FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

June 5, 2001

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 CALIFORNIA STATE REPUBLICAN PARTY

Attached please find a copy of the final audit report and related documents on California State Republican Party, which was approved by the Commission on May 24, 2001.

Informational copies of the report have been received by all parties involved and the report may be released to the public on June 5, 2001.

Attachment as stated

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

REPORT OF THE AUDIT DIVISION

ON

California State Republican Party

Approved May 24, 2001

FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

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FEDERAL ELECTION COMMISSION
Washington, DC 20463

CALIFORNIA REPUBLICAN STATE PARTY

EXECUTIVE SUMMARY

The California Republican State Party (CRP) registered with the Federal Election Commission as the California Republican Party on March 5, 1981 and maintains its headquarters in Burbank, California. The Treasurer during the period covered by the audit was Shawn Steel. The current Treasurer is Michael Der Manouel, Jr.

The audit was conducted pursuant to 2 U.S.C. §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 six audit findings summarized below were presented to the CRP at the completion of fieldwork and later in the interim audit report (IAR). CRP's responses to the findings are contained in the audit report.

MISSTATEMENT OF FINANCIAL ACTIVITY - 2 U.S.C. §434(b)(1), (2) and (4). A comparison of the CRP's reported financial activity to its bank records for the period January 1, 1997 to December 31, 1998, revealed an underreporting of disbursements of $1,740,744 and an overstatement of closing cash on hand of $1,742,757. After notification of the audit the CRP filed amended reports that corrected most of the misreporting. In response to the audit, the CRP filed a comprehensive amended report that materially corrected the public record.

EXCESSIVE COORDINATED PARTY EXPENDITURES ON BEHALF OF FEDERAL CANDIDATES — 2 U.S.C. §§441a(d)(1) and (3); 441a(a)(2)(A); 11 C.F.R §§ 110.7(b)(2)(i) and (ii). The CRP spent $2,368,491 on behalf of the Matt Fong for Senate Committee (MFSC). Because the CRP failed to obtain prior written authorization from the Republican National Committee to utilize a portion of its spending limitation, this amount exceeds the CRP's 441a(a) and 441a(d) contribution limitation by $845,554 ($2,368,491-$1,517,937-$5,000)[1].

[1] The two limits are combined for purposes of calculating the excessive amount of coordinated expenditures.

Additionally, the CRP spent $2,663 in excess of its coordinated spending limitation on behalf of Bordonaro For Congress in the March 10, 1998 Congressional District 22 Special Election. Both the National Republican Congressional Committee and the CRP utilized their 441a(d) and 441a(a) spending limit.

In the MFSC case, the CRP and the RNC assert that a delegation of coordinated spending authority was made, however the requisite written authorization cannot be located. The lack of documentation is attributed to an "administrative oversight".

With respect to the excessive amount attributed to Tom Bordonaro, the CRP does not contest the finding, noting that the amount is small and that it simply lost track of the amount spent on behalf of the Bordonaro campaign.

DISCLOSURE OF RECEIPTS-INDIVIDUALS -2 U.S.C. §§ 434(b)(3)(A), 431(13)(A) and 11 C.F.R §§104.3(a)(4). A review of contributions from individuals determined that contributor information was not disclosed accurately. The errors included identifying the wrong account holder on checks drawn on both joint and single accounts. This was primarily the result of a flaw in a computer program.

In response to the audit, the CRP asserted systemic changes were implemented in its donor receipt procedures.

DISCLOSURE OF DEBTS AND OBLIGATIONS - 2 U.S.C. §434(b)(8) and 11 C.F.R §104.11(a) and (b). The CRP failed to itemize a number of debts and obligations on its disclosure reports. Subsequent to being notified of the audit the CRP filed amended schedules that materially corrected the deficiency.

ITEMIZATION OF REFUNDS AND REBATES -11 C.F.R §§100.10 and 104.3(4)(v). On its original 1998 reports the CRP included in receipts, but failed to itemize, 88 refunds and rebates totaling $33,080. After notification of the audit, the CRP filed amended reports that corrected all but 46 items.

In response to the audit, the CRP filed amended schedules that materially corrected the itemization problems.

REPORTING OF COMMITTEE LOAN -11 C.F.R §§104.3(d) and 104.3(a)(4)(iv) The CRP failed to file Schedules A (Itemized Receipts), C (Loans) and C-1 (Loans and Lines of Credit From Lending Institutions), itemizing the receipt of the loan. Subsequent to notification of the audit, Schedules A and C were filed. After the exit conference, the CRP submitted a Schedule C-1.

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION ON THE CALIFORNIA STATE REPUBLICAN PARTY

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of the California State Republican Party[1] (CRP), undertaken by the Audit Division of the Federal Election Commission (the 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 from January 1, 1997, through December 31, 1998. During this period, the CRP reported a beginning cash balance of $89,551; total receipts of $13,256,664; total disbursements of $11,538,974; and a closing cash balance of $1,807,241.[2]

C. COMMITTEE ORGANIZATION

The CRP registered with the Federal Election Commission as the California Republican Party on March 5, 1981 and maintains its headquarters in Burbank,

[1] Formerly known as the California Republican Party.

[2] All figures in this report have been rounded to the nearest dollar.

California. The Treasurer during the period covered by the audit was Shawn Steel. The current Treasurer is Michael Der Manouel, Jr.

To manage its federal financial activity, the CRP used seven bank accounts. From these accounts the CRP made approximately 4,300 disbursements. Receipts were primarily composed of contributions from individuals ($4,217,200); contributions from other political committees ($26,202); transfers from affiliated and other party committees ($2,602,712); loan received ($300,000); offsets to operating expenditures ($85,992); and transfers from its non-federal accounts ($5,893,538).

During the audit period, the CRP maintained eleven non-federal bank accounts, with total reported receipts of $11,905,306 and total reported disbursements of $11,671,694.[3]

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of 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.C. and F.);

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 debts and obligations (See Finding II.D.);

6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records (See Finding II.A.);

7. adequate recordkeeping for transactions;

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 Findings II.B.1. and 2.); and

[3] These numbers have not been audited.

9. other audit procedures that were deemed necessary in the situation (See Finding II.E.).

Unless specifically discussed below, no material noncompliance with statutory or regulatory requirements was detected. It should be noted that the Commission may pursue any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. 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 reporting period and calendar year.

