



FEDERAL ELECTION COMMISSION  
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2002 NOV 27 P 3 50

November 27, 2002

**MEMORANDUM**

**TO:** The Commissioners

**THROUGH:** James A. Pehrkon  
Staff Director

Robert J. Costa  
Deputy Staff Director

**FROM:** Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

Alex Boniewicz  
Audit Manager

Tesfai Asmamaw  
Lead Auditor

**SUBJECT:** Final Audit Report – Gore 2000, Inc. (Gore 2000)

**AGENDA ITEM**  
For Meeting of: ~~12-05-02~~  
12-12-02

Attached for your approval is the subject final audit report. Also attached is the legal analysis provided by the Office of General Counsel (Counsel) and a copy of the narrative portion of Gore 2000's response to the Preliminary Audit Report. There remain some disagreements between the Audit staff and Counsel with respect to winding down costs. Those disagreements are discussed below.

First, some background information concerning the Gore committees will be useful in considering these matters. As of September 30, 2002, Gore 2000 discloses accounts receivable of about \$32,000 (all phone deposits for active phones); one payable of \$88,000 (which it disputes) and cash on hand of \$1,009,172. During the past 21 months no contributions have been received. Similarly, Gore/Lieberman, Inc. discloses one receivable from its media company, as well as a small amount (about \$7,000) of press receivables that, at this point, are of questionable collectibility. Gore/Lieberman, Inc. reports no outstanding payables and cash on hand on September 30, 2002, of \$46,184. Finally, the Gore/Lieberman General Election Legal and Accounting Compliance Fund (the GELAC) discloses a cash balance on September 30, 2002, of \$7,040,074. Other than

interest earned, the GELAC has reported no receipts within the past year. Given the above, these committees appear to have completed, or nearly completed, the winding down process. However, Gore 2000 and Gore/Lieberman, Inc. propose combined future winding down costs through December 31, 2003, in excess of \$2,000,000. The only matter in either report that remains in dispute is the amount of surplus funds held by Gore 2000. That amount is determined in large part by the level of future winding down costs. The Audit staff has proposed a combined winding down allowance of \$960,130. The total repayments at issue, a primary surplus repayment, is less than half that amount.

A discussion of each topic addressed in the legal analysis follows:

- **WINDING DOWN PERIOD**

Counsel's analysis disagrees with the Audit staff's shortening of the winding down period from December 31, 2003, in the Preliminary Audit Report (PAR) to June 30, 2003, for the Final Audit Report (FAR). Counsel agrees with Gore 2000 that the December 31, 2003, date is reasonable. The analysis notes that since this is a "large" campaign with substantial activity and the repayment process is not yet complete, the longer winding down period is reasonable. The analysis refers to the Statement of Reasons for Buchanan's 1992 campaign (Buchanan SOR) and notes that the Commission has in the past limited estimated winding down costs, particularly legal fees, where the estimate is speculative or uncertain and comparatively excessive. Counsel's analysis goes on to note that Buchanan's winding down estimates were much higher than any other 1992 campaign except Clinton's which was a much larger campaign. Counsel's analysis continues by speculating that the winding down period may not be completed by June 30, 2003, and that Gore 2000 may incur reasonable winding down costs after that date.

Counsel's analysis also says that although the number of audit issues is not necessarily indicative of the time needed to wind down a campaign, the fact that Gore 2000 has one complex contested issue involving a substantial repayment is no indication that the administrative review process will go faster, merely because it is only disputing a surplus repayment. Counsel's analysis further notes that Gore 2000 has entered into agreements with various vendors and has not had notice of the shortened wind down period proposed in the audit report.

Finally, Counsel's analysis states that the regulations do not mandate a specific cut-off date for estimating winding down costs and again references the Buchanan SOR which stated that delaying the repayment determination until the end of the wind down period would lead to delay and create potential abuse of the process because committees might assert they have not completed wind down activities in order to expend the remaining funds rather than repay them.

Winding down costs are defined as the costs associated with the termination of political activity such as the cost of complying with post election requirements of the Act and other necessary administrative costs of winding down the

campaign, including office space rent, staff salaries, and office supplies. As noted above, other than debating the amount of Gore 2000's surplus funds, the winding down appears to be nearly complete. The campaign has few bills outstanding and cash well in excess of those obligations. There are few amounts owed to the campaign. Although it is true that the number of findings in an audit report does not necessarily determine the length of the wind down period, audit reports that do not contain findings that are likely to generate future compliance actions do not suggest a protracted wind down effort. Counsel speculates that an administrative review process may ensue and that may be the case. However, that is not known and the wind down allowance calculated provides substantial resources for such a review, more than twice the amount at issue. The fact that some vendors have been contracted for another year does not establish those expenses as winding down costs as defined by the Commission's Regulations. The Audit staff does not agree with Counsel's conclusions with respect to the length of the wind down period.

If Gore 2000 and Gore Lieberman, Inc are permitted the additional six-months of winding down costs for 2003, as well as the other adjustments recommended in Counsel's analysis, a surplus of \$709,056 would result, generating a repayment of \$221,225 (of which Gore 2000 has repaid \$54,591). However, by doing so, an additional \$517,000 would be added to the Audit staff's combined estimated future winding down costs bringing the total to nearly \$1.5 million primarily to fund an administrative review process over an entire calendar year with only \$221,225 at issue.

The Audit staff has not revised the wind down period to include the last 6 months of 2003.

- **WIND DOWN RATIO**

The Counsel's analysis disagrees with the Audit staff's rejection of Gore 2000's allocation ratios for winding down costs and recommends that a larger percentage be allocated to Gore 2000. Counsel cites language from the Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Funds (the Compliance Manual), cited by the Audit staff in its report, by stating that Gore 2000 has in fact "claimed" a different percentage. It notes the regulations do not mandate a 50% allocation of wind down expenses. Counsel's analysis acknowledges the imperfections in the Gore 2000 ratios and that Gore 2000 should have submitted documentation supporting its separate ratio for accountants, lawyers and personnel. Counsel's analysis then speculates that based on the significance of the issues in Gore 2000 more winding down costs will relate to it rather than to Gore/Lieberman, Inc. Counsel then cites the larger repayment amount for Gore 2000 and the physical size of the response to the PAR, to further support its position. Counsel's analysis then proposes acceptance of Gore 2000's ratio (61% Primary versus 39% General) as more accurate than the Audit staff's.

The Audit staff disagrees with Counsel's analysis. Counsel acknowledges that the basis of the campaign's allocation is not valid in one instance and not documented in the other. Counsel agrees that the number of checks written by Gore 2000 as compared to

Gore/Lieberman, Inc. is not valid allocator. It is also agreed that for the portion of the winding down costs that were allocated based on staff time expended on the response, no documentation was submitted to support the percentages used. The Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Funds (the Compliance Manual) advises readers that when a primary and a general committee of a candidate share winding down activities, each committee must allocate and document its allocation of the expenses as being attributable to either the primary or the general committee. If the respective committees claim no allocation, it will be presumed that winding down costs should be allocated equally between the committees. Counsel is correct in stating that the Gore campaign has in fact claimed another allocation. However, the relevant section of the Compliance Manual would have no meaning if it were interpreted to require only an undocumented claim. Further, Counsel's reliance on the size of the repayments and the size of the response is not valid. The issue at hand is the future winding down budget, the allocation of that budget, and the allocation of past winding down costs between the two committees. This issue affects the audit report presentation for both committees, although a repayment is generated only in the Gore 2000 case. As to the size of the responses to the respective PARs, although the Gore 2000 response is longer, the Gore/Lieberman, Inc. response incorporates the Gore 2000 response by reference recognizing that the winding down issue affects both committees.

The Audit staff has not revised its NOCO presentation in the report, and winding down costs remain allocated equally between the Gore/Lieberman, Inc. and Gore 2000.

- **PARTICULAR CATEGORIES OF EXPENSES**

1. **INSURANCE**

Counsel's analysis disagrees with the exclusion of professional liability insurance costs for attorneys and states that the renewal of existing insurance should be a permissible winding expense; also noting it has commented similarly in other analyses. Counsel cites Gore 2000's statement that such insurance is needed to protect itself from claims based on actions by its attorneys during the entire campaign. Finally, Counsel speculates that even though Gore 2000 does not currently employ attorneys, it may hire some during the policy period.

Although other insurance coverage allowed by the Audit staff appears to provide duplicate coverage, the report has been revised to include an amount for this insurance through June 30, 2003.

2. **LEGAL FEES**

Counsel's analysis disagrees with the exclusion from winding down costs of \$50,000 for other legal fees. The analysis speculates that although the subject matter of the lawsuit is unclear, it appears that at least one case exists and further appears

to be campaign related since it involves the candidate and his party; and cites an estimate from the involved attorney. Counsel concludes, after stating that additional documentation of this and other litigation would be helpful, that some amount for other legal expenses should be permitted as a winding down cost; however, no estimated amount is suggested.

The Audit staff, without more information, has not added any estimate for attorneys' fees other than those for local counsel. In the time since the 2000 election only \$2,700 in such fees have been paid and no obligations for any such fees are claimed. The amount paid has not been included in winding down costs since the connection to the campaign has not been established. Any estimate for future payments is speculative and no connection with the campaign has been established for the one case discussed in Gore 2000's response.

### **3. HAYES SOFTWARE & ACCOUNTING (HAYES)**

Counsel's analysis does not agree with the Audit staff's treatment of expenses incurred for services provided by Hayes during the general election expenditure report period. Gore 2000 argues that those expenses are related solely to the primary and the Audit staff accepted that argument in the report submitted to Counsel for review. Explaining that its comments are consistent with those given relative to Nader 2000, Counsel believes these payments to Hayes and any other expenses incurred between the date of nomination and the end of the expenditure report period, should be treated as general election expenses.

The attached report has been adjusted to conform with Counsel's suggestion.

#### Recommendation

The Audit staff recommends that the report be approved. It is requested that this matter be placed on the Open Session agenda for December 5, 2002. If you have any questions, please contact Tesfai Asmamaw or Alex Boniewicz at extension 1200.

#### Attachments:

Report of the Audit Division on Gore 2000, Inc.

Legal Analysis, dated November 21, 2002

Gore 2000, Inc. Response to the Preliminary Audit Report (Narrative portion only)



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

***REPORT OF THE AUDIT DIVISION  
ON  
GORE 2000, INC.***

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of Gore 2000, Inc. (Gore 2000). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states, "After each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under section 9037." Also, Section 9039(b) of Title 26 of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time, as it deems necessary.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (FECA), as amended.

**B. AUDIT COVERAGE**

The audit covered the period from Gore 2000's first bank transaction on January 8, 1999, through December 31, 2000. During this period, Gore 2000 reported an opening cash balance of \$0, total receipts of \$53,871,927, total disbursements of \$50,378,013, and a closing cash balance of \$3,493,914. In addition, a limited review of Gore 2000's financial activity and disclosure reports for the period from January 1, 2001, through September 30, 2002, was conducted to determine its matching fund entitlement based on its financial position.

**C. CAMPAIGN ORGANIZATION**

Gore 2000 registered with the Federal Election Commission (the Commission) on January 11, 1999, as the principal campaign committee for then Vice President Al Gore (the Candidate), a candidate for the Democratic Party's nomination for the office of President of the United States.

Gore 2000 currently maintains its headquarters in Washington D.C. The Treasurer for Gore 2000 since inception has been Jose Villarreal, who continues to serve in that capacity.

During the audit period Gore 2000 maintained its depositories in Washington, D.C. To handle its financial activity, Gore 2000 utilized four bank accounts from which it made 24,531 disbursements. Further, Gore 2000 received contributions totaling about \$34,477,100, from 42,878 contributors. It also received \$6,000 in transfers from other authorized committees; \$3,917,035 in offsets to expenditures; and, \$15,708 in interest and other receipts.

In addition to the above, the Candidate was determined eligible to receive matching funds on September 30, 1999. Gore 2000 made 10 matching fund requests totaling \$15,561,886 and received \$15,456,084 from the United States Treasury (U.S. Treasury). This amount represents 92% of the \$16,890,000 maximum entitlement that any candidate could receive. For matching fund purposes, the Commission determined that then Vice President Gore's candidacy ended on August 16, 2000, the date on which he received the nomination. On August 1, 2000, Gore 2000 received its final matching fund payment to defray expenses and to help defray the cost of winding down the campaign.

#### **D. AUDIT SCOPE AND PROCEDURES**

In addition to a review of expenditures made by Gore 2000 to determine if they were qualified or non-qualified campaign expenses, the audit covered the following general categories:

1. the receipt of contributions or loans in excess of the statutory limitations;
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;
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;

6. the accuracy of total reported receipts, disbursements and cash balances as compared to bank records;
7. adequate recordkeeping for transactions;
8. the accuracy of the Statement of Net Outstanding Campaign Obligations (NOCO) filed to disclose its financial condition and to establish continuing matching fund entitlement (See Finding II.A.);
9. compliance with spending limitations; and,
10. other audit procedures that were deemed necessary in the situation (See Findings II.B. & II.C.) .

