correct the reporting problems noted above. The Audit staff's original testing documented 41 itemized entries that did not contain the contributor's occupation and/or name of employer. As previously stated, in almost every instance the missing contributor information was contained in the Committee's records. Of this total (41), the Committee did not include 35 of the contributions disclosed on its initial reports on its amendments. Further, for two entries disclosed on the amendments the occupation/name of employer was listed as "info req" [information requested] when, in fact, the information provided by the contributor was contained in the Committee's records. The Committee, on the amendments filed, included occupation/name of employer information for only 4 of the 41 exceptions noted.

F. DISCLOSURE OF DEBTS AND OBLIGATIONS

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished.

Section 116.2(b) of Title 11 of the Code of Federal Regulations states that ongoing committees shall not settle any outstanding debts for less than the entire amount owed, but may request a Commission determination that such debts are not payable under 11 CFR 116.9, and may resolve disputed debts under 11 CFR 116.10. Creditors may forgive debts owed by ongoing committees under the limited circumstances provided in 11 CFR 116.8.

Section 116.8 (a) of Title 11 of the Code of Federal Regulations states, in part, that a creditor may forgive the outstanding balance of a debt owed by an ongoing committee if the creditor and the ongoing committee have satisfied the requirements of 11 CFR 116.3 and 116 .5, as appropriate, and the debt has been outstanding for at least twenty-four months, and the creditor has exercised reasonable diligence in attempting to locate the ongoing committee and has been unable to do so; or, the ongoing committee does not have sufficient

cash on hand to pay the creditor; has receipts and disbursements of less than \$1,000 during the previous twenty-four months; and, owes debts to other creditors of such magnitude that the creditor could reasonably conclude that the ongoing committee will not pay this particular debt.

Sections 116.8(b) and (c) of Title 11 of the Code of Federal Regulations state, in part, that a creditor that intends to forgive a debt owed by an ongoing committee shall notify the Commission by letter of its intent. Upon the Commission's request, the ongoing committee or the creditor shall provide such additional information as the Commission may require to review the creditor's request. The Commission will review each request to forgive a debt to determine whether the ongoing committee and the creditor have complied with the requirements of 11 CFR part 116, and whether or not the forgiveness of the debt would result in an apparent violation of the Act or the Commission's regulations.

Consistent with its reporting of allocable expenses, the Committee disclosed only the federal portion of debts and obligations incurred and/or paid. The non-federal portion of a debt was never disclosed. At a minimum, \$838,486 related to the non-federal portion was not disclosed.

In the interim audit report the Audit staff recommended that the Committee file amended Schedules D (Debts and Obligations Excluding Loans) for 1995 and 1996 to disclose both the federal and non-federal portion of all debt, except for DMFE loans, which resulted from shared activity. DMFE loans should have been disclosed on Schedule C (Loans).

The Committee filed amended reports for 1995 and 1996 which materially disclosed the above debts on Schedules D. However, our review of the amended debt schedules indicated that debts to 11 vendors were reduced \$223,590. The Committee annotated these itemized entries with "Adjusted by Vendor" but did not provide documentation in support of same. Further, the creditors did not notify the Commission by letter of their intent to forgive the above debts. In addition, the Committee did not file amended Schedules C, as recommended, to disclose information related to the DMFE loans.

02 07 025 333



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 9, 1999

Ms. Ann E. W. Stone, Treasurer
Republicans for Choice PAC
2760 Eisenhower Avenue
Suite 260
Alexandria, Virginia 22314


Dear Ms. Stone:

Attached please find the Report of the Audit Division on Republicans for Choice PAC. The Commission approved the report on December 2, 1999.

The Commission approved Final Audit Report will be placed on the public record on December 16, 1999. 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 matters covered during the audit or in the report should be directed to Jeff Spilizewski or Tom Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,


For Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

22 " 07 " 025 " 3214

02.07.02.313

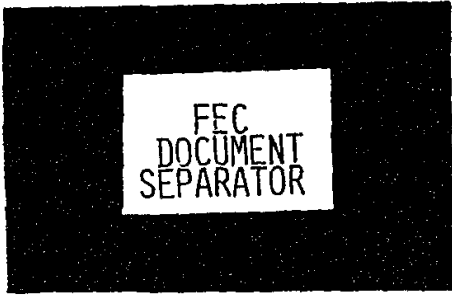
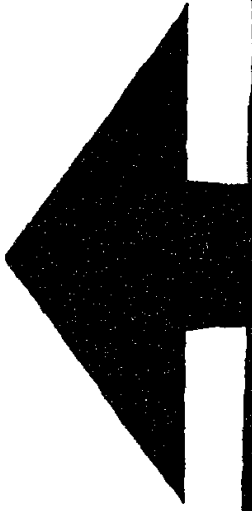
22 " 07 " 025 " 3216

CHRONOLOGY
REPUBLICANS FOR CHOICE PAC

Audit Fieldwork	06/22/98 — 08/13/98
Interim Audit Report to the Committee	04/16/99
Response Received to the Interim Audit Report	08/13/99
Final Audit Report Approved	12/02/99

22.07.025.3247

22.07.025.3219



FEC
DOCUMENT
SEPARATOR