Sections 434(b)(3)(A) and (B) of Title 2 of the United States Code state, in part, that each report under this section shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of such contribution; and, the identification of each political committee which makes a contribution to the reporting committee, together with the date and amount.

Section 434(b)(5)(A) of Title 2 of the United States Code states, in part, that each report under this section 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 committee operating expense, together with the date, amount, and purpose of such operating expenditure.

Section 431(13) of Title 2 of the United States Code states 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; and, in the case of any other person, the full name and address of such person.

The Audit staff's reconciliation of the CRP's reported financial activity to its bank activity, from January 1, 1997 through December 31, 1998, revealed that the CRP had materially misstated its disbursement and closing cash on hand balances for 1998. The adjustments to receipts are also presented in order to assist CRP in arriving at the correct closing cash figure.

1. Receipts

The CRP's reported receipts were overstated by $1,612. The components of the misstatement are as follows:

Reported Receipts		$10,360,758
Voided Checks Reported As Receipts	-12,107	
Vendor Refund Not Reported	20,000	
Value of Leased Equipment Reported as a Receipt	-18,184	
Reconciling Item	$8,679	-1,612
Correct Reportable Receipts		$10,359,146

2. Disbursements

The CRP's reported disbursement totals were understated by $1,740,744. All of the expenditures that are included in this amount required itemization on supporting schedules. Further, $645,460 of the unreported disbursements were expenditures made on behalf of the Matt Fong for US Senate Committee (MFSC). The CRP completed filing amended reports in September 1999 that contained additional disbursements totaling $1,747,908 after it was notified of the Commission's audit. However, portions of the additional disbursements were reported incorrectly and the CRP did not supply supporting schedules for $500,000 of the $645,460 of MFSC expenditures. This amount ($500,000) was comprised of two wire transfers on October 1, 1999 and October 13, 1999 to Russo Marsh Inc. for television ads. Furthermore, this same amount is part of the 441a(d) excessive contribution noted in Finding II.B.1. The CRP stated the failure to provide the supporting schedules was an oversight. The explanation of differences below does not consider the amended reports.

The components of the misstatement are as follows:

Reported Disbursements		$8,637,885
Disbursements Not Reported	$1,769,052	
Reported Voided Checks	-32,463	
Transfer From Federal to Non Federal Not Reported	18,433	
Disbursements Reported Twice	-7,300	
Value of Leased Equipment Reported as a Disbursement	-18,184	
Reconciling Amount	$11,206	1,740,744
Correct Reportable Disbursements		$10,378,629

3. Ending Cash On Hand

The reported ending cash on hand at December 31, 1998 was overstated by $1,742,757, resulting from the misstatements detailed above.

At the Exit Conference, CRP representatives were provided with documentation explaining the misstatements. The CRP stated some of the misstatements were due to problems with personnel and agreed to amend the original reports at the appropriate time.

The interim audit report recommended the CRP file a comprehensive amended report for calendar year 1998, to include corrected Summary and Detailed Summary Pages as well as amended Schedules A, and Schedules B.

In response to the interim audit report, the CRP acknowledged that there were errors in the original FEC disclosure reports. These errors were attributed to the inexperienced staff, inept accounting software, and a large volume of activity. Furthermore, the CRP suggests that it did not complete the filing of amended reports before the receipt of the audit notification letter because of changes in personnel and the need to reconstruct manual records. The CRP goes on to explain that the preparation of the amended reports was ongoing at the time the audit notification letter was received, as evidenced by numerous telephone conversations between CRP staff and the Commission's Report Analysis Division (RAD).

As is the Commission's policy, the audit evaluated the disclosure reports as they existed when the CRP was notified of the audit. The CRP began receiving letters from RAD concerning its reports in January 1999, but did not complete filing amended reports until September 1999. Those amended reports contained additional disbursements totaling $1.7 million (nearly 17% of the CRP's reportable disbursements). The filing of the amended reports was not completed until almost a year after the election that the additional disbursements sought to influence. Further, the amended reports incorrectly reported some disbursements and failed to itemize the $500,000 payment to Russo Marsh on behalf of MFSC. The CRP does not take issue with the conclusions about the reports as originally filed, or the errors that remained in the September 1999 amended reports, however, it does request that the Commission view favorably its efforts in filing those reports.

As recommended above, the CRP filed a comprehensive amendment that materially corrected the original reports. This comprehensive amendment accurately completes the public record.

B. EXCESSIVE COORDINATED PARTY EXPENDITURES ON BEHALF OF FEDERAL CANDIDATES

Section 441a(d)(1) and (3) of Title 2 of the United States Code states, in 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 a candidate for Federal office who is affiliated with such party.[4]

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multi-candidate political committee shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed $5,000.

Section 110.7(b)(2)(i) and (ii) of Title 11 of the Code of Federal Regulations explains the dollar value restriction placed on expenditures made on behalf of a candidate for election to the office of Senator and Representative. The California 1998 party spending limit for Senate and Congressional nominees was $1,517,937 and $32,550, respectively, applied separately for the State and the National Party.

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[4] On May 5, 2000, in FEC v. Colorado Republican Federal Campaign Committee, the United States Court of Appeals for the Tenth Circuit ruled that these spending limitations were unconstitutional. This decision is binding only in the 10th Circuit which does not include California. (*FEC v. Colorado Republican Federal Campaign Committee*, 213 F.3d 1221(10th Cir. 2000), cert. granted, 68 U.S.L.W. 1679 (U.S. Oct. 10, 2000)(No. 00-191)

Section 431(9)(A)(i) of Title 2 of the United States Code states that the term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.

Section 431(17) of Title 2 of the United States Code states, in part, that the term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate.

Section 100.22 of Title 11 of the Code of Federal Regulations states, in part, that the term *expressly advocating* means any communication that uses phrases such as "vote for the President," or "support the Democratic nominee", among others, or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s).

Section 100.17 of Title 11 of the Code of Federal Regulations states, in part, that the term *clearly identified* means the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an unambiguous reference to his or her status as a candidate such as "the Democratic presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

Section 106.1(a) of Title 11 of the Code of Federal Regulations states, in part, that expenditures, including in-kind contributions, independent expenditures, and coordinated expenditures made on behalf of more than one clearly identified candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived.

Sections 434(b)(4)(H) and (6)(B)(iii) of Title 2 of the United States Code state, in part, that for any political committee other than an authorized committee, each report filed under this section shall disclose the name and address of each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure and a statement which indicates whether such independent expenditure is in support of, or in opposition to, a candidate, as well as the name and office sought by such candidate, and a certification, under penalty of perjury, whether such independent expenditure is made in cooperation, consultation, or concert, with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee.