The Audit staff did not analyze issue ads paid for by the national or state party committees or review payments made to media vendors by the national or state party committees.

As part of the Commission's standard audit process, an inventory of Gore 2000's records was conducted prior to the audit fieldwork to determine if the records are materially complete and in an auditable state. The records were found to be materially complete and the audit fieldwork commenced.

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

## **II. FINDINGS AND RECOMMENDATIONS – AMOUNTS DUE TO THE U.S. TREASURY**

### **A. DETERMINATION OF NET OUTSTANDING CAMPAIGN OBLIGATIONS**

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which reflects the total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility, plus estimated necessary winding down costs.

The Candidate's date of ineligibility (DOI) was August 16, 2000. The Audit staff reviewed Gore 2000's financial activity through September 30, 2002, analyzed projections of estimated winding down costs through June 30, 2003<sup>1</sup> and prepared the Statement of Net Outstanding Campaign Obligations that appears below:

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<sup>1</sup> Storage costs for records have been included through June 30, 2006.

GORE 2000, INC.  
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS  
As of August 16, 2000  
As Determined at September 30, 2002

**ASSETS**

Cash in Bank	\$4,304,995	
Accounts Receivable	4,356,187 (a)	
Total Assets		\$8,661,182

**OBLIGATIONS**

Accounts Payable:		
For Qualified Campaign Expenditures through 9-30-02	\$3,926,559 (b)	
Due to Gore/Lieberman for Primary Expenses Paid	\$103,559	
Due to Gore/Lieberman for Portion of Winding Down Amount Payable to the U.S. Treasury for State-Dated Checks (See Finding III.C.)	\$429,712 (c)	
	2,485	
Winding Down Costs:		
Dec. 8, 2000 to September 30, 2002: Actual	2,358,697	
October 1, 2002 to June 30, 2003: Estimated	480,070 (d)	
Total Obligations		7,301,082

NET OUTSTANDING CAMPAIGN OBLIGATIONS - SURPLUS	\$1,360,100
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**FOOTNOTES TO NCCO**

- (a) This amount represents \$2,746,420 in transfers received from Gore/Lieberman; vendor refunds, rebates and reimbursements of \$420,477, deposits not yet reimbursed by the vendors and reported by Gore 2000 as outstanding as of 9/30/02 of \$31,771, and, a receivable due from Gore/Lieberman and/or Gore/Lieberman General Election Legal and Accounting Compliance Fund for its share of winding down paid by Gore 2000 through 9/30/02 of \$1,157,519.
- (b) This amount represents obligations incurred for goods and services and excessive contributions received on or prior to 8/16/00 (DCI) and paid/refunded thereafter. Not included in this figure is an \$88,000 disputed debt owed to Penn, Schoen & Berland disclosed on Gore 2000's July 15th Quarterly report for 2002. Once this matter is resolved and documentation is provided to the Audit staff for review, the NCCO will be appropriately adjusted.
- (c) This amount represents half of the winding down costs paid by Gore/Lieberman through 9/30/2002.
- (d) The estimated winding down cost estimate is based on Gore 2000 spending patterns in the first nine months of 2002 (See Section II.B below). Gore 2000 provided estimates that were much higher than those of the Audit staff. The Audit staff found some of their estimates to be unsupported especially in view of the limited issues raised in this audit. However, the Audit staff will review Gore 2000's disclosure reports and records to compare actual figures with the estimates and prepare adjustments as warranted. Storage costs for records have been included through June 30, 2006.

## **B. NOCO SURPLUS REPAYMENT**

Section 9038.2(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that the Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus.

Section 9038.3(c)(1) of Title 11 of the Code of Federal Regulations states, in part, that if on the last day of candidate eligibility the candidate's net outstanding campaign obligations reflect a surplus, the candidate shall within 30 days of the ineligibility date repay to the Secretary an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

The Audit staff's review of the Gore 2000 Statement of Net Outstanding Campaign Obligations and associated records indicated that on August 16, 2000, Gore 2000 had substantial surplus funds.

This issue was discussed at the exit conference and copies of workpapers were provided. Gore 2000 representatives expressed their intent to challenge the Audit staff's determination, specifically its calculation of estimated winding costs to be incurred after December 31, 2001.

Subsequent to the exit conference, Gore 2000 submitted documentation for expenditures incurred between January and March 2002. In addition, documentation relative to some reported outstanding receivables was provided. Finally, the response disputed the Audit staff's allowance for estimated winding down costs, noting it should be higher. In support of its position, Gore 2000 submitted documentation and speculates that costs will rise generally by 10%. In some instances, such as estimated costs for archiving records and "other legal fees," documentation relative to winding down costs incurred by the 1992 & 1996 Clinton/Gore campaigns is provided in support of its estimates.

Based on our review of the documentation submitted, the NOCO presentation in the preliminary audit report was revised to include those expenditures incurred during January through March of 2002 as actual winding down costs and disbursements made for disputed debts incurred prior to the date of ineligibility. The calculation of estimated winding down costs was revised to include only the period after March 31, 2002. In addition, accounts receivable were revised based on the documentation submitted. However, the Audit staff was not persuaded by the documentation provided by Gore 2000, which included speculative increases in cost of services of 10%, unsigned leases and estimates based on the winding down activities of the 1992 & 1996 Clinton/Gore campaigns, which were not indicative of what such costs would be for Gore 2000. An attachment to the preliminary audit report detailed those

categories where the Audit staff and Gore 2000 differed on wind down estimates; as well as those categories where there was either agreement or Gore 2000 did not contest the Audit staff's estimate in its response. The Audit staff based its wind down estimates on Gore 2000 spending patterns during the last nine months of 2001. As noted by footnote (e) to that NOCO Statement, the Audit staff continued to review Gore 2000 disclosure reports as they were filed, and, the records supporting those reports to further adjust the winding down estimates.

The Statement of Net Outstanding Campaign Obligations as of August 16, 2000, as presented in the preliminary audit report, showed that Gore 2000 had a surplus in the amount of \$1,456,005. The Audit staff recommended that Gore 2000 provide evidence that it was not in a surplus position. Such evidence was to include, but was not limited to, documentation supporting its wind down estimates that detailed the services to be provided as well as the need for such services to wind down the campaign. Absent such evidence, the Audit staff stated that it would recommend that the Commission determine that \$454,274 [ $\$1,456,005 \times .3120$ ]<sup>2</sup> was repayable to the United States Treasury.

In its response to the preliminary audit report, Gore 2000 provides a NOCO that shows a surplus of \$174,972, calculates a repayment of \$54,591, and is annotated to note variances from the NOCO developed by the Audit staff. In accordance with its own calculation, Gore 2000 submitted a check for \$54,591.28 as a repayment to the United States Treasury.

The response restates that the major difference between the two NOCOs involves treatment of wind down expenses. Specifically, Gore 2000 differs with the Audit staff's treatment of wind down expenses where certain costs (actual or estimated) were excluded, or, incorrectly categorized as a wind down expense rather than an accounts payable and, where wind down expenses were incorrectly allocated between the primary and general committees. Gore 2000's response also included documentation in support of the wind down expenses it was disputing and narrative descriptions of duties performed by vendors excluded from the Audit staff's calculation of wind down expenses. In addition, documentation to support its reclassification of some refunds as offsets to wind down costs rather than accounts receivable; and, the inclusion of a disputed debt as an accounts payable was also provided.

It should also be noted that two significant issues, Gore 2000's speculation that estimated wind down cost would rise by 10% and its need for archiving costs of \$300,000, raised previously by Gore 2000, are not pursued in this response. Further, Gore 2000 has significantly reduced its original estimate for other legal fees from \$250,000 to \$50,000.

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<sup>2</sup> This figure (.3120) represents Gore 2000's repayment ratio as calculated pursuant to 11 CFR §9038.3(c)(1).

The topics that account for the major differences between the Gore 2000 and the Audit surplus amount are discussed below. All differences are presented on Attachment 1.

1. Alternative to Audit Staff's 50-50 Wind Down Ratio

Gore 2000 disputes the Audit staff's allocation of wind down costs between the primary and general committees on a 50-50 basis<sup>3</sup>. It believes wind down cost should be allocated 61% to Gore 2000 and 39% to Gore/Lieberman (the general committee). That overall ratio was determined by applying a ratio (56% primary / 44% general) to wind down expenses based on the number of checks issued by each committee during its life, except for personnel, accounting and legal expenses for the period March 1 through September 30, 2002. These were allocated 80% to Gore 2000 and 20% to the general committee based on "...the greater number of issues related to the primary audit, as opposed to the lesser number related to the general audit..." After application of these ratios to wind down expenses, the total dollar amount of wind down expenses to be paid by each committee was calculated, and the respective totals were used to determine the 61% primary and 39% general ratio.

The proposed allocation ratio suffers from a number of flaws. First, a ratio based on the number of checks issued during the life of each campaign is not indicative of the level of wind down effort attributable to each campaign<sup>4</sup>. Based on its longer life span, such a ratio gives more weight to Gore 2000. Second, it fails to consider that, although both committees made payments for wind down, Gore 2000 paid most of the costs. These payments benefited both committees but the checks are counted among those issued by Gore 2000. Third, even if the number of audit report issues is accepted as a reasonable allocation method, the facts do not support the proposed 80% allocation. Other than a small number of stale dated checks, the only issue in the Gore 2000 report is the amount and allocation of wind down expenses to be allowed. The allocation of those expenses is an issue that involves both Gore 2000 and the general committee. Also, the general committee report includes a greater number of issues than the Gore 2000 report. Finally, no documentation is provided to support Gore 2000's determination of these ratios.

Given the above, Gore 2000 has not demonstrated an allocation ratio that is more accurate than the presumed 50%/50% ratio used in the preliminary audit report.

<sup>3</sup> The Commission's Financial Control and Compliance Manual For Presidential Primary Candidates Receiving Public Financing (April 2000) explains that when wind down is shared by the primary and general election campaigns, each must document its allocation of the shared expenses. Absent a documented claim, wind down is presumed to be attributable equally to the primary and general campaigns (pages 30-31).

<sup>4</sup> It is equally logical to base the allocation on total dollars spent by the two committees. That would weight the wind down expenses to the general committee. However total dollars is no more indicative of the relative wind down effort required than is the number of checks issued.

## 2. Shortened Wind Down Period

After considering Gore 2000's response, the paucity of issues and the time necessary to complete the remaining audit process, the Audit staff has revised all wind down estimates (except storage) to conclude at June 30, 2003, rather than December 31, 2003 as projected in the preliminary audit report. The only significant issue remaining to be contested is the time and funds needed to finish Gore 2000's affairs. Gore 2000 is left with continuing the dispute only to demonstrate that additional wind down is necessary<sup>5</sup>.

Using estimates developed by the Audit staff, this resulted in a decrease to wind down expenses of about \$310,000 for Gore 2000.

## 3. Payments to Hayes Software & Consulting

Gore 2000 argues that all payments to Hayes Software and Consulting should be considered solely as a primary wind down expense and that the services provided (compliance assistance, technical support and management of its contributor database and records) are required until it has terminated.

As noted in the response, the Audit staff is familiar with Mr. Hayes' work and it relates to contributions and matching funds. Based on the response, the Audit staff agrees that payments totaling \$66,159 (\$55,159 by Gore 2000 & \$11,000 by the general committee) for services rendered from December 8, 2000 through December 31, 2001, are solely primary-related wind down expenses. Other payments (\$18,629) to Hayes Software & Consulting, for services rendered during the period August 17 through December 7, 2000, were correctly categorized as general election expenses.

Since no findings resulted from the Audit staff's review of contributions that had been completed by December 31, 2001, and, there were no reported contributions received during 2002, we fail to see the need for such services after December 31, 2001, or what they accomplish.<sup>6</sup> As such payments made by Gore 2000, totaling \$20,000, and made by the general, totaling \$20,000, for services provided during 2002 are not considered wind down costs.

As a result, wind down expenses for Gore 2000 have been increased by \$27,580 (50% of \$55,159) to adjust for that portion previously attributed to the general. In addition, the amount due to the general, for wind down costs it paid, has been increased by \$5,500 (50% of \$11,000).

<sup>5</sup> The Buchanan campaign found itself in a similar situation after the 1992 election. The Commission determined an amount to be allowed that was less than the amount requested and determined a repayment on that basis.

<sup>6</sup> See Report of the Audit Division on Clinton for President (1992) where a similar determination was made with respect to contribution database management during the wind down period.

4. Payments to Allen Wegehof and Robert Ishikawa

Gore 2000 argues that payments to Allen Wegehof and Robert Ishikawa, both consultants providing technical support and compliance assistance related primarily to filing FEC reports and preparing audit related material, should be included as a wind down expense required until termination.

Based on the documentation provided, the Audit staff agrees and has increased wind down expenses by about \$100,000, half of which are attributable to the general committee.