Section 441d(a) of Title 2 of the United States Code states, in part, that whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such communication shall clearly state who paid for the communication and whether the communication was authorized by a candidate, or an authorized political committee of a candidate.

1. Excessive Coordinated Party Expenditures on Behalf of The Matt Fong For US Senate Committee

Section 110.7(a)(4) Title 11 of the Code of Federal Regulations allows the national committee of a political party to make expenditures under 2 U.S.C §441a(d) and 11 CFR §110.7(a)(4) through a designated agent, such as a state party committee. [5] Additionally, the Commission's Campaign Guide for Political Party Committees states in part, that the assigning committee *must first authorize the spending in a written agreement* that should specify the amount the agent may spend.

The CRP spent $2,368,491 on behalf of the MFSC. Of this amount: $1,560,767 was reported as either coordinated expenditures or as operating expenditures with a notation attributing them to the MFSC; $645,220 was not included in the disbursement totals, or in amounts attributed to MFSC on any CRP disclosure report filed prior to the notification of the audit, although a portion of the amount was itemized on Schedules F as memo-type entries; $124,222[6] was reported but not attributed to the MFSC; and, $38,282 was paid wholly from the non federal account and therefore not included on any Federal disclosure report. This amount ($2,368,491) exceeds the CRP's 441a(a) and 441a(d) contribution limitations by $845,554 ($2,368,491-$1,517,937-$5,000)[7].

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[5] In *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981), the United States Supreme Court held that the Commission acted within its discretion when interpreting 2 U.S.C. §441a(d)(3) to allow for party committees to delegate their spending authority under 2 U.S.C. § 441a(d)(3). This case arose from a complaint filed by the Democratic Senatorial Campaign Committee (DSCC). The DSCC alleged that the National Republican Senatorial Committee (NRSC) was prohibited by the Federal Election Campaign Act of 1971, as amended, from acting as the agent of state Republican Party committees for the purpose of making 441a(d)(3) expenditures. Several state Republican Party committees entered into written agreements with the NRSC which designated the NRSC as their agent for making 441a(d)(3) expenditures.

[6] The $645,220 and the $124,222 represent portions of expenditures allocable to more than one candidate and in some cases both federal and non-federal candidates. For those that had a non-federal aspect, the non-federal account overpaid its allocated portion by $66,573.

[7] The two limits are combined for purposes of calculating the excessive amount of coordinated expenditures.

The expenditures identified above are comprised of the cost of: television ads featuring Mr. Fong ($1,756,349); the cost of advocacy mailers featuring only Mr. Fong ($243,651); the cost of mailers featuring Mr. Fong among other candidates, but not qualifying as exempt party activity as defined by 11 CFR §§100.7(b)(9)[8] and (15), or §§100.8(b)(10) and (16) ($146,068); allocated phone bank costs ($111,812); invoices forwarded from the MFSC ($47,267); the cost of polling information provided to both the CRP and the MFSC at the same time ($57,363);[9] and, Mr. Fong's allocable portion of a charter flight with other Republican candidates ($5,981).

Documentation establishing coordination between the CRP and the MFSC for these expenses includes:

- Scripts from all of the television ads featuring Mr. Fong with the disclaimer "Paid for by the California Republican Party and authorized by the Matt Fong, U.S. Senate Committee, Inc."

- A statement from a partner in the firm that handled the media and portions of the mailings, and who was the campaign manager for the MFSC, explaining that the CRP and the MFSC worked together on the various projects the CRP funded.

- A letter from the polling company stating " The questionnaires for these projects were designed by representatives of Moore Information, the CRP and the Fong campaign, working in conjunction with each other."

- Documentation showing Mr. Fong was a passenger on the charter flight paid by the CRP.

- The CRP general ledger account codes and legal clearance forms list most of these expenses as either a "COORDINATED EXPENSE" or "INKIND CONTRIBTUION."

- Correspondence from CRP Counsel stating it made various coordinated expenditures on behalf of Matt Fong and advising the CRP to ensure that it reported such activity.

As of year end 1998, the CRP disclosed coordinated expenditures on behalf of MFSC in the amount of $1,500,848, or $17,089 less than the 441a(d)(3) limitation. In addition, the CRP reported in-kind contributions of $59,920 or $54,920

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[8] In Advisory Opinion 1978-89, the Commission concluded publications that contain biographical information on the candidate, the candidate's position on specific issues, and statements of party philosophy, do not fall within the slate card exemption.

[9] A portion of the total cost of the polling services is attributable to CRP. The non federal account overpaid its share of that cost by $7,106

more than the 441a(a) contribution limitation. The CRP's chart of accounts has two coordinated expenditure accounts, one for Congressional District 22 (Bordonaro) and the other relating to Mr. Fong. A CRP printout of the account relating to Mr. Fong dated December 3, 1998, shows total coordinated expenditures in the amount of $2,008,858. The printout is annotated to show that only a portion of some expenditures were considered to be on behalf of Mr. Fong, the adjusted total is $2,000,239[10]. On its Schedules F, Coordinated Expenditures, (original and post audit notification amendments) the CRP states that it was not designated to make coordinated expenditures on behalf of any other party committee. However, when the Audit staff inquired, the CRP representative stated that she believed the Republican National Committee (RNC) assigned its coordinated party spending authority to the CRP as allowed by 11 CFR §110.7(a)(4). A copy of the prior written authorization was requested repeatedly, but was not provided during fieldwork. Further, the RNC's reports make no mention of any assignment of the spending limitation. At the exit conference, the CRP was given a schedule itemizing all expenditures made on behalf of the MFSC. After the exit conference, a period is provided for the submission of additional materials. The CRP submitted a memorandum stating it had made a request of the RNC regarding the delegation of its coordinated authority on behalf of Mr. Fong and was awaiting a response.

Counsel for the CRP, later faxed the Audit Division a copy of a letter from RNC Counsel dated January 31, 2000. The letter states that the RNC is confident it transferred the limit based on RNC Party Rule 34(f), which prohibits the RNC from supporting a candidate who is nominated by a blanket primary. Only three states had a blanket primary in 1998, California, Washington and Alaska. According to RNC Counsel, the latter 2 states select their nominees at a convention, thus obviating the need for Party Rule 34(f). The letter from RNC Counsel is not prior written authorization, but rather an explanation of why "the RNC did not contribute to or make any expenditures on behalf of" Mr. Fong's candidacy. Transferring its spending limitation to the CRP would appear to undermine the RNC's own rule.

A November 19, 1998 memorandum (Memorandum) from two RNC National Committee members appears to itemize, in round numbers, the financial support provided by the RNC, the NRSC, and the NRCC to California during the 1998 election cycle, further complicates this issue. One item under the heading RNC, lists "Fong coordinated contribution-$500,000." Although, the RNC transferred numerous amounts to the CRP, this amount cannot be directly traced to any of the disbursements included in the $2,368,491 that the CRP made on behalf of MFSC. Entries under the heading NRSC show contributions to "Fong of $17,500 and Fong coordinated of $1,200,000." Commission reports show the NRSC contributing $17,500 to the MFSC and transferring $99,000 to the CRP in November and December 1998. The reports do not show coordinated expenditures on behalf of the MFSC. The numbers on the Memorandum do

[10] The difference between the reported coordinated expenditures of $1,500,848 and the $2,000,239 shown on the CRP's accounting ledger is payments to Russo Marsh and Raper, Inc. totaling $500,000 for media that were not reported, and $608 for printed material reported on Schedule F.

not comport with RNC, NRSC or CRP Federal reports and do not match party transfers. Additionally these numbers are not consistent with the January 31, 2000 letter from RNC Counsel. On February 15, 2000, the Audit staff contacted RNC Counsel to request an explanation of the Memorandum (CRP Counsel authorized the Audit staff to discuss this matter with RNC personnel). After various phone conversations, RNC Counsel faxed a letter to the Audit Division, dated June 2, 2000, stating:

> ...it appears the figures reflected therein may have come from figures projected or requested prior to the 1998 election. According the RNC's 1998 political director, Tony Hammond, at least three meetings were held that year with the National Committee members where various figures for spending on the California election were discussed. Mr. Hammond believes the figures reflected in the November 18, 1998 (sic) memorandum could have been prepared using the figures discussed at any of these meetings, all of which were held prior to the 1998 election.(emphasis added)

In an effort to clarify the source of the spending referenced in the Memorandum, the Audit staff requested a copy of the early spending figures referenced above. To date, the RNC has not responded.

The documentation submitted at the time of the interim audit report did not establish that the RNC authorized the CRP to utilize its coordinated spending limitation in advance of the expenditures.[11] Rather it suggested, that since Party rules prevented the RNC from supporting Mr. Fong, the Commission should assume the transfer of its spending authority to the CRP. On the contrary, an authorization would appear to be inconsistent with the RNC's Party Rules as explained in the letter from RNC Counsel. Further, since the CRP's disclosure reports did not reflect coordinated spending in excess of its own limitation, there would appear to be little incentive for it to have sought additional spending authority. Finally, the Memorandum from the RNC Committee members provided no clarification of the situation.

[11] As is explained below in the finding concerning the CRP's coordinated expenditures on behalf of Bordonaro For Congress, the CRP executed an advance agreement with the National Republican Congressional Committee (NRCC) when its coordinated spending authority was transferred on February 9, 1998. Another agreement was executed when a portion of the spending authority was transferred back on February 12, 1998.

2. Excessive Coordinated Party Expenditures on Behalf of Bordonaro for Congress

The CRP spent $2,663 in excess of its coordinated spending limitation on behalf of Bordonaro For Congress (BFC) in the March 10, 1998 Congressional District 22 Special Election.[12] Tom Bordonaro was the only Republican candidate on the ballot and no other office was at stake in this election.

The CRP made disbursements for a mailing that contained a letter from California Governor Pete Wilson, and an Absentee Ballot Application. Governor Wilson's letter contains statements such as, "We can stop them right here in California by electing a Republican to Congress on March 10th... If you and your Republican neighbors vote, we will win... The most convenient way for you to vote is through the mail and ...return your application to vote-by-mail. Your vote could very well make the difference."(emphasis added) Such mailings in connection with this election are not considered a "generic GOTV" party disbursement because they urge the election of a clearly identified candidate, the only Republican candidate. The total costs associated with the mailing are $38,153, which includes production and postage. The mailing was handled by a direct mail company as defined by 11 CFR §100.7(b)(15)(i), thus precluding the possibility of considering it an exempt party activity as defined by 11 CFR §§100.7(b)(9) and (15), or 100.8(b)(10) and (16). The CRP reported $6,660 as "CD22 Postage Mailer Postage" on Schedule B, Line 21b (Other Federal Operating Expenditures) and $9,300 as "Bulk Mail Postage" on Schedule F, Line 25 (Schedule of Itemized Coordinated Expenditures Made By Political Party Committees or Designated Agents on Behalf of Candidates for Federal Office), attributable to BFC. The remaining $22,253 was not reported (See Finding II.A. above).

Evidence supporting coordination of this mailing includes a memorandum from CRP Counsel, as well as, CRP accounting records. The memorandum from CRP Counsel dated February 10, 1998 discusses, "...conversations regarding the various ways in which the CRP could support Tom Bordonaro in the special election to be held in the 22nd Congressional District later that month, and the various ways in which the NRCC and Bordonaro have requested, this support." (emphasis added) Furthermore, it outlines the NRCC's request to have the CRP characterize these mailers "as a 'generic GOTV expense' thereby not counting as a 'contribution' or 'coordinated party expenditure' specifically for Bordonaro." CRP Counsel disagreed with the NRCC and consulted with RNC Counsel, who "tentatively" agreed with him. CRP Counsel summarized four options in which the CRP may send out mailers: Coordinated; Generic GOTV; Volunteer Activities; and Independent Expenditure. Other CRP correspondence stated that it would only be under unusual circumstances that mailings to support candidates would be

[12] The vacancy resulted from the death of Representative Walter Capps. An election was held on January 13, 1998 and because no candidate received more than 50% of the vote, the candidate from each party who received the most votes participated in a runoff election on March 10, 1998.

reported as independent expenditures, because "political parties typically coordinate their activities with their candidates." Furthermore, the CRP categorized the production cost ($22,153) and most of the postage cost ($9,300) in its general ledger as "COORDINATED EXPENDITURE-CD22," the remaining $6,600 portion of the postage was classified as "GOTV." The CRP also maintained a ledger account titled "INDEPENDENT EXPENDITURE CD22," which contained expenditures separate from those at issue.