5. Other Legal Fees

Gore 2000 argues that legal expenses arising in jurisdictions outside of Washington, DC have not been included as estimated wind down expenses and provides one estimate of \$50,000 for such fees.

As noted above, Gore 2000 has reduced its estimate for such services from \$250,000 to \$50,000. The documentation provided fails to show the litigation is campaign related and fails to demonstrate that in the two years after the primary election any amounts have been expended for such legal fees. As such, the Audit staff's position is unchanged and no estimate for such legal services has been included in our wind down estimates.

6. Insurance Costs

Gore 2000 disputes the exclusion of insurance costs for directors & officers liability, property & casualty, an umbrella policy, and professional liability for legal staff, for 2002 and 2003. It provides documentation showing that it anticipates such costs to be \$52,205.

The Audit staff reviewed the documentation and allowed \$48,288 in such costs for 2002, as well as including an estimate of \$24,144 for such insurance costs though the remaining six-month wind down period ending on June 30, 2003, half of which are attributable to the general committee.

7. Expenses Excluded From or Incorrectly Classified as Wind Down

Gore 2000 argues that the Audit staff erroneously excluded costs totaling \$28,060 as wind down expenses; and, in addition, erroneously treated as wind down expenses \$27,262 in costs that should have been treated as accounts payable<sup>7</sup>.

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<sup>7</sup> Treatment as accounts payable attributes 100% of the expenses to Gore 2000 reducing the surplus dollar for dollar. Treatment of the expenses as wind down causes them to be attributed equally to Gore 2000 and the general committee reducing the Gore 2000 surplus by half as much.

The Audit staff examined the documentation submitted for the \$28,060 and adjusted our NOCO as follows. The Audit staff included \$21,048 as wind down; recognized \$5,000 as an accounts payable; and determined that \$2,012 was solely a general expense.

The Audit staff examined the documentation submitted for the \$27,595<sup>8</sup> and adjusted our NOCO as follows. The Audit staff determined that \$21,070 was in fact accounts payable rather than wind down costs. The remaining expenses (\$6,524) were determined to be solely general in nature, rather than wind down related. As a result, wind down expenses were reduced by the entire \$27,595 and accounts payable increased by \$21,070.

8. Drafts Improperly Treated as Wind Down Expense

Gore 2000 argues that drafts clearing after August 16, 2000, which totaled \$39,926, should have been treated as accounts payable not as wind down expenses. The Audit staff agrees with Gore 2000 relative to drafts totaling \$11,965 and notes that they were treated as such in the preliminary audit report NOCO. In addition, based on the documentation submitted, the remaining drafts in question (\$27,961) were determined to be general election expenses. Therefore, no adjustment was required.

9. Offsets Erroneously Excluded

Gore 2000 argues that the Audit staff incorrectly omitted offsets of \$77,019 from its wind down calculation. Based on the documentation provided, the Audit staff has removed the amount from accounts receivable and has included the offsets as reductions to wind down expenses<sup>9</sup>.

This change also causes a reduction (by half of the amount, or \$38,510) in the amount due from the general for its share of wind down costs, which has the effect of reducing Gore 2000's surplus by \$38,510.

10. Account Payable Omitted

Gore 2000's response notes the exclusion of an \$88,000 debt, disclosed on its 2002 July 15<sup>th</sup> Quarterly Report, as an accounts payable. The response states that even though it is disputing this debt, the Audit staff should not have simply disregarded it. Although a copy of relevant pages from the report were included as part of the response; no other documentation was provided.

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<sup>8</sup> Gore 2000 included a check at \$1,602; the correct amount was \$1,935.

<sup>9</sup> As part of accounts receivable, this amount increases the surplus dollar for dollar. As a reduction to wind down expenses the increase in the surplus attributable to these transactions is only half as much. Wind down expenses, and any offsets to those expenses, are attributed equally to Gore 2000 and the general committee.

The Audit staff did not simply disregard the matter, but continues to exclude the disputed debt from its NOCO until such time as the matter is resolved and documentation is provided to show an obligation exists. An appropriate footnote has been added to the NOCO presentation.

11. Persuasive Technologies

Gore 2000 argues that payments to Persuasive Technologies, which provides continuing computer maintenance services, should be included as a wind down expense. Based on the documentation provided, the Audit staff agrees and has increased wind down expenses by \$46,000, half of which are attributable to the general committee.

12. Computer Services

The Audit staff had allowed estimated wind down costs for computer services of \$35,920. Payments for the rental of computer equipment appeared to end April of 2001. As a result, the Audit staff reduced wind down expenses by \$35,920, only half of which (\$17,960) is attributable to Gore 2000. The other half of this amount is attributable to the general.

Attachment 1 has been provided to detail changes to wind down expenses that were made based on Gore 2000's response and to detail the remaining differences.

In an alternative argument to the specific transactions discussed above and further detailed on Attachment 1, Gore 2000 disagrees with the methodology used by the Audit staff to calculate the surplus repayment, arguing that it is inconsistent with other methodologies used in calculating matching fund repayments. Gore 2000 states, "...the question is whether and when matching funds have been exhausted, i.e., used up, it appears that the auditors have more than one way to calculate the outcome. This point may be best illustrated by the different treatment accorded to the Bill Bradley campaign from the auditors' proposal here." A description follows of the LIFO (last-in, first-out) process used to determine when matching funds are exhausted in the situation where the candidate had a deficit on the date of ineligibility, received matching fund payments after the date of ineligibility, and repayment is being sought for non-qualified campaign expenses paid after the date of ineligibility<sup>10</sup>. The response then states this method was not used to determine when its matching funds were used up and, having received its last matching fund payment of \$138,210 on August 1, 2000, spent that amount in a matter of days, well before the date of ineligibility (8-16-00). Gore 2000 concludes, "...that it used up its matching funds prior to the date of ineligibility and has no repayment whatsoever due."

Gore 2000 is confusing repayment matters. Section 9038(b)(3) of Title 26 of the United States Code is very specific concerning the calculation of a repayment amount when there are funds remaining in the candidate's accounts after all qualified

<sup>10</sup> See 11 CFR §9038.2(b)(2)(iii)(B).

campaign expenses have been paid. That is the calculation that the Audit staff performed in determining the amount to be repaid by Gore 2000. The Bradley campaign, however, had no unexpended funds. Instead it had net outstanding campaign obligations and was entitled to continue to receive matching fund payments after the date of ineligibility to help retire those obligations. The LIFO method described by Gore 2000 is only applied to determine when the last of the post date of ineligibility payments had been expended. After that point in time there could be no repayment for non-qualified campaign expenses since there were no federal funds in the campaign's accounts. Thus, rather than treating two similarly situated campaigns differently, the Audit staff applied the statutory and regulatory provisions that apply to each campaign in the different circumstances in which they found themselves.

Given the above, the Audit staff's repayment calculation remains unchanged.

The Audit staff prepared the revised NOCO that appears above at page four. It shows Gore 2000 to be in a surplus position in the amount of \$1,360,100. Of that surplus amount, \$424,351 [ $\$1,360,100 \times .3120$ ]<sup>11</sup> is repayable to the United States Treasury.

### **Recommendation # 1**

The Audit staff recommends that the Commission determine that Gore 2000 repay \$424,351 [ $\$1,360,100 \times .3120$ ] to the United States Treasury.

### **C. STALE-DATED CHECKS**

Section 9038.6 of Title 11 of the Code of Federal Regulations state that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The Audit staff identified 17 stale-dated checks totaling \$7,210 issued by Gore 2000 from its Depository Account. These were all contribution refund checks.

The matter was discussed at the exit conference held subsequent to the close of fieldwork. Gore 2000 was provided with a detailed schedule of the stale-dated checks and was in agreement as to the checks and dollar amounts involved. Gore 2000 representatives stated that documentation would be provided as the checks cleared.

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<sup>11</sup> This figure (.3120) represents Gore 2000's repayment ratio as calculated pursuant to 11 CFR §9038.3(c)(1).

In the preliminary audit report, the Audit staff recommended that Gore 2000 either provide evidence that the checks are not outstanding, or, absent such evidence, make a payment of \$7,210 to the United States Treasury.

In its response to the preliminary audit report, Gore 2000 provided evidence that stale-dated checks, totaling \$4,725, had been negotiated. The response also states the Audit staff will be advised as additional checks are resolved. As such, absent evidence to the contrary, unresolved, stale-dated checks totaling \$2,485 [\$7,210-\$4,725] are payable to the United States Treasury.

**Recommendation #2**

The Audit staff recommends that the Commission determine that Gore 2000 pay \$2,485 to the United States Treasury.

**III. SUMMARY OF AMOUNTS DUE TO THE UNITED STATES TREASURY**

Finding II.B.	NOCO Surplus Repayment	\$ 424,351
Finding II.C.	Stale-Dated Checks	<u>2,485</u>
	Total	\$ 426,836
	Less: Amount Paid	<u>(54,591)</u>
	Total Due United States Treasury	<u>\$ 372,245</u>

GORE 2000, INC.  
 STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS  
 As of August 16, 2000

As Determined at September 30, 2002

	Per Audit Staff PAR	Per Gore 2000's PAR Response	DIFFERENCES
<b>ASSETS</b>			
Cash in Bank	\$ 4,304,995.00	\$ 4,304,995.00	\$ -
Accounts Receivable	\$ 2,746,420.00	\$ 2,746,420.00	\$ -
Transfers from Gore/Lieberman	\$ 1,157,519.00	\$ 741,032.00	\$ 416,487.00
Due from Gore/Lieberman for Windown	\$ 420,477.00	\$ 420,777.00	\$ (300.00)
Refunds & Rebates	\$ 31,771.00	\$ 31,771.00	\$ -
Telephone Deposits	\$ 8,661,182.00	\$ 8,244,985.00	\$ 416,187.00
<b>TOTAL ASSETS</b>	\$ 18,022,364.00	\$ 17,488,965.00	\$ 533,399.00
<b>OBLIGATIONS</b>			
Accounts Payable:			
For Qualified Campaign Expenditures through 9-30-02	\$ 3,926,559.00	\$ 4,055,004.00	\$ (128,445.00)
Due to Gore/Lieberman for Wind Down	\$ 429,712.00	\$ 404,579.00	\$ 25,133.00
Due to Gore/Lieberman for Primary Expenses Paid	\$ 103,560.00	\$ -	\$ 103,560.00
Amount Payable to the U.S. Treasury for State-Dated Checks (See Finding III.C.)	\$ 2,485.00	\$ 2,485.00	\$ -
Winding Down Costs:			
Dec. 8, 2000 to September 30, 2002: Actual	\$ 2,358,697.00	\$ 1,795,538.00	\$ 563,159.00
October 1, 2002 to June 30, 2003: Estimated	\$ 480,069.00	\$ 1,812,417.00	\$ (1,332,348.00)
Total Obligations	\$ 7,301,082.00	\$ 8,070,023.00	\$ (768,941.00)
<b>NET OUTSTANDING CAMPAIGN OBLIGATIONS - SURPLUS REPAYMENT</b>	\$ 1,366,100.00	\$ 174,872.00	\$ 1,185,128.00
	\$ 424,351.26	\$ 54,591.26	\$ 369,760.00

Explanation

The difference arises primarily from: Gore 2000's response utilizing rates it developed to allocate windown; changes resulting from its submission of documentation to support reclassifying some windown as accounts payable; and reclassifying an accounts receivable as an offset to wind down expenses.

The Difference arises from a minor Gore 2000 math error.

The difference arises primarily from: the Audit staff's exclusion of a disputed debt (\$88,000); no adjustment made for drafts (\$39,926) properly accounted for & the inclusion of \$27,282 in previously excluded expenses.

This net difference arises primarily from: (1) reclassifying payments from 12/8/00 thru 12/31/01 to Hayes Software as solely primary; reclassifying payments to Hayes from 8/16/00 thru 12/7/00 as general campaign expenses; and, (3) allowing payments to other vendors (Weghehoff, Ishikawa, etc) as wind down based on Gore 2000's response.

Audit staff has revised the presentation of these general expenses paid by the Primary. In the PAR they were offset against the accounts receivable from Gore/Lieberman.

This difference arises primarily from the Audit staff updating its figure through 9-30-02 and the additional windown allowed as a result of Gore 2000's response.

See Pages 2 to 4 for details of differences.

FOOTNOTES TO NOCCO

(a) This amount represents \$2,746,420 in transfers due from Gore/Lieberman; vendor refunds, rebates and reimbursements of \$420,477; deposits not yet reimbursed by the vendors and reported by Gore 2000 as outstanding as of 9/30/02 of \$31,771; and, a receivable due from Gore/Lieberman for its share of winding down paid by Gore 2000 through 9/30/02 of \$1,157,519.

(b) Pema, Schoen & Berland disclosed on Gore 2000's July 15th Quarterly report for 2002. Once this matter is resolved and documentation is provided to the Audit staff for review, the NOCCO will be appropriately adjusted.