The above expenditures were for the purpose of influencing a federal election and urging the public to vote for a clearly identified candidate. Further, there is evidence of coordination between the CRP and BFC, therefore the expenditures are not independent. These expenditures are either coordinated expenditures or contributions. The sum of the expenditures exceeds the sum of the available coordinated expenditure limitation and the contribution limitation by $2,663 ($38,153-(($32,550-$31,810)+$29,750[13]+$5,000)(See Footnote 7, on page 8).

At the Exit Conference, the staff explained the excessive amounts attributed to each candidate, along with providing the CRP supporting schedules.

The interim audit report recommended the CRP provide evidence demonstrating that the expenditures in question were not coordinated expenditures made on behalf of, or contributions to the MFSC and BFC.

If the CRP's response included the contention that it was authorized to make coordinated expenditures as an agent of the RNC with respect to the MFSC, the Audit staff recommended that the CRP provide:

- a copy of a written authorization executed prior to the use of the RNC's 441a(d) limit.

- documentation of and explanations for the amounts on the Memorandum

If these expenditures were independent expenditures, the Audit staff recommended that the CRP: (1) file amended Schedule(s) H4 and E (Independent Expenditures) to report the independent expenditures and certify that they were not made in coordination with the candidates, (2) provide documentation to refute the evidence of coordination cited above; and (3) file amended Summary and Detailed Summary pages for the reports at issue by reporting period, if necessary.

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[13] The CRP provided the Audit staff a copy of written authorization dated February 9, 1998 transferring $31,810 of its 441a(d) limit, the amount of the limitation for the previous year, to the National Republican Congressional Committee (NRCC). On February 12, 1998 the NRCC transferred $29,750 back to CRP by means of another written authorization. The 1998 coordinated spending limitation was $32,550.

Absent the submission of the materials discussed above, the report recommended that the CRP file amended Schedules F, along with the appropriate adjustments on the Summary/Detailed Summary Pages. Furthermore, the CRP should seek refunds from the MFSC and the BFC Committee.

Finally, documentation was requested demonstrating that the federal account(s) reimbursed the non-federal account(s) $111,961 [($38,282+66,573-7,106]. The documentation submitted was to include a copy of a check or other debit advice showing the transfer, and copies of the relevant bank statements for both the federal and non-federal accounts.

In response to the interim audit report, the CRP concedes that it cannot locate a written record demonstrating the delegation of the RNC's coordinated expenditure authority on behalf of MFSC. The CRP further notes that it prepared and maintained copies of its delegation letters with respect to the 22nd Congressional District Congressional Election, and that both it and the RNC are experienced with 2 U.S.C. 441a(d) compliance. The lack of documentation in this instance is attributed to an "administrative oversight". Finally, CRP contends that affidavits from Michael Schroeder[14] and Mitch Bainwol[15], along with the letter submitted by RNC Counsel, fully resolve the issue of the delegation in the CRP's favor.

Both Mr. Schroeder and Mr. Bainwol state they recall conversations[16] regarding the delegation of spending authority from the RNC to the CRP. They state that the RNC could not use its coordinated spending limitation on behalf of MFSC due to Party Rule 34(f). Discussions ensued concerning whether the Party Rule prevented the RNC from delegating its spending authority to the CRP. Both affidavits state that it was agreed that the coordinated spending limitation would be transferred to the CRP and that a document would be prepared evidencing the delegation. Mr. Schroeder states that he does not recall ever seeing or receiving such a document.

With respect to Party Rule 34(f) and the interim audit report's suggestion it would be undermined by the delegation of the RNC's coordinated spending authority, Mr. Schroeder explains that he was author of Rule 34(f) and a member of the RNC Rules Committee in 1996 when it was adopted. The RNC's General Counsel at that time was asked whether the rule would preclude the delegation of the RNC's coordinated spending authority and if the rule prevented the RNC from using it. Mr. Schroeder states that the Counsel's opinion was that it did not.

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[14] Mr. Schroeder is the former Chairmen of the California Republican Party from 1996 through 1999.

[15] Mr. Bainwol is the former Executive Director of the Republican National Committee for 1998.

[16] The conversations involved the Chair of the NRSC, the Political Director of the NRSC, the candidate and the RNC Western Regional Director.

Although the CRP and the RNC assert that a delegation of coordinated spending authority was made, it is clear the requisite written authorization did not occur. Further, it is clear that both the CRP and the RNC understood the need for a written authorization[17]. The record also demonstrates that there was initially doubt about whether the spending authority could be transferred under RNC Party Rules. At some point that question was apparently resolved in favor of the transfer. Finally, since the CRP did not report utilizing more than its own limitation, its disclosure reports did not suggest that a delegation of spending authority was necessary. The amended reports filed in September of 1999 indicated that the CRP's limitation had been exceeded by approximately $40,000 while again failing to acknowledge more than $500,000 in coordinated expenses on behalf of MFSC.

With respect to the Memorandum, the CRP claims it was "prepared without reference to any federal election campaign reports or documents of either the RNC or the Committee." As a result, "it is not surprising" that the numbers do not comport with any Federal reports. Hence, the CRP believes this Memorandum should have no bearing on the resolution of the 441(a)(d) expenditure issue.

This response does not clarify the purpose of the Memorandum or the source of the figures contained therein. The CRP only addresses the Memorandum with respect to itself and the RNC. As stated earlier, the amounts associated with the RNC do not directly match its Federal reports, however, the RNC did transfer amounts in excess of the $500,000 figure mentioned in the Memorandum during the election period. More significantly, the CRP makes no comment on the Memorandum's accurate entry for NRSC contributions to Mr. Fong's campaign or the entry entitled "Fong coordinated - $1,200,000." The fact this Memorandum is dated subsequent to the election and that questions regarding its origin remain unresolved, make it difficult to disregard.

With respect to the excessive amount attributed to Tom Bordonaro, the CRP does not contest the finding. It appears to the CRP that it simply lost track of the amount spent on behalf of the Bordenaro campaign. The CRP argues that the amount of the overage is small and it should be deemed insignificant. A small difference ($603) in the amount calculated by the Audit staff and the CRP is noted in the response. The CRP derives their number from subtracting the amount transferred to the NRCC ($31,810) and the amount transferred back from the NRCC ($29,750).

[17] Subsequent to the CRP's response to the interim audit report, RNC counsel submitted a copy of a written authorization provided to the Washington State Republican Party for the 1998 election cycle.

The correct calculation is as follows:

2 U.S.C. 441a(d)(2) Coordinated Spending Limitation		$32,550
Less: Amount Transferred to the NRCC	($31,810)	
Plus Amount Transferred from the NRCC	$29,750	($2,060)
2 U.S.C. 441a(a) Contribution Limitation		$5,000
Amount Available to Spend On Behalf of BFC		$35,490
Amount Expended on Behalf of BFC		($38,153)
Amount in Excess of Available Spending Authority		($2,663)

The CRP has filed amended reports correctly itemizing all expenditures made on behalf of Matt Fong and Tom Bordonaro on Schedule F (Coordinated Expenditures), as recommended. Also as recommended, the CRP federal account reimbursed the non-federal account $111,961 for over-funding of federal activity. The CRP response to the interim audit report makes no claim that any of the expenditures questioned were not on behalf of Matt Fong or Tom Bordonaro, or that any were independent.

Finally, the CRP believes this finding should be deferred until the Supreme Court decides *Federal Election Commission v. Colorado Republican Federal Campaign Committee*. The importance of this case and its possible effects are recognized, however, there is no reason to withhold the discussion of this matter pending the outcome. Should the Court determine that the 2 U.S.C. 441a(d)(2) limitations are unconstitutional, the Commission will take no further action with respect to these issues.

C. DISCLOSURE OF RECEIPTS-INDIVIDUALS

Section 434(b)(3)(A) of Title 2 of the United States Code requires, in part, a political committee to report the identification of each person who makes a contribution to the committee in an aggregate amount or value in excess of $200 per calendar year, together with the date and amount of any such contribution.

Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" to be, 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.

Section 104.3(a)(4) of Title 11 of the Code of Federal Regulations states, in part, that the identification of each contributor and the aggregate year-to-date total for such contributor shall be reported for each person whose contribution or contributions aggregate in excess of $200 per calendar year and for all committees which make contributions to the reporting committee during the reporting period.

The Audit staff reviewed contributions from individuals on a sample basis and determined contributor information was not disclosed accurately for a material

number. The errors included identifying the wrong account holder on checks drawn on both joint and single accounts. This was primarily the result of a computer program that assigned one contributor identification number (ID) to each household. For example, if a contribution was to be attributed to the husband only, it was recorded in the database and disclosed on FEC reports as "M/M John Doe." Additionally, the CRP failed to provide the aggregate year-to-date totals for the "1998 Fall Convention" receipts. The computerized schedule itemizing these receipts was not an approved format and did not allow for this information.

At the exit conference, the Audit staff explained the irregularities. The CRP did not comment.

The interim audit report recommended the CRP demonstrate that procedural changes have been made to avoid the recurrence of the noted errors in future reports. In response, the CRP asserted systemic changes were implemented in its donor receipt procedures. The CRP believes its 1999-2000 filings "substantiate these corrections and systemic improvements."

Although the 2000[18] filings reveal a substantial decrease in the rate of "M/M's" appearing on the Schedule A's, they are still present. The CRP should continue to review their procedures to avoid further problems.

D. DEBTS AND OBLIGATIONS

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

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. A debt or obligation, the amount of which is $500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation which is over $500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

A test of debts and obligations owed to vendors revealed the CRP failed to itemize a material number on the disclosure reports and amendments thereto, filed before

[18] The procedural recommendation was made in late December 1999. Any changes would not be reflected in disclosure reports filed before this date.

the Audit Notification Letter. The CRP did not file debt schedules for the period July 1, 1998 through December 31, 1998. Subsequent to the Audit Notification Letter amended schedules for these report periods were filed which materially corrected the deficiency.

At the exit conference and in the Interim Audit Report, the CRP was advised that no further action would be required with respect to this finding.

In the interim audit report, no further action was recommended with respect to this matter. The CRP did not dispute this finding.

E. ITEMIZATION OF REFUNDS AND REBATES

Section 104.3(4)(v) of Title 11 of the Code of Federal Regulations requires that the reporting committee disclose each person who provides a rebate, refund or other offset to operating expenditures where the aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such receipt. Person is defined at 11 CFR §100.10 as an individual, partnership, committee, association, corporation, labor organization, and any other organization, or group of persons.

The review of offsets to operating expenditures (Refunds/Rebates) revealed that on its original 1998 reports, the CRP included in receipts but failed to itemize, 88 refunds and rebates totaling $33,080. After notification of the audit, the CRP filed amendments for two report periods (October Quarterly and Post-General) that corrected 42 errors totaling $15,568. Still requiring itemization were 46 items totaling $17,512 received between January 1, 1998, and June 30, 1998. The CRP had not filed Schedules A to support the reported refunds/rebates received from vendors for these periods. In addition, the CRP failed to report a refund from one vendor for $20,000, which also requires itemization. (See Finding II.A.)

At the Exit Conference the CRP was provided a schedule of the itemization errors for vendor refunds and rebates. The CRP did not comment.

The staff recommended that the CRP file as part of a comprehensive amended report for 1998, Schedules A, by reporting period, itemizing the remaining receipts noted above.

In response to the recommendation, the CRP filed the required schedules. These amended schedules materially corrected the itemization problems.

F. REPORTING OF COMMITTEE LOAN

Section 104.3(d) of Title 11 of the Code of Federal Regulations states in relevant part, each report filed under 11 CFR §104.1 shall, on Schedule C (Loans) or D

(Other Debts), disclose the amount and nature of outstanding debts and obligations owed by the reporting committee, and that when a political committee obtains a loan, or establishes a line of credit, at a lending institution as described in 11 CFR §§100.7(b)(11) and 100.8(b)(12), it shall disclose the date, amount, interest rate, and repayment schedule on Schedule C-1.

Section 104.3(a)(4)(iv) of Title 11 of the Code of Federal Regulations states in part, each report filed shall disclose each person who makes a loan to the reporting committee, during the reporting period, together with the identification of any endorser or guarantor of such loan, the date such loan was made and the value of such loan.

The CRP received a loan from Pacific Century Bank on October 28, 1998 for $300,000. The loan was repaid with interest on November 20, 1998.

The CRP failed to file Schedules A (Itemized Receipts), C (Loans) and C-1 (Loans and Lines of Credit From Lending Institutions), itemizing the receipt of the loan. Subsequent to notification of the audit, Schedules A and C were filed. At the exit conference, the CRP was provided a schedule detailing the review of the loan. After the exit conference, the CRP submitted a Schedule C-1.