(c) This amount represents half of the winding down costs paid by Gore/Lieberman through 9/30/2002.

(d) The estimated winding down cost estimate is based on Gore 2000 spending patterns in the last nine months of 2001 (See Section II.B. below). Gore 2000 provided estimates that were much higher than those of the Audit staff. The Audit staff found some of their estimates to be unsupported especially in view of the limited issues raised in this audit. However, the Audit staff will review Gore 2000's disclosure reports and records to compare actual figures with the estimates and prepare adjustments as warranted. Storage costs for records have been included through June 30, 2006.

**Gore 2000, Inc. Detailed Wind Down Differences:**

**Auditor's Note:** Shaded categories indicate Gore 2000 agrees with Audit staff; differences arise from shortened wind down period & ratio used by Gore 2000.

Wind Down Cost Description	Audit Staff WD Estimates for FAR		Gore 2000 WD Total		Gore 2000 Ratio Applied		Difference	For Additional Information, See Finding III.B., at the Numerical Sub-Section Noted Below	Comments
		Ratio 50/50							
Rent & Utilities	\$ 28,371.00	\$ 14,185.50	\$ 198,597.00	\$ 111,909.41			\$ (97,723.91)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
Computer Service	\$ -	\$ -	\$ 35,920.00	\$ 20,240.92			\$ (20,240.92)		Although Gore 2000 agrees with Audit, we have dropped this estimate since computer rental payments (the primary basis for this estimate) stopped March, 2001.
Insurance	\$ 24,144.00	\$ 12,072.00	\$ 52,205.00	\$ 29,417.52			\$ (17,345.52)	6.	Based on documentation submitted in response to the PAR, the Audit has allowed insurance paid. The difference arises primarily from the end of the wind down period being shortened from 12/31/03 to 6/30/03 and Gore 2000's estimate projecting these expenses to be incurred through 2/22/04.
Parking	\$ 675.00	\$ 337.50	\$ 4,725.00	\$ 2,662.54			\$ (2,325.04)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
Dues	\$ 840.51	\$ 420.26	\$ 1,961.00	\$ 1,105.02			\$ (684.77)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
Salaries - Not Subject to *80/20 per cent	\$ 240,300.00	\$ 120,150.00	\$ 397,349.00	\$ 223,906.16			\$ (103,756.16)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
Salaries subject to 80/20 (4/02 to 9/02)	\$ -	\$ -	\$ 160,200.00	\$ 128,160.00			\$ (128,160.00)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
RPUM Legal Fees - Not subject to 80/20	\$ 315,000.00	\$ 157,500.00	\$ 525,000.00	\$ 295,837.50			\$ (138,337.50)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
RPUM Legal Fees @ 80/20 (4/02 to 9/02)	\$ -	\$ -	\$ 210,000.00	\$ 168,000.00			\$ (168,000.00)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
RPUM Office Expenses - Not subject to 80/20	\$ -	\$ -	\$ 31,808.00	\$ 17,923.81			\$ (17,923.81)		Gore 2000 uses different ratios: Audit has included this in its calculation of legal fees above and has revised the wind down period to end 6/30/03, not 12/31/03.

**Gore 2000, Inc. Detailed Wind Down Differences:**

**Auditor's Note:** Shaded categories indicate Gore 2000 agrees with Audit staff; differences arise from shortened wind down period & ratio used by Gore 2000.

Wind Down Cost Description	Audit Staff WD Estimates for F:AR	Audit Staff Ratio 50/50	Gore 2000 WD		Difference	For Additional Information, See Finding III.B, at the Numerical Sub-Section Noted Below	Comments
			Total	Applied			
RPUM Office Expenses @80/20 (4/02 to 9/02)	\$ -	\$ -	\$ 17,428.00	\$ 13,942.40	\$ (13,942.40)		Gore 2000 uses different ratios; Audit has included this in its calculation of legal fees above and has revised the wind down period to end 6/30/03, not 12/31/03.
Other Law Firms	\$ -	\$ -	\$ 50,000.00	\$ 28,175.00	\$ (28,175.00)	5.	Audit does not include: documentation fails to show campaign-relatedness.
Travel for Attorneys	\$ -	\$ -	\$ 25,000.00	\$ 14,087.50	\$ (14,087.50)		Audit does not include: documentation fails to show campaign-relatedness.
Hayes Software	\$ -	\$ -	\$ 125,000.00	\$ 125,000.00	\$ (125,000.00)	3.	Gore 2000 documentation indicates this is solely primary. Audit agrees. However, since no receipts reported in 2001 or 2002, Audit has allowed only through 12/31/01 as winddown all of which is included as actual wind down.
BKD (for 3 mos 2002; 12 mos 2003)	\$ 249,000.00	\$ 124,500.00	\$ 247,500.00	\$ 139,466.25	\$ (14,966.25)	1. & 2.	<u>There is agreement on the monthly estimate.</u> However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
BKD (7 mos 2002)	\$ -	\$ -	\$ 50,000.00	\$ 28,175.00	\$ (28,175.00)	1. & 2.	<u>There is agreement on the monthly estimate.</u> However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
BKD travel & out of Pocket	\$ -	\$ -	\$ 124,139.00	\$ 69,952.33	\$ (69,952.33)		Gore 2000 uses different ratios; Audit has included this in its estimated fees above.
BKD subject to 80/20 (4/02 to 9/02)	\$ -	\$ -	\$ 253,560.00	\$ 202,848.00	\$ (202,848.00)	1. & 2.	<u>There is agreement on the monthly estimate.</u> However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.
Persuasive Technologies	\$ 18,000.00	\$ 9,000.00	\$ 40,000.00	\$ 22,540.00	\$ (13,540.00)		Based on documentation provided in response to PAR, Audit agrees this is needed wind down, but has allowed only through 6/30/03, the revised end of wind down period.
Ishikawa	\$ 11,250.00	\$ 5,625.00	\$ 25,000.00	\$ 14,087.50	\$ (8,462.50)	4.	Based on documentation provided in response to PAR, Audit agrees this is needed wind down, but has allowed only through 6/30/03, the revised end of wind down period.
Wegehoff	\$ 18,000.00	\$ 9,000.00	\$ 40,000.00	\$ 22,540.00	\$ (13,540.00)	4.	Based on documentation provided in response to PAR, Audit agrees this is needed wind down, but has allowed only through 6/30/03, the revised end of wind down period.

**Gore 2000, Inc. Detailed Wind Down Differences:**

**Auditor's Note:** Shaded categories indicate Gore 2000 agrees with Audit staff; differences arise from shortened wind down period & ratio used by Gore 2000.

Wind Down Cost Description	Audit Staff W/D Estimates for PAR		Gore 2000 W/D Total		Gore 2000 Ratio Applied		Difference	For Additional Information, See Finding III.B, at the Numerical Sub-Section Noted Below	Comments
	Estimate	Ratio	Estimate	Ratio	Estimate	Ratio			
Office Supplies	\$ 2,700.00	\$ 1,350.00	\$ 6,300.00	\$ 3,550.05	\$ (2,200.05)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.		
Water, Coffee Etc	\$ 675.00	\$ 337.50	\$ 1,575.00	\$ 887.51	\$ (550.01)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.		
Telephone	\$ 11,250.00	\$ 5,625.00	\$ 35,398.00	\$ 19,946.77	\$ (14,321.77)		Gore 2000 fails to provide related documentation to support its calculation. Differences arise as a result of Gore's use of its ratio and Audit revising the end of the winddown period.		
Postage & Mailing	\$ 5,400.00	\$ 2,700.00	\$ 12,600.00	\$ 7,100.10	\$ (4,400.10)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.		
Printing, Copying	\$ 2,250.00	\$ 1,125.00	\$ 22,067.00	\$ 12,434.75	\$ (11,309.75)		Gore 2000 fails to provide related documentation to support its calculation. Differences arise as a result of Gore's use of its ratio and Audit revising the end of the winddown period.		
Storage	\$ 12,983.40	\$ 6,491.70	\$ 6,058.00	\$ 3,413.68	\$ 3,078.02	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.		
Moving Expenses	\$ 7,300.00	\$ 3,650.00	\$ 7,300.00	\$ 4,113.55	\$ (463.55)		Based on documentation provided in response to PAR, Audit agrees this is needed wind down, but has allowed only through 6/30/03, the revised end of wind down period. Difference arises mainly from Gore use of ratios it developed		
Travel - Staff	\$ -	\$ -	\$ 6,626.00	\$ 3,733.75	\$ (3,733.75)		No Documentation submitted to justify or support its calculation. Actuals through 6-30-03 are already in our actual wind down figure.		
Taxes	\$ 12,000.00	\$ 6,000.00	\$ 12,000.00	\$ 6,762.00	\$ (762.00)	1. & 2.	There is agreement on the monthly estimate. However, the difference results from: the Audit staff not accepting Gore's allocation ratio; and, the wind down period being shortened from 12-31-03 to 6-30-03.		

**Gore 2000, Inc. Detailed Wind Down Differences:**

**Auditor's Note:** Shaded categories indicate Gore 2000 agrees with Audit staff; differences arise from shortened wind down period & ratio used by Gore 2000.

Wind Down Cost Description	Audit Staff WD Estimates for FAR	Audit Staff Ratio 50/50	Gore 2000 WD Total	Gore 2000 Ratio Applied	Difference	For Additional Information, See Finding III.B., at the Numerical Sub-Section Noted Below	Comments
	\$ 960,138.91	\$480,069.46	\$ 2,725,316.00	\$ 1,741,919.03			
				\$ 70,437.50			
				\$ 60.47			
			\$ 1,812,417.00	\$ 1,812,417.00			

Adjust: L. Hayes  
 include @ \$6.35% &  
 later @100% in Gore  
 WD calculation.  
 Adjust: Differences  
 due to Gore math errors  
 or unexplained or  
 rounding.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

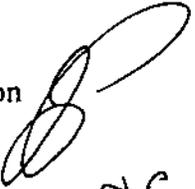
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AUDIT DIVISION

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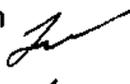
November 21, 2002

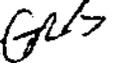
**MEMORANDUM**

TO: Joseph F. Stoltz  
Assistant Staff Director  
Audit Division

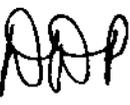
THROUGH: James A. Pehrkon   
Staff Director

Robert J. Costa   
Deputy Staff Director

FROM: Lawrence H. Norton   
General Counsel

Gregory R. Baker   
Acting Associate General Counsel

Peter G. Blumberg   
Acting Assistant General Counsel

Delanie DeWitt Painter   
Attorney

SUBJECT: Proposed Audit Report on Gore 2000, Inc. (LRA 568)

The Office of General Counsel has reviewed the proposed Audit Report on Gore 2000, Inc. (the "Committee") submitted to this Office on October 25, 2002. This memorandum summarizes our comments on the proposed report.<sup>1</sup> Generally, we concur with any findings not specifically addressed in these comments. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

**I. NOCO SURPLUS REPAYMENT (II. B.)**

The proposed report states that the Committee has a surplus of \$1,385,013 and recommends that the Commission determine that the Committee must repay \$432,124 to the United States Treasury. See 26 U.S.C. § 9038(b)(3); 11 C.F.R. § 9038.2(b)(4), 9038.3(c). The

<sup>1</sup> The Office of General Counsel recommends that the Commission consider this document in open session since the Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

Committee's response to the Preliminary Audit Report ("PAR") calculated a smaller surplus amount of \$174,972, and a repayment of \$54,591. The main difference between the Committee's Statement of Net Outstanding Campaign Obligations ("NOCO Statement") and the NOCO Statement prepared by the auditors is that the Committee includes a larger amount of winding down costs. Although some differences concerning the amounts of winding down costs in the PAR have been resolved in the proposed report, a large amount remains in dispute. A chart attached to the proposed report delineates the differences between the Committee's figures and the Audit staff's calculations for specific types of wind down expenses. Two major areas of disagreement between the Audit staff and the Committee, which affect all categories of expenses, are the length of the winding down period and the attribution of wind down costs between the primary and general election campaigns. The NOCO Statement in the proposed report indicates that estimated wind down costs have been updated with actual figures through June 30, 2002 and states that the Audit staff will continue to review Committee reports and records to adjust estimated figures with actual figures.

#### **A. WIND DOWN PERIOD**

This Office notes that the Audit staff has shortened the projected wind down period by six months. The proposed report includes estimated winding down costs only through June 30, 2003 rather than December 31, 2003, as projected in the PAR. The proposed report asserts that "the paucity of issues and the time necessary to complete the remaining audit process" justifies shortening the wind down period. It notes that the "only significant issue" is the amount of wind down costs and the Committee "is left with continuing the dispute only to demonstrate that additional wind down is necessary." The Audit staff's shortened wind down period decreases the estimated wind down costs by approximately \$310,000.

This Office disagrees with the shortened projected winding down period in the proposed report and recommends that estimated winding down costs be included through December 31, 2003, as projected in the PAR. We believe that allowing estimated winding down costs for the Committee through December 31, 2003 is reasonable. In previous audits, the Commission has limited estimated winding down costs, particularly for legal fees, where the candidate's estimate is speculative or uncertain and comparatively excessive. See Statement of Reasons, Patrick J. Buchanan and Buchanan for President, Inc. ("Buchanan 1992"), (approved August 1, 1995). The Commission found that Buchanan 1992's estimate of 1,500 hours of legal services after the completion of the repayment process, which its counsel admitted was uncertain, lacked a reasonable basis. *Id.* at 22-23. Buchanan 1992's projected wind down costs were also higher than any other 1992 campaign except the Clinton campaign, "a much larger campaign for an eventual party nominee." *Id.* at 23. Here, on the other hand, the Committee is a large campaign of a party nominee with substantial amounts of activity and the repayment process is not complete; thus, a longer wind down period is reasonable. The administrative review process in this matter might not be complete by June 30, 2003 and the Committee might incur reasonable wind down costs after that date in connection with the repayment or other matters.

The number of issues in an audit is not necessarily a barometer of the amount of time needed to wind down the campaign. One complex, contested issue may take much longer to resolve than several simpler or uncontested issues, particularly if the issue involves a substantial repayment like the recommended repayment of \$432,124 in the proposed report. Although the recommended repayment is entirely based on surplus funds, the Committee has made a number of factual and legal arguments contesting the calculation of particular expenses; thus, this one issue is made up of a number of smaller issues. The Committee has contested this issue throughout the audit and repayment process and may continue to dispute this issue by requesting administrative review of any Commission repayment determination.<sup>2</sup> See 11 C.F.R. § 9038.2(c)(2). Each of the steps in the administrative review process takes time, and there is no indication that the administrative review process will be faster for the Committee than for other campaigns that dispute repayments merely because the Committee would be disputing a surplus repayment.<sup>3</sup> Thus, estimated winding down expenses should not be limited to June 30, 2003 because the administrative review process may continue after that date. Further, winding down expenses may be necessary for expenses unrelated to the audit and repayment process, such as litigation or other matters, which will be incurred after June 30, 2003.

Other facts in this matter also support estimating wind down expenses through December 31, 2003. Since the auditors estimated wind down expenses through December 31, 2003 in the PAR, the Committee has not had notice or the opportunity to contest the June 30, 2003 date used in the proposed report. It appears that the Committee has entered into contracts with various vendors, such as computer consultants, through December 2003, perhaps in anticipation that wind down activity will continue through that date.

Although this Office recommends estimating the Committee's winding down through December 31, 2003, we do not advocate allowing wind down to continue indefinitely. The regulations do not mandate a specific cut-off date for estimated winding down costs, but rather, provide that the NOCO Statement should include estimated winding down costs that will be

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<sup>2</sup> The Commission's audit and repayment procedures, set forth at 11 C.F.R. § 9038.2(c), allow a candidate who disputes a repayment determination to request an administrative review of the repayment determination. 11 C.F.R. § 9038.2(c)(2). The procedures provide that within 60 days after the repayment determination, the candidate shall submit written legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. 11 C.F.R. § 9038.2(c). The candidate may also request an oral hearing. *Id.* The Commission will consider the written submission and oral hearing in deciding whether to revise the repayment determination. *Id.* A repayment determination following an administrative review must be accompanied by a written statement of reasons explaining the legal and factual reasons supporting the determination. *Id.*

<sup>3</sup> The administrative review procedures are not different for candidates who dispute repayment determinations based upon a surplus than for those who dispute other kinds of repayments. The regulations at section 9038.3 provide that if a candidate has a surplus on the date of ineligibility, the candidate shall make a repayment within 30 days; however, this section also provides that the Commission may make a surplus repayment determination that requires repayment in accordance with section 9038.2. 11 C.F.R. § 9038.3(c). Section 9038.2(b)(4) lists as one basis of repayment that the Commission may determine that the candidate's net outstanding campaign obligations reflect a surplus. Thus, the repayment procedures in section 9038.2 apply to disputes over the amount of a surplus repayment.

incurred "from the time the statement is submitted until the expected termination of the committee's political activity." 11 C.F.R. § 9034.5(b)(2). Nevertheless, Commission precedent does not support a perpetual winding down process. The Commission rejected Buchanan 1992's argument that it should be allowed to wind down completely before the Commission sought a repayment. See Statement of Reasons at 26-27. The Commission stated that postponing the repayment determination until the end of wind down would lead to delay and create "potential abuse of the process because committees might assert they have not completed winding down activities in order to expend remaining funds rather than repaying funds." *Id.* at 27.

## B. WIND DOWN RATIO

One significant area of dispute is the allocation of wind down costs between the Committee and Gore/Lieberman Inc. (the "General Committee"), (i.e. between the primary and general campaigns). The Committee allocates winding down costs 61% to the Committee and 39% to the General Committee. To arrive at this ratio, the Committee first applied a ratio of 56% primary and 44% general on most wind down expenses, based on the number of checks issued by each committee. Then it allocated personnel, legal and accounting expenses for the period between April 1, 2002 and September 30, 2002 as 80% primary and 20% general, contending that there were more issues in the primary audit than in the general audit and that the allocation was based "on the actual time and services provided by the personnel, lawyers and accountants." Committee Response (September 13, 2002) at 12. The total amounts calculated using the Committee's allocation percentages resulted in a ratio of 61% primary and 39% general. The Committee contends that the law does not require a specific allocation method, and notes that the allocation for the 1992 Clinton/Gore campaign was 57% primary and 43% general while the 1996 Clinton/Gore campaign allocation was 60% primary and 40% general. *Id.* The Committee also asserts that most of the work needed to prepare for the audits related to the primary campaign because the primary campaign has additional requirements related to contributions, allocation and additional spending limitations. *Id.* It also argues that its response to the PAR is more "lengthy and complex" than the General Committee's response, and that the primary campaign had additional costs related to moving offices. *Id.* The proposed report rejects the Committee's allocation method and instead evenly divides all wind down costs 50% to each committee. This Office disagrees and recommends that a larger percentage of winding down costs be allocated to the Committee than to the General Committee.

The Audit Division relies on the *Financial Control and Compliance Manual for Presidential Primary Candidates Receiving Public Funding* ("Compliance Manual") (April 2000), which states that when a candidate's primary and general committees "share winding down (overhead, staff, etc.) each committee must allocate and document its allocation of the expenses of wind down as being attributable either to the primary or the general. If no allocation is claimed by the respective committees, it will be presumed that the winding down expenses should be allocated equally between the Committees." Compliance Manual at 31. The regulations, however, do not mandate a 50% allocation of wind down expenses between the primary and general campaigns. Moreover, the Committee has in fact "claimed" a different allocation method in its response to the PAR.

This Office acknowledges that the Committee's allocation method is imperfect. We agree with the Audit staff that the number of checks issued by each committee does not accurately reflect the allocation of wind down activity because the Committee was in existence for a longer period than the General Committee and the Committee paid most of the wind down costs for both committees. In addition, the Committee should have provided documentation of the activity of its personnel, lawyers and accountants between April 1, 2002 and September 30, 2002 to support its allocation of 80% of those expenses to the primary campaign.

Nevertheless, we believe that a larger percentage of wind down costs during the audit and repayment process are, and will continue to be, related to the primary election than to the general election. This conclusion is not based strictly on the number of issues in the audits but on the relative significance of those issues.<sup>4</sup> A comparison of the proposed report on the Committee and the proposed report on the General Committee reveals that the total repayment amount for the General Committee is \$14,887 (of which \$11,625 has already been paid) a small fraction of the total repayment for the Committee of \$434,609 (of which \$54,591 has been paid). A larger primary allocation is justified by the time and services provided by the Committee's personnel, lawyers and accountants, who are apparently focusing their efforts on the substantial contested repayment issue in the audit of the Committee rather than on the undisputed issues in the General Committee audit. This focus on the primary repayment is evident in the length and detail of the Committee's response to the PAR, compared to the brief response to the General Committee PAR. Therefore, in the absence of documentation revealing the precise percentage of wind down expenses related to the primary and general elections or any basis in the documentation or regulations for a different allocation percentage, we recommend that the proposed report adopt the Committee's proposed 61% primary, 39% general allocation ratio because it would be more accurate than a 50% allocation.

### C. PARTICULAR CATEGORIES OF EXPENSES

This Office has the following comments on particular categories of expenses, including insurance, other legal fees and payments to Hayes Software and Consulting.

We disagree with the exclusion of professional liability insurance costs for attorneys employed by the Committee. The Audit staff notes that the Committee does not currently employ any attorneys. However, the Committee explains that this expense is for the renewal of attorney malpractice insurance to continue to protect the Committee against claims based on actions by its attorneys "during the entire course of the campaign."<sup>5</sup> Committee Response at 10.

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<sup>4</sup> As noted above, the calculation of the Committee's net outstanding campaign obligations and the surplus repayment can be considered a number of separate issues or a complex multi-part issue.

<sup>5</sup> The Committee provided the insurance policy and correspondence from the insurance company to support its explanation. A letter from the insurance company concerning the policy renewal states that claims must be submitted to the insurance carrier during the policy period or within 60 days after the expiration of the policy. The enclosed policy states that it is limited to "claims that are first made against the employed lawyer and reported in writing during the policy period."

As this Office has previously commented with respect to the Quayle 2000, Inc. and Quayle 2000 Compliance Committee audit, the renewal of existing insurance coverage should be a permissible winding down expense. Insurance coverage is not inappropriate to winding down a campaign because potential liabilities continue as long as an entity continues to exist. As a matter of policy, committees should not be discouraged from renewing insurance to reduce potential liability.<sup>6</sup> The renewal of the Committee's professional malpractice insurance appears to be a reasonable winding down expense even though it does not currently employ any attorneys because it appears that the policy would protect the Committee against new claims concerning actions by attorneys while they were employed by the Committee. In addition, the insurance would cover any attorneys the Committee might hire during the policy period.

In addition, we disagree with the exclusion of \$50,000 for other legal fees from the winding down costs. The Committee asserts that this expense is necessary for existing and potential litigation related to the campaign. Committee Response at 14. The Committee states that it is currently involved in several lawsuits, and provided documentation of one lawsuit filed in the United States District Court for the Southern District of New York by an individual against the Democratic National Committee, the candidate and his spouse. The documentation includes a letter from an attorney estimating legal fees of between \$50,000 and \$200,000 for the case depending on whether it goes to trial as well as a filed motion to dismiss the case for failure to state a claim and improper venue. Although the subject matter of this lawsuit is unclear, it appears to be related to the campaign since it involves the candidate and his party. Additional documentation of this and other litigation would be helpful. Based on the documentation provided by the Committee, this Office believes some amount should be permitted as winding down costs for other legal expenses.

Finally, we do not agree that expenses incurred for services provided by Hayes Software and Consulting ("Hayes") during the general election expenditure report period should be treated as primary winding down costs. Instead, we recommend that these and any other expenses incurred between the date of nomination and the end of the expenditure report period should be treated as general election expenses rather than primary winding down costs, even if they were in part related to the primary campaign, consistent with our comments on the Nader 2000 audit dated November 8, 2002. The Committee contends that payments to Hayes were primary-related because they involved compliance assistance, technical support and management of the contributor database for contributions and matching funds. In addition, the Audit staff informed us that Hayes had a separate contract with the Gore/Lieberman General Election Legal and Accounting Compliance Fund ("GELAC"). Nevertheless, this vendor's services may have had some general election component because the contributor database could have been useful to the general campaign as a source of information about its supporters and the services the vendor provided to the GELAC and the Committee may have overlapped.

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<sup>6</sup> Indeed, the Commission's regulations encourage publicly-financed committees to obtain insurance on equipment; section 9038.4(b)(8) includes "whether the committee sought or obtained insurance on the items" as a factor to consider in determining whether lost, misplaced or stolen equipment should be considered a non-qualified campaign expense.

#### D. CALCULATION OF SURPLUS REPAYMENT

Although the Committee calculated and paid a surplus repayment of \$54,591, it makes an alternative argument that it has no surplus because the auditor's calculation of the surplus is inconsistent with the methods used to calculate matching fund repayments in other audits.<sup>7</sup> The Committee asserts that the auditors use two different methods to determine when a committee's public funds have been used up, and that the auditors should have used a last in first out ("LIFO") method to determine when the Committee had used up its matching funds as it does to determine repayments for non-qualified campaign expenses.

This Office concurs that the Audit Division has used the correct methodology to calculate the surplus repayment and that the Committee is incorrect. The law provides different methods to calculate repayments for candidates who are in a surplus position at the date of ineligibility, like the Committee, than to calculate non-qualified campaign expenses for committees who are in a deficit position. The different calculation methods are clearly delineated in the statute and regulations as well as the regulatory history. Title 26 section 9038(b)(3) provides that candidates may retain public funds to liquidate obligations for six months, but:

after all obligations have been liquidated, that portion of any unexpended balance remaining in the candidate's accounts which bears the same ratio to the total unexpended balance as the total amount received from the matching payment account bears to the total of all deposits made into the candidate's accounts shall be promptly repaid to the matching payment account.