In the interim audit report, no further action was recommended with respect to this matter. The CRP did not dispute this finding.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 19, 2001

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Staff Director

FROM: Lois G. Lerner
Acting General Counsel

BY: Gregory R. Baker
Acting Associate General Counsel

Peter G. Blumberg
Acting Assistant General Counsel

Delbert K. Rigsby
Attorney

SUBJECT: Final Audit Report on the California State Republican Party (LRA #579)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report of the California State Republican Party (the "Committee"), which was submitted to this Office on March 16, 2001.[1] This memorandum presents our comments on the proposed Report. If you have any questions concerning our comments, please contact Delbert K. Rigsby, the attorney assigned to this review.

[1] This Office recommends that the Commission consider the proposed Final Audit Report in open session because this document does not include matters exempt from public disclosure. *See* 11 C.F.R. § 2.4.

II. EXCESSIVE COORDINATED PARTY EXPENDITURES ON BEHALF OF FEDERAL CANDIDATES (II. B.)[2]

This Office concurs with the Audit Division's finding that the Committee may have exceeded its coordinated party expenditure limit on behalf of Matt Fong for Senate Committee and Bordonaro for Congress. This Office notes that the proposed Report states that prior written authorization is required to delegate authority for 2 U.S.C. § 441a(d) expenditures, citing the Commission's Campaign Guide for Political Party Committees. With regard to the Committee's expenditures on behalf of Matt Fong for Senate, the proposed Report states that although the Committee and the Republican National Committee ("RNC") assert that a delegation of coordinated spending authority was made, it was clear that the requisite written authorization did not occur and that the Committee and the RNC understood the need for a written authorization. This Office reiterates its comments on the Interim Audit Report of the California State Republican Party that while there is no provision in the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations that requires prior written authorization to delegate authority relating to 441a(d) expenditures, the Audit staff's approach is consistent with long-standing Commission policy. *See* OGC's Comments on the Interim Audit Report at 2-3. This Office's comments on the Interim Audit Report are attached and incorporated herein by reference.

This Office also concurs with the Audit Division's view that the finding relating to excessive coordinated expenses made by the Committee should not be deferred until the United States Supreme Court rules on *FEC v. Colorado Republican Federal Campaign Committee*, 213 F.3d 1221 (10th Cir. 2000), *cert. granted*, 68 U.S.L.W. 1679 (U.S. Oct. 10, 2000) (No. 00-191). In its response to the Interim Audit Report, the Committee argued that it would be appropriate for the Commission to defer reaching any finding that the Committee exceeded its 441a(d) limits until *Colorado Republican* has been decided by the United States Supreme Court. The 10th Circuit's opinion in *Colorado Republican* only applies to the states of Colorado, Kansas, New Mexico, Oklahoma, Utah and Wyoming, and does not prohibit the Commission from making any determination in the proposed Report with respect to the California State Republican Party's compliance with 2 U.S.C. § 441a(d).[3] When referencing the 10th Circuit's decision on page 16 of the proposed Report, this Office recommends that the Audit staff include the citation for the decision which is found above in this paragraph.

Finally, this Office notes that footnote 13 in the proposed Report refers to February 9, 1998 as the date that the Committee provided the Audit staff with written authorization relating to its 441a(d) spending authority on behalf of Bordonaro for Congress. This Office recommends

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2 The parenthetical reference corresponds to the section number in the proposed Report.

3 On June 23, 2000, the Commission issued an advisory to the public on the 10th Circuit's opinion in *Colorado Republican* which states that "until the Supreme Court resolves the case, the Federal Election Commission will not file any action in the courts in the Tenth Circuit to enforce section 441a(d)(3). The Commission will, however, generally continue the administrative processing of matters concerning section 441a(d)(3)." This Office believes that the finding on coordinated expenditures in the proposed Final Audit Report is consistent with the Commission's approach regarding this case.

that footnote 13 be revised to reflect that February 9, 1998 represents the date of the written authorization and not the date that it was provided to the Audit staff.

<u>Attachment</u>
Memorandum from Lawrence M. Noble to Robert J. Costa, *Interim Audit Report on the California State Republican Party (LRA #579)*, October 25, 2000.

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

October 25, 2000

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Leslie Bright KLB
Associate General Counsel

Rhonda J. Vosdingh RJV
Assistant General Counsel

Delbert K. Rigsby DKR
Attorney

SUBJECT: Interim Audit Report on the California State Republican Party (LRA # 579)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Interim Audit Report of the California State Republican Party (the "Committee"), which was submitted to this Office on August 25, 2000.[1] This memorandum presents our comments on the proposed Report. If you have any questions concerning our comments, please contact Delbert K. Rigsby, the attorney assigned to this review.

Attachment 1
Page 1 of 4

II. EXCESSIVE COORDINATED PARTY EXPENDITURES ON BEHALF OF FEDERAL CANDIDATES (II. B.)[2]

This Office concurs with the Audit Division's recommendation that the Committee provide evidence that the expenditures questioned in the proposed Report were not coordinated expenditures made on behalf of, or contributions to the Matt Fong for Senate Committee and Bordonaro for Congress. The proposed Report states that prior written authorization is required to delegate authority for 2 U.S.C. § 441a(d) expenditures, citing the Commission's Campaign Guide for Political Party Committees (the "Campaign Guide") and *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981). The Campaign Guide states that a national party or state party may assign all or part of its coordinated party spending authority to another party committee, and the assigning committee must first authorize the spending in a written agreement that should specify the amount the designated agent may spend. *Campaign Guide* at 16. *See also* 11 C.F.R. §§ 110.7(a)(4) and 110.7(b).[3] In 1997, the Commission issued a notice of proposed rulemaking on independent and coordinated party committee expenditure limitations that requested comment on whether to add a prior written authorization requirement to the regulations. *See* 62 Fed. Reg. 24367, 24371. The Commission considered adding language to 11 C.F.R. § 110.7(c) to "set forth the Commission's current policy regarding the assignment" of the coordinated party expenditure limitations reflected in the *Campaign Guide*. *Id.* Specifically, the revised regulation would have provided "that whenever a party committee authorizes another party committee to use part or all of its coordinated expenditure limitation, the authorization must be in writing, must specify a dollar amount, and must be made before the committee so authorized actually makes the coordinated expenditure." *Id.* However, no final rules have been adopted.[4]

While there is no provision in the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations that requires prior written authorization to delegate authority relating to 441a(d) expenditures, the proposed report's approach is consistent with long-standing Commission policy. In previous enforcement matters, the Commission has considered expenditures by party committees to be unauthorized where there was no prior written

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[2] The parenthetical reference corresponds to the section number in the proposed Report.