Similarly, the regulations at section 9038.3(c)(1) provide that if the candidate's net outstanding campaign obligations reflect a surplus on the date of ineligibility, the candidate shall repay the "amount of matching funds contained in the candidate's surplus" calculated as "an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts." Thus, the statute and regulations do not use a LIFO method to calculate the amount of matching funds actually in the candidate's accounts on a particular date for a surplus repayment. The auditor's calculation of the Committee's surplus repayment is in accordance with these provisions of the statute and regulations.

The regulations provide a different method of calculation for repayments for non-qualified campaign expenses, and consider when the candidate's accounts no longer contained matching funds. Section 9038.2(b)(2)(iii) provides that the amount of a repayment for non-qualified campaign expenses "shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits as of 90 days after the candidate's date of

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<sup>7</sup> The Committee specifically refers to the audit of Bill Bradley for President, Inc. That audit report notes in footnote (a) to the NOCO Statement that it does not address certain non-qualified campaign expenses because the majority of them were paid after all public funds in the committee's accounts had been spent.

ineligibility.” This section further provides that in seeking non-qualified campaign expense repayments from candidates who received matching funds after the date of ineligibility, the Commission will review expenditures “to determine at what point committee accounts no longer contain matching funds” by reviewing expenditures “from the date of the last matching fund payment to which the candidate was entitled, using the assumption that the last payment has been expended on a last-in, first-out basis.”<sup>8</sup> 11 C.F.R. § 9038.2(b)(2)(iii)(B). Thus, the LIFO method only applies to repayments for non-qualified campaign expenses, not to surplus repayments.

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<sup>8</sup> In 1987, the Commission revised the procedure for determining when a candidate no longer has matching funds in his or her account, and stated that the Commission will not examine expenditures to determine if they are non-qualified after all matching funds in the candidate’s account are spent. Explanation and Justification, *Public Financing of Presidential Primary and General Election Candidates*, 52 Fed. Reg. 20864, 20873 (June 3, 1987). The Commission stated that its method “is to review the expenditures made after the committee has received its last matching fund payment, using the assumption that the federal funds are used on a 100% basis until they are spent.”

**RESPONSE  
OF GORE 2000, INC.  
TO THE PRELIMINARY REPORT  
OF THE AUDIT DIVISION**

**I. Introduction and Summary**

This response is filed on behalf of Gore 2000, Inc., (the "Committee"), the principal campaign committee for Al Gore during the primary election campaign of the 2000 presidential election cycle. This is the response of the Committee to the Preliminary Audit Report ("PAR") of the Audit Division.

As an initial matter, the Committee notes that the Audit Division found no material non-compliance in numerous categories of receipts and expenditures reviewed. Among those areas where no material non-compliance was detected are: excessive or prohibited contributions; the proper disclosure of contributions, disbursements and debts, as well as the completeness and accuracy of the information disclosed; the accuracy of the reported amounts as compared to the Committee's bank records; the completeness and accuracy of the recordkeeping for Committee transactions; and numerous other specific items reviewed by the Audit Division.

The Committee's response is numbered and set out to correspond to the discussion and proposed findings of the PAR. The Committee has only responded to those specific issues raised by the Audit Division in the context of the PAR.

**II. Amounts Due to Treasury**

**A. Determination of Net Outstanding Campaign Obligations**

The Committee's analysis of its financial position as of August 16, 2000 revised through June 30, 2002 appears on the following page. This statement of Net Outstanding Campaign Obligations ("NOCO") is annotated with informational notes to summarize variances from the Audit Division NOCO calculation. More importantly, however, the NOCO is also cross-referenced to specific Attachments that can be found immediately after the Response. The basis of the Committee's response is found in the calculations contained in those Attachments.

In addition, following the Committee's NOCO below is a more detailed explanation of the Committee's position with respect to certain line items, along with references to the Attachments and other back-up documentation. The documentation is located following all of the Attachments. This material is organized by line item, as it appears in the NOCO. It should be noted, however, that the explanatory information is provided to clarify the Committee's submission and assist in the correction of the NOCO. The Committee's NOCO and the Attachments should be primarily relied upon for analysis of the financial calculations.

As an initial matter, please note that the major difference between the NOCO presented by the Audit Division and the NOCO as adjusted by the Committee primarily involves the treatment of winding down expenses. Specifically, the Committee differs with the auditors' treatment of winding down expenses where they (1) excluded certain items from winding down – either actual or estimated – that should have been included, (2) included certain items that should have been excluded, i.e., that should have been included elsewhere on the NOCO, and (3) allocated winding down expenses between the Primary and General Committees using an incorrect allocation formula.

The correction of these items is best evidenced by reference to the Attachments to the NOCO, particularly Attachment 1. The discussion that follows augments the Attachments on – as indicated above – a line-by-line basis.

The Committee has submitted a repayment in accordance with the NOCO that follows.

[This space intentionally left blank: NOCO follows.]

**GORE 2000, INC.**  
**IOCO RECALCULATION PER AUDIT**  
**as of August 16, 2000 revised through 8/30/02**

**ASSETS**

Cash in Bank	4,304,995 (1)
Accounts Receivable:	
Transfers from Gore/Lieberman	2,746,420 (2)
Due from Gore/Lieberman for Winding Down December 7, 2000 - March 31, 2002	741,032 (3)
Other Accounts Receivable:	
Refunds, rebates and reimbursements	420,777 (4)
Telephone Deposits owed to Gore 2000	31,771 (5)
<b>Total Assets</b>	<b>8,244,995</b>

**LIABILITIES**

Accounts Payable	
Qualified Campaign Expenses	4,055,004 (6)
Due to Gore/Lieberman for Winding down December 7, 2000 - March 31, 2002	404,579 (7)
Stale Dated Checks	2,485 (8)
Winding Down Costs	
December 7, 2000 - March 31, 2002 (Actual)	1,795,538 (9)
April 1, 2002 - December 31, 2003 (Estimated)	1,812,417 (10)
<b>Total Obligations</b>	<b>8,070,023</b>

**NET OUTSTANDING CAMPAIGN OBLIGATIONS - SURPLUS**

174,972

**REPAYMENT PERCENTAGE**

31.20%

**SURPLUS REPAYMENT**

54,591

- 1) As calculated by auditors
- 2) As calculated by auditors
- 3) Adjustments have been made to auditor calculations as detailed on Attachment 1(e) and related schedules
- 4) Adjustments have been made to auditor calculations as detailed on Attachment 2
- 5) As calculated by auditors
- 6) Adjustments have been made to auditor calculations as detailed on Attachment 3
- 7) Adjustments have been made to auditor calculations as detailed on Attachment 1(e) and related schedules
- 8) Adjustments have been made to auditor calculations as detailed on Attachment 4
- 9) Adjustments have been made to auditor calculations as detailed on Attachment 1
- 10) Attachment 1 and related schedules contain the Committee's revised estimates of additional winding down costs for the period July, 2002 through December, 2003 as well as the Committee's actual costs incurred and paid for the period April through June 2002

1. Amount Due from Gore/Lieberman for Winding Down

The Committee has made adjustments in the line item entitled "Amount Due from Gore/Lieberman for Winding Down" to correct the errors made in the auditors' calculations. The adjustments result in a reduction of the amounts due from Gore/Lieberman totaling \$179,512.53 (making the total due \$741,032.00) and are detailed in Attachments 1(a) - (e), Tab 1, and accompanying back-up documentation, Tabs 2-5. These adjustments fall into four categories: (1) items erroneously excluded by the auditors totaling \$28,060.48, (2) items erroneously treated as winding down costs rather than accounts payable totaling \$27,262.31, (3) items erroneously omitted as offsets totaling \$77,019.12, and (4) application of an incorrect allocation of winding down costs between the primary and general committees.<sup>1</sup>

a. actual winding down expenses erroneously excluded

The auditors erroneously excluded from winding down \$28,060.48 in actual winding down expenses. All of these amounts were incurred during the winding down period and include payments for health insurance coverage, directors and officers liability insurance coverage, payroll expenses, computer maintenance services, and FEC compliance, reporting and audit preparation charges. These are detailed in Attachment 1(a), Tab 1, and back-up documentation. Tab 2, is provided to substantiate these expenses.

While it should be self-evident that all of these charges are valid winding down expenses actually incurred during the winding down period, a few of them bear further discussion, given the erroneous treatment applied by the auditors, and given that the auditors have also omitted these expenses from estimated winding down costs, as discussed later.

(i) computer maintenance expenses

With respect to Persuasive Technologies, that company provides continuing computer maintenance for the Committee. As the auditors are fully aware, the Committee's hardware includes older models that have been subjected to heavy usage - and obviously continue to be used for winding down purposes. The Committee's server is relied upon for winding down purposes, including compliance and accounting functions, and needs regular maintenance. The Committee does not maintain on staff

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<sup>1</sup> Although this line item pertains to actual winding down expenses, the arguments contained herein are equally applicable to estimated winding down expenses, and are expressly written to assist in the consideration of both actual and estimated costs

a technology expert, though given the FEC's ever-increasing electronic requirements, both in the audit and in reporting, it certainly could have elected to do so.<sup>2</sup>

In lieu of a salaried staff person, the Committee contracts with a former staff person to provide technology assistance and computer maintenance. This function is obviously a necessity in the current regulatory environment. To exclude these reasonable charges from winding down – especially when they are less than the cost of a salaried position, and in lieu of the fact that the Committee was simply trying to save, rather than squander, its resources – is contrary to common sense and past precedent. In 1996, the Clinton/Gore campaign was permitted to pay for the same individual as a salaried employee, but the Committee is being deprived from paying him as a Consultant. There is simply no basis for excluding these expenses from winding down costs (either actual or estimated).

(ii) compliance expenses

With respect to Allen Wegehof, the same argument as made above applies and is incorporated herein. Mr. Wegehof is a longtime consultant to the Committee providing technical support and FEC compliance assistance related primarily to filing FEC reports and preparing audit related material – clearly a winding down-related purpose. Rather than making him an employee – at a significantly higher expense – the Committee has paid him as a consultant<sup>3</sup>. His duties are continuing and necessary for the compliance with the FEC's requirements. There is simply no basis for excluding these expenses from winding down costs (either actual or estimated).

(iii) contributor records and compliance expenses

Finally, with respect to Larry Hayes (Hayes Software and Consulting), the same arguments again apply. In fact, the auditors have long been familiar with Mr. Hayes and the services he provides, and the omission of these amounts seems to support no other purpose than to artificially lower the Committee's winding down costs. The auditors, in fact, know that Mr. Hayes provides critical winding down functions, including compliance assistance, technical support and the management of the Committee's contributor records and database.

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<sup>2</sup> The auditors have permitted the salary of staff performing this winding down function to be included in the winding down totals in past audits. See, e.g., the calculation of winding down costs in connection with the audits of the Clinton/Gore '96 Primary and General Committees

<sup>3</sup> Again, in 1996, the Clinton/Gore campaign was permitted to pay for the same individual as a salaried employee, but the Committee is being deprived from paying him as a Consultant.

As with the two consultants above, winding down payments to Mr. Hayes with respect to the 1996 presidential campaign were allowed as winding down expenses in the audit of that campaign, and there is no basis whatsoever for disparate treatment in connection with the 2000 cycle.

An additional argument applies to the payment received by Mr. Hayes during the expenditure report period. This payment was omitted by the auditors from winding down expenses under the "bright-line" rule. However, such an application is clearly erroneous. Unlike some employees who performed work for both the primary and the general during this period, all services provided by Mr. Hayes related to the primary campaign, and none of them related to the general. From the inception of Gore 2000 through the winding down period, Mr. Hayes' focus was receipts and not expenditures.<sup>4</sup> He had no involvement with the making of, reporting of, management of, or any other aspect of expenditures. Instead, as described above, he assists with the reporting and recordkeeping of receipts and assists with audit-related matters pertaining to the contributor records. Because this payment was for services exclusively related to the primary campaign, the total must be included in primary winding down (in both actual and estimated).

(iv) directors and officers liability insurance

With respect to the directors and officers liability insurance coverage, this is an on-going expense of the Committee, necessitated during the winding down period in order to keep the policy and coverage in place. The plain language of the policy clearly indicates that it covers the Committee's directors and officers for the period of time during the campaign, but must be kept current, i.e., paid in full, in order to maintain that coverage. In other words, the Committee is paying during the winding down period to protect its directors and officers for actions during the entire course of the campaign. A copy of the policy is attached, Attachment 1(d), Tab 5.