[3] Section 110.7(a)(4) permits a national party committee to make coordinated expenditures with respect to presidential candidates through a designated agent such as a state and subordinate party committee. Section 110.7(b) permits a national party committee and a state party committee to make coordinated expenditures for candidates for federal office in that state, but does not explicitly provide that such expenditures may be made through a designated agent. Since the ability to designate agents for spending authority under Section 441a(d) is available for presidential campaigns, it should also be available for campaigns for the United States Congress and United States Senate.

[4] Because of a recent federal court decision, *FEC v. Colorado Republican Federal Campaign Committee*, 213 F.3d 1221 (10th Cir. 2000), *cert. granted*, 68 U.S.L.W. 1679 (U.S. Oct. 10, 2000) (No. 00-191), the law regarding coordinated expenditures is unsettled in some jurisdictions. Once the legal issues surrounding coordinated expenditures are resolved, the Commission may draft new regulations regarding coordinated expenditures by party committees, and it is possible that a prior written authorization requirement to delegate authority under Section 441a(d) could be included in the new rules.

authorization, and found reason to believe that the respondents violated 2 U.S.C. § 441a(f), but took no further action.[5] *See* MURs 2701, 2751, 4213 and 4214.

The Court's decision in *Federal Election Commission v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981), is not a basis to require prior written authorization to delegate authority for 2 U.S.C. § 441a(d) expenditures. *See* Proposed Report, n.5.[6] This case involved a challenge by the Democratic Senatorial Campaign Committee to agency agreements between several state Republican Party committees and the National Republican Senatorial Committee (NRSC) in which the state committees designated the NRSC to be their agent for spending funds pursuant to 2 U.S.C. § 441a(d)(3). In *Democratic Senatorial Campaign Committee*, the United States Supreme Court held that Section 441a(d)(3) does not expressly or by necessary implication foreclose the use of agency agreements, and that while Section 441a(d)(3) does not authorize the NRSC to make expenditures in its own right, it does not follow that it may not act as agent of a committee that is expressly authorized to make expenditures. This Office does not believe that this decision can be interpreted to require prior written authorization regarding the delegation of authority for Section 441a(d) expenditures. Thus, this Office recommends that footnote 5 which discusses this case be deleted from the Interim Audit Report.

This Office also recommends other changes to this section of the proposed Report. Specifically, footnote 4 should be revised to include the citation for the decision in *FEC v. Colorado Republican Federal Campaign Committee*, 213 F.3d 1221 (10th Cir. 2000), *cert. granted*, 68 U.S.L.W. 1679 (U.S. Oct. 10, 2000) (No. 00-191), and reflect the correct name of the court which is the United States Court of Appeals for the Tenth Circuit instead of the U.S. District Court for the 10th Circuit. On October 10, 2000, the United States Supreme Court granted a petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

Additionally, the proposed Report's formulation of the amount of excessive coordinated expenditures made by the Committee on behalf of Matt Fong for Senate Committee and Bordonaro for Congress, which is found on pages 7 and 12, respectively, combines both the 441a(a) contribution limit and the 441a(d) coordinated expenditure limit in the calculation. The proposed Report should be revised to clarify that the two limits are combined for purposes of calculating the excessive amount of coordinated expenditures.

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[5] For example, in MUR 4213, this Office's analysis stated "state parties may not make coordinated party expenditures on behalf of the presidential ticket without prior written authorization from the national party committee." First General Counsel's Report dated April 12, 1995 at 4.

[6] Footnote 5 in the proposed Report references *National Republican Senatorial Campaign v. Democratic Senatorial Campaign Committee* (Civil Action No. 80-1129) and FEC v. *Democratic Senatorial Campaign Committee* (Civil Action No. 80-939), which were cases for review before the United States Supreme Court. The United States Supreme Court consolidated these cases for purposes of oral argument, and the Court's decision is cited as *Federal Election Commission v. Democratic Senatorial Campaign Committee*, 454 U.S. 27 (1981).

Finally, this Office is attaching its response to the first audit query for the California Republican Party regarding the Committee's expenditures in a special election in 1998 to fill the vacant seat in the 22nd Congressional District in California. That query raised a number of questions related to the proposed Report's finding II.B.2., "Excessive Coordinated Party Expenditures on Behalf of Bordonaro for Congress," specifically: 1) whether the January 13, 1998 special election is considered a general election; 2) whether there is a separate expenditure limit under 2 U.S.C. § 441a(d) for the January 12, 1998 election and the March 10, 1998 election; 3) whether the Committee could divide its 441a(d) limit between the two Republican candidates in the January 13, 1998 election; 4) whether the Committee can make "generic GOTV" party disbursements in direct relation to both special elections if only one federal office is on the ballot; and 5) whether the Committee's disbursements are either 441a(d) expenditures or contributions to any candidates. As noted in that memorandum, this Office recommends it be attached to the proposed Report when it is circulated to the Commission.

Attachment
Memorandum from Kim Leslie Bright, Associate General Counsel, to Robert J. Costa, Assistant Staff Director, Audit Division, *Audit Query on California Republican Party (LRA #579)*, March 14, 2000.

Attachment 1
Page 4 of 4

FEDERAL ELECTION COMMISSION
WASHINGTON D C 20463

June 1, 2001

Mr. Michael Der Manouel, Treasurer
California State Republican Party
1903 W. Magnolia Blvd.
Burbank, CA 91506

Dear Mr. Der Manouel:

Attached please find the Final Audit Report on California State Republican Party. The Commission approved the report on May 24, 2001.

The Commission approved Final Audit Report will be placed on the public record on June 5, 2001. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220. Any questions you have related to matters covered during the audit or in the report should be directed to Ms. Erica Holder or Mr. Russ Bruner of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

cc: Charles E. Bell, Jr. Esq.

CHRONOLOGY

CALIFORNIA REPUBLICAN STATE PARTY

Audit Fieldwork	10/17/99--12/09/99
Interim Audit Report to the Committee	11/27/00
Response Received to the Interim Audit Report	01/17/01
Final Audit Report Approved	05/24/01