Despite the fact that this is standard insurance coverage and practice, the auditors have chosen to exclude this expense from winding down. This reveals a fundamental misunderstanding of the purpose of covering prior acts, as stated in the policy. In addition, the Committee continues to have directors and officers, and obviously, they continue to require such coverage. Accordingly, there is simply no basis for excluding these expenses from winding down costs.

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<sup>4</sup> Payments inadvertently made to HayeSoft from Gore Lieberman have been reimbursed by Gore 2000, and a copy of the reimbursement check is attached Attachment 1(c), Tab 4

b. partially signed contracts

With respect to Persuasive Technologies, Allen Wegehof and Larry Hayes, the auditors also stated that they were excluding these expenses from winding down because the contracts for the winding down period with these entities were not fully executed. This position is both factually wrong and contrary to law. All three of these vendors had previous long-term relationships with the Committee and with Committee principals, in the latter case dating back to previous election cycles. All three had signed the agreements sent to them by the Committee. These agreements simply put in writing the oral agreements already in existence with the Committee. There is no requirement in the law that winding down expenses are valid only if pursuant to a fully executed written contract.

Moreover, there was no logical reason for the vendors to insist that the Committee sign their agreements, and since each of the vendors had indeed signed, the Committee treated these as valid and binding contracts. In the Committee's view, their signature on the agreements was sufficient to make them binding and valid on the Committee, particularly since the written agreements were actually proposals made by the Committee to the vendors and were actually accepted by virtue of the signature of the vendors (see attached agreements). Attachment 1(d), Tab 5. Under generally accepted contract principles, an offer that is accepted is a valid contract.

In addition, in the past, the auditors have asked for and accepted unsigned agreements and oral agreements reduced to writing.<sup>5</sup> Now – where it is convenient to enable the auditors to artificially deflate the Committee's winding down expenses – the auditors have taken the opposite position. Clearly, the auditors' position on signed contracts is to adopt that which is most detrimental to the Committee, even where it is inconsistent with past practices. The lack of the Committee's signature cannot erase (1) the vendors' valid signature, (2) the parties' full treatment of these agreements as valid contracts, or (3) the conclusion that the actual services performed for payments on these contracts were at the very essence of and integral to winding down purposes.

Accordingly, as described above, the payments excluded by the auditors for these valid winding down services must be included the winding down calculation.

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<sup>5</sup> In fact, in past audits, the auditors have insisted that oral agreements be reduced to writing during the winding down period by the Committee's attorneys, in, e.g., the audits of the Clinton/Gore '96 Primary and General Committees (sample attached). Attachment 1(d), Tab 5. Those were then accepted by the auditors as valid and binding contracts.

c. winding down expenses erroneously included

The auditors erroneously included \$27,262.31 in winding down expenses, when these costs should have been included in Accounts Payable. These amounts include payments for telephone bills, Federal and state taxes, insurance charges, equipment rental costs, and individual travel reimbursements – all of which were incurred prior to the date of ineligibility. This is discussed in greater detail below in the section pertaining to Accounts Payable. The Committee has adjusted this calculation accordingly.

d. offsets erroneously excluded

The auditors erroneously omitted \$77,019.12 in offsets to winding down expenses. This is discussed in greater detail below in the section pertaining to Refunds, Rebates and Reimbursements. The Committee has adjusted this calculation accordingly.

e. adjusting the allocation of winding down costs between primary and general

The auditors incorrectly applied a 50-50 allocation of winding down costs between Gore 2000 and Gore/Lieberman. The correct allocation is fully analyzed and indicated on Attachment 1, Tab 1. In addition, a more detailed discussion of winding down appears below in paragraph 5. In short, and for the reasons states therein, as calculated by the Committee, 61% of winding down should be attributed to the primary (Gore 2000) and 39% of winding down should be attributed to the general (Gore/Lieberman).

Accordingly, as described in the paragraphs above, for purposes of the Committee's NOCO, \$179,512.53 should be deducted from the amount due from Gore Lieberman for winding down costs (making the total due \$741,032.00). Attachment 1(e), Tab 1.

2. Refunds, Rebates and Reimbursements

The Committee has made adjustments in the offsets line item (entitled "Refunds, Rebates and Reimbursements") to correct the error made in the auditors' calculations. The auditors erroneously included \$77,019.12 in offsets to operating expenditures, i.e., as assets, on the NOCO, amounts that were all incurred and received during the winding down period, and the Committee's calculation deducts this amount from offsets.

These amounts, as detailed in Attachment 2, Tab 6 and accompanying back-up documentation, are for COBRA (health insurance premiums) reimbursements and were all received between March 2001 and March 2002. Because they were incurred and received during the winding down period, there is no basis for their inclusion in offsets to operating expenditures, since that category is used only for refunds, rebates and reimbursements that were incurred prior to the date of ineligibility. Moreover, there is no dispute as to the purpose of these offsets – a purpose that is clearly a post-election purpose – to continue the health insurance coverage of former employees of the Committee during 2001 and 2002.

Accordingly, for purposes of the Committee's NOCO, \$77,019.12 should be deducted from Refunds, Rebates and Reimbursements."

### 3. Accounts Payable for Qualified Campaign Expenses

The Committee has made adjustments in the Accounts Payable line item to correct the errors made in the auditors' calculations. The auditors erroneously omitted \$159,967.98 in qualified campaign expenses from Accounts Payable, and the Committee's calculation adds this amount into Accounts Payable. The adjustments are detailed in Attachment 3, Tab 7 and accompanying back-up documentation.

The detailed listing attached indicates that there are 34 different vendor charges that were omitted by the auditors including telephone bills, Federal and state taxes, insurance charges, equipment rental costs, and individual travel reimbursements. Also omitted were campaign drafts for a variety of primary expenses, payroll and bank service charges on the Committee's depository account. Finally, the Committee's debts for polling, as fully disclosed on its Debt Schedule (Schedule D), were omitted from Accounts Payable. The Committee has also provided back-up documentation hereto supporting all of these items as Accounts Payable. Attachment 3, Tab 7.

All of these expenses were incurred prior to the date of ineligibility. They have all been duly reported on the Committee's FEC reports, which – given the purpose reported thereon – clearly demonstrate that these items are qualified campaign expenses. To the Committee's knowledge, no questions have arisen as to the validity of these payments

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" As explained later, the Committee has moved this amount to the appropriate winding down category.

" Although the Committee is disputing this debt with this vendor, the auditors may not simply disregard it as an account payable for the reason – as they stated to Committee staff – that they assume the debt will not be paid. As the Commission knows, the Committee is obligated to pay its debts unless there is a valid reason not to do so. To date, the Committee is still reporting this debt as a legal obligation, albeit disputed, and there is no basis for the auditors to arbitrarily exclude it from their Accounts Payable calculation.

as qualified campaign expenses. Thus, given the timing of when these expenses were incurred, there is no basis for their exclusion from Accounts Payable.

Accordingly, for purposes of the Committee's NOCO, \$159,967.98 should be added to Accounts Payable. This adjustment does not change the Committee's calculation of expenditures subject to the limit, as all of these accounts payable have been previously reported on the Committee's Line 23 (operating expenditures subject to the limit) for each applicable reporting period.

#### 4. Amounts Due to General for Winding Down

The Committee has made adjustments in the line item entitled "Amount Due to General for Winding Down" to correct the errors made in the auditors' calculations. The adjustments result in an increase of the amounts due to Gore/Lieberman totaling \$68,861.63 (making that amount \$404,579.00) and are detailed in Attachments 1(a)-(e), Tab 1, and accompanying back-up documentation, Tabs 2-5. These adjustments fall into one of two categories: (1) items erroneously excluded by the auditors from winding down costs totaling \$62,850.23, and (2) application of an incorrect allocation of winding down costs between the primary and general committees.

##### a. winding down expenses erroneously excluded

The auditors erroneously excluded \$62,850.23 in actual winding down expenses. All of these amounts were incurred during the winding down period and includes payments for attorney malpractice insurance coverage, travel expenses, computer maintenance services, and FEC compliance, reporting and audit preparation charges.

The Committee incorporates the discussion contained in paragraph 1 above regarding these charges. In addition, while it should be self-evident that all of these charges are valid winding down expenses actually incurred during the winding down period, a few of them bear further discussion, given the erroneous treatment applied by the auditors.

##### (i) attorney malpractice insurance expenses

With respect to the attorney malpractice insurance coverage, this is an on-going expense of the Committee, necessitated during the winding down period in order to keep the policy and coverage in place. The plain language of the policy clearly indicates that it covers the Committee's attorneys for the period of time during the campaign, but must be kept current, i.e., paid in full, in order to maintain that coverage. In other

words, the Committee is paying during the winding down period to protect its attorneys for actions during the entire course of the campaign. A copy of the policy is attached hereto, as well as correspondence from the insurance company. Attachment 1(d), Tab 5.

Despite the fact that this is standard insurance coverage and practice, the auditors have chosen to exclude this expense from winding down, because the Committee no longer "employs any attorneys." This reveals a fundamental misunderstanding of insurance law and policies and of the purpose of covering prior acts, as stated in the policy and the insurance company's letter.<sup>8</sup> The policy has been issued on a "Claims-Made" basis and has an applicable "policy period". Thus, in order to remain in force to protect against claims that are made for actions occurring during the policy period, the Committee must not let coverage lapse. The only way to prevent coverage from lapsing is to renew the policy by making the payments at issue.

Accordingly, there is simply no basis for excluding this expense from winding down costs.

(ii) computer and compliance expenses

With respect to Persuasive Technologies and Allen Wegehoff, the same argument as made in the discussion pertaining to them above applies.<sup>9</sup> In addition, the Committee is making the identical claim with respect to Robert Ishikawa. Mr. Ishikawa is a former employee of and longtime consultant to the Committee providing FEC compliance assistance related primarily to filing FEC reports. It is completely ludicrous to conclude that payments made for assistance in filing FEC reports – particularly with the Commission's new and complex electronic filing requirements – would not be considered valid winding down expenses.

Rather than making him an employee – at a significantly higher expense – the Committee has paid him as a consultant. His duties are continuing and necessary for the compliance with the FEC's requirements.

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<sup>8</sup> In addition, also as clearly stated in the Committee's application for insurance, this coverage is intended to protect the Committee's outside counsel, as well, and the Committee obviously continues to retain such counsel. In fact, after the 1992 campaign, a lawsuit was filed against the Clinton for President '92 Committee and its attorneys arising out of the response to the PAR submitted in 1994. That suit was not filed until 1995, nearly three years after the election. Public Office Corporation v. Clinton for President Committee, 1998 U.S. Dist. LEXIS 19806 (D.D.C. Dec. 1998), 194 F.3d 139 (D.C. Cir. 1999), 530 U.S. 1263 (cert. denied 2000); 530 U.S. 1297 (rehearing denied 2000). Had the Committee not maintained its policy, there would have been no insurance coverage.

<sup>9</sup> That discussion is fully incorporated by reference into this section as well.

The Committee has been operating a valid and legally binding agreement with Mr. Ishikawa.<sup>10</sup> There is simply no basis for excluding these expenses from winding down costs.

- b. adjusting the allocation of winding down costs between primary and general

The auditors incorrectly applied a 50-50 allocation of winding down costs between Gore 2000 and Gore/Lieberman. The correct split is fully analyzed and indicated on Attachment 1, Tab 1. In addition, a more detailed discussion of winding down appears below in paragraph 5. In short, and for the reasons states therein, as calculated by the Committee, 61% of winding down should be attributed to the primary (Gore 2000) and 39% of winding down should be attributed to the general (Gore/Lieberman).

Accordingly, for purposes of the Committee's NOCO, \$68,861.63 should be added to the amount due to Gore/Lieberman for winding down costs (making the total due \$404,579.00). Attachment 1(e), Tab 1.

## 5. Winding Down

- a. allocation between primary and general

The auditors incorrectly applied a 50-50 allocation of winding down costs between Gore 2000 and Gore/Lieberman. According to the FEC's Compliance Manual, this allocation is used only in the case where a more accurate allocation cannot be supported. The Committee has fully supported a more accurate allocation.

The correct allocation is fully analyzed and supported on Attachment 1, Tab 1. That Attachment shows the Committee's methodology which can be categorized as an overall allocation method adjusted for the time period of the response to the audit, i.e., the response to the Exit Conference and to the PAR. Thus, prior to March 2002, the Committee allocated the winding down costs pursuant to a ratio of the total number of disbursements made by the Committee over the life of the campaign (Primary) to those made by Gore Lieberman (General). Under that allocation, 56% of the disbursements were made by the Committee, and 44% were made by Gore Lieberman. From March through September 2002, the Committee allocated 80% of the personnel, accounting and legal expenses to the Committee and 20% to Gore Lieberman (with all other expenses continuing to be allocated based on the 56%-44% standard

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<sup>10</sup> The Committee also fully incorporates by reference into this section its discussion pertaining to the validity of the agreements between the Committee and its winding down vendors.

allocation). The 80%-20% allocation is based on the greater number of issues related to the primary audit, as opposed to the lesser number related to the general audit, and the actual time and services provided by the personnel, lawyers and accountants. As indicated above, because he performed no services related to the general election, Hayesoft payments were allocated 100% to the Committee.

In short, and as demonstrated on the Committee's Attachments, 61% of winding down should be attributed to the primary (Gore 2000) and 39% of winding down should be attributed to the general (Gore/Lieberman). This allocation is further supported by both facts and law:

- No specific allocation formula is required by law. In audits in prior cycles, the auditors have recognized that winding down costs attributable to the primary are greater than those attributable to the general. Previous audits in 1996 and 1992 of the respective Clinton Gore campaigns permitted allocations of 60% primary and 40% general in 1996 and 57% primary and 43% general in 1992. See Attachment 1(d), Schedule E, Tab 5. There has been no change in the law related to the allocation of post-expenditure winding down costs, so there is no basis for rejecting the same approach used in the two prior cycles.
- There is a logical and factual basis for such an approach. Most of the work necessary for preparing for the 2000 audits related to the primary and not to the general. The primary is more complex due to a variety of requirements, including, among others, contribution issues, complex allocation issues and additional spending limits. The primary's response to the PAR is far more lengthy and complex than the general's response.

In addition, the Gore 2000 primary campaign was uprooted and moved nearly a year into its existence. The move was physically disruptive to the records of the Committee, and many employees who were unable to move had to be replaced, and the new staff trained again.

Accordingly, the Committee's allocation of winding down expenses between the primary and general should be accepted.

b. actual winding down expenses

The Committee has made adjustments in the actual winding down expenses line item to correct the errors made in the auditors' calculations. The adjustments are detailed in Attachments 1(a)-(e) Tab 1 and accompanying back-up documentation. Tabs 2-5, and fall into four categories: (1) items erroneously excluded by the auditors totaling \$28,060.48, (2) items erroneously treated as winding down costs rather than accounts payable totaling \$27,262.31, and (3) items erroneously omitted as offsets totaling \$77,019.12.<sup>11</sup> These items have been discussed in previous sections of this response, and those discussions, along with accompanying Attachments and back-up documentation, are fully incorporated herein by reference.

Similarly, the Committee also fully incorporates by reference the previous discussion, along with accompanying Attachments and back-up documentation, pertaining to the correct split of winding down costs between primary and general. Accordingly, the adjustments contained on the Committee's NOCO should be adopted.

c. estimated winding down expenses

It is with respect to estimated winding down costs, that the auditors have made their most errors, incorrect assumptions and unreasonable and unsupported conclusions. Clearly, the auditors, in a blatant and arbitrary attempt to artificially inflate the Committee's surplus have decided to ignore the substantial documentation and material provided by the Committee in response to the Audit Division Exit Conference that fully supports the Committee's estimate of future winding down costs. The Committee has provided additional support and documentation herein, Attachment 1(d), Tab 5.

The Committee has made adjustments in the estimated winding down expenses line item to correct the errors made in the auditors' calculations. The adjustments result in an increase to the estimated winding down costs as presented by the auditors of \$846,247.13 and are detailed in Attachment 1(d), Tab 5.<sup>12</sup> These adjustments fall into one of three categories: (1) actual winding down expenses incurred April 1, 2002

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<sup>11</sup> The Committee has also reimbursed Gore Lieberman for payments to Hayesoft that were inadvertently made from the General Committee. A copy of that check is attached Attachment 1 (c), Tab 4

<sup>12</sup> The Committee believes that the estimated costs will actually run higher - consistent with the figures presented in response to the Exit Conference - but has, for purposes of the PAR and submission of the revised NOCO, accepted some of the auditors figures and revised estimates

through June 30, 2002<sup>13</sup> and (2) estimates of future winding down expenses through December 2003.

Surprisingly – despite much documentation to the contrary – there are a number of categories of winding down expenses that the auditors have refused to recognize at all.<sup>14</sup> That is, there has been no acknowledgement that the Committee will have to pay these costs when the evidence, as well as logic, is incontrovertible that these expenses will be incurred. Attachment 1(d) and Schedules A-D, Tab 5 therein set forth all of these costs. A number of them have already been discussed in great detail in this Response, including expenses for technical and computer support, FEC compliance and audit preparatory work, management of contributor records, and insurance expenses. In addition, a few others that have not been recognized at all bear mentioning here.

- Partially signed contracts. The auditors have, without any legal basis, excluded payments to be made pursuant to contracts signed by various vendors of the Committee. These are discussed at length in paragraph 1b above. All of these agreements are valid contracts for necessary and reasonable winding down expenses, and for the reasons set forth above, should be accepted as such.
- Other legal fees. The auditors allow no expenses for legal, e.g., litigation, costs arising in jurisdictions outside of Washington, DC where the Committee must defend itself or its principals for actions relating to the 2000 campaign. Past experience is clear that a number of such lawsuits will arise, and the retention of additional and/or local counsel will be necessary. The auditors have rejected the evidence of other legal fees from prior campaigns by simply asserting that those campaigns were different. However, the clear evidence is that unanticipated actions have been filed and will be filed, particularly against former officeholders.<sup>15</sup> The Committee is currently involved in a number of cases and has attached an example hereto. The Committee has also attached an estimate of attorneys fees

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<sup>13</sup> The Committee has included the category of actual winding down expenses for the most recent quarter in this section in order that the NOCO submitted herein mirrors the time frame of the NOCO presented by the Audit Division, i.e., containing actual winding down through March 31, 2002.

<sup>14</sup> The NOCO presented by the auditors permits the Committee \$0 in these categories.

<sup>15</sup> Indeed the '92 Clinton campaign was involved in one lawsuit that did not begin until 1995 and did not conclude until 2001.

provided by the outside counsel retained in that matter. Attachment 1(d), Tab 5.

- Legal expenses. The auditors make no allowances for expenses that routinely arise in connection with the legal representation of the Committee. The actual legal expenses already paid indicate that such expenses have been incurred, and there is no reason to believe that they will not continue to be incurred in the course of continued representation. These expenses include items such as office expenses, telephone charges, copy charges, printing, facsimile charges, supplies, filing fees, and other typical and routine expenses. Anticipated expenditures are based on the monthly averages incurred thus far in the winding down period and are expected to total \$49,236 for the remaining winding down period. The Committee has attached hereto back-up documentation to support these expenses. Attachment 1(d), Tab 5.
- Legal and accounting travel. The auditors make no allowances for travel expenses that routinely arise in connection with legal and accounting services provided to the Committee. In fact, the auditors have long been familiar with the travel expenses incurred by the Committee's outside accountant who maintains a primary office and residence outside the Washington, DC metropolitan area. In addition, the lawsuits and investigations that occasionally arise in other jurisdictions, as well as other legal matters, necessitate some level of travel by Committee counsel (at least two such suits are pending currently – Committee counsel are defending a lawsuit in New York and assisting in a prosecution in Michigan of the alleged theft of the Committee's donor list). Estimates have been based on actual travel expenses incurred thus far in the winding down period. Back-up documentation is provided to support these expenses. Attachment 1(d), Tab 5.
- Staff travel. The Committee anticipates some level of staff travel in conjunction with various investigation, lawsuits and other litigation occurring out-of-state. For example, the Committee is assisting in providing its staff as witnesses in a prosecution in Michigan over allegations of theft of the Committee's donor list. Back-up documentation supporting these costs is attached. Attachment 1(d), Tab 5.

- Moving expenses. The Committee's lease ends in December 2002, and the Committee will have to find new space, given that it is its understanding that renewal in the current space is not available. Moving to an as-of-yet undetermined location will result in expenses being incurred. The Committee has received reasonable estimates of moving expenses in the amount of \$6,000 for moving the furniture, equipment and files to a new location. In addition, a large number of items were removed from storage in conjunction with the audit, and the Committee anticipates costs of \$1,300 to transfer files back to storage. Back-up documentation is included to support this. Attachment 1(d), Tab 5.

It is simply unreasonable for the auditors to fully exclude these items when the likelihood that the Committee will incur them is absolute. In past audits, estimates of identical expenses were accepted without question by the Audit Division in its calculation of future winding down costs – making their refusal to do so here even more arbitrary and insupportable.

The Committee has supplied reasonable, justified and supportable estimates of its winding down costs, and these amounts should be fully reflected in the NOCO that is finally adopted. The Committee also fully incorporates by reference the previous discussion, along with accompanying Attachments and back-up documentation, pertaining to the correct allocation of winding down costs between primary and general. Accordingly, the adjustments contained on the Committee's NOCO should be adopted.

#### B. Surplus and Surplus Repayment

Based on the NOCO submitted herein, the Attachments thereto and the analysis above, the Committee has recalculated the amount of the surplus and the surplus repayment. In accordance with that calculation, the Committee has submitted a check for \$54,591.28.

However, the Committee disagrees with the methodology used by the auditors in calculating the surplus, because it is inconsistent with other methodologies used by the auditors in calculating matching fund repayments. The Committee has included the following argument with respect to the surplus for the Commission's consideration.

particularly if the Audit Division refuses to accept the Committee's corrected NOCO and the explanations provided above.<sup>16</sup>

Specifically, when, as here, the question is whether and when matching funds have been exhausted, i.e., used up, it appears that the auditors have more than one way to calculate the outcome.

This point may be best illustrated by the different treatment accorded to the Bill Bradley campaign from the auditors' proposal here. In the Bradley audit, the auditors needed to determine whether any non-qualified campaign expenses were paid with matching funds after the date of ineligibility (and thus, were repayable). From the work papers made available, the auditors apparently used the LIFO (last in, first out) method of accounting for funds in making this calculation. Thus, Bill Bradley's date of ineligibility was March 9, 2000, and his last matching fund payment was received after "doi" on June 15, 2000 in the amount of \$265,191.01. Using LIFO, the auditors apparently determined that the next \$265,191.01 in expenditures by the Bradley campaign after June 15, 2000 used up all of those matching funds. The Bradley campaign was presumed by the auditors to have no more matching funds in its account after June 19, 2000, and no repayment due.

In contrast, the auditors did not use the LIFO method when determining whether the Gore campaign used up its matching funds. The Committee received its last payment of matching funds on August 1, 2000 (well before the date of ineligibility) of \$138,209.62. That amount was spent in a matter of days, well before "doi". Instead of using the same (LIFO) method to determine that the Committee had used up its matching funds, however, the auditors substituted a complicated analysis that starts with a completely different presumption: that is that each dollar spent after the receipt of a matching fund payment is not presumed to be made with those matching funds (guaranteeing there would be matching funds left for a repayment).

Thus, the auditors are able to force the Committee into a surplus position. Instead of recognizing – as is clearly the case – that the Committee had used up its matching funds, the auditors conveniently use two different methods to make this determination and come to opposite results: in one case finding that the Bradley campaign used up its matching funds, and in the other finding that the Gore campaign did not. There is simply no basis for using two different methods to determine when a candidate has used up his or her matching funds.

Moreover, it is immaterial the purpose for which the calculation is made, particularly when, as here, it is used to distort the Committee's financial position. In other words, it should not matter that the calculation was used in this audit to determine a surplus and in the Bradley audit to determine the repayment of non-qualified campaign expenses after the date of ineligibility. When the result arrived at by the auditors using two arbitrary and different methodologies is that one committee has used up its matching

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<sup>16</sup> The Committee specifically reserves its right to argue that, in fact, no surplus repayment whatsoever is due, should the Audit Division or the Commission refuse to adopt the Committee's positions herein.

funds and need not make a repayment, while another committee has not used up its matching funds and thus, must make a repayment. There is a fundamental unfairness in the disparate treatment of the two committees. The regulated community should be able to apply a clearly understood concise formula to determine for itself its financial position, particularly where financial consequences result, rather than be at the after-the-fact whim of the auditors.

This discrepancy is exacerbated by the fact that all Gore matching funds were received prior to the date of ineligibility. This means that the Gore Committee's entitlement to these funds was not in any way limited by the requirement to show outstanding campaign obligations. In contrast, the last four Bradley submissions amounting to over \$8 million were received after his date of ineligibility and were therefore contingent on demonstrating net outstanding campaign obligations as of the dates of receipt of those funds.

Accordingly, the Committee believes under the most accurate and fair methodology – that it used up its matching funds prior to its date of ineligibility and has no repayment whatsoever due. Alternatively, however, if the Commission does not determine to standardize these calculations, then Committee believes that its calculation of NOCO is the accurate, correct and complete version and should be adopted by the Commission for purposes of determining the Committee's financial position.

#### C. Stale-Dated Checks

Of the \$7.210 in stale-dated checks remaining on the Audit Division's schedule of stale-dated checks for the Committee, only \$2.250 remains unresolved. The Committee has sent inquiries to the recipients and will update the auditors as additional information is received. A listing of checks that have been reissued and cleared (\$4.725) and been reissued and awaiting clearance (\$235), with accompanying documentation, is included. Attachment 4, Tab 8.

September 13, 2002