



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 13, 2001

MEMORANDUM

TO: RON M. HARRIS
PRESS OFFICER
PRESS OFFICE

FROM: ROBERT J. COSTA *[Signature]*
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE FINAL AUDIT REPORT ON
SCHUMER '98

Attached please find a copy of the final audit report and related documents on
Schumer '98 which was approved by the Commission on April 6, 2001.

Informational copies of the report have been received by all parties involved and
the report may be released to the public on April 13, 2001.

Attachment as stated

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

22.07.025.2650

**REPORT OF THE AUDIT DIVISION
ON THE
SCHUMER '98**

Approved April 6, 2001



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

1593-520-70-22
22-07-025-2651

TABLE OF CONTENTS

SCHUMER '98

	Page
Executive Summary	1
Final Audit Report	5
Background	5
Findings	7
Analysis	27
Transmittal to Committee	29
Chronology	31



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

A99-04

SCHUMER '98

EXECUTIVE SUMMARY

Schumer '98 (the Committee) registered with the Federal Election Commission on April 28, 1997, as the principal campaign committee for Charles E. Schumer, Democratic Candidate for the U.S. Senate from the state of New York.

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

The findings of the audit were presented to the Committee at an exit conference held at the completion of fieldwork on March 29, 2000 and later in the interim audit report. The following is an overview of the findings contained in the audit report.

Receipt of Contributions from Individuals in Excess of the Limitation —

2 U.S.C. §§441a(a) and 431(11), 11 CFR §§100.7(a), 103.3(b), 110.1(b), (k) and (l), 11 CFR §103.3(b). The Audit staff's review of contributions conducted during audit fieldwork identified 836 apparent excessive contributions from 789 individuals, 36 partnerships, and 11 political committees totaling \$999,879. Of this amount, excessive contributions totaling \$97,050 were reattributed, redesignated or refunded, but not in a timely manner. The Committee attributed many of the remaining contributions to more than one contributor or to more than one election, but the requisite documentation to support those attributions was not made available during the audit.

In response to the interim audit report, Committee Counsel argues that contributions in excess of the statutory limits were not greater than \$61,540. Counsel further states that Schumer '98 is unable to demonstrate that it obtained and maintained all of the records related to its redesignation and reattribution efforts. Counsel goes on to state that the auditors identified \$902,829 in such contributions and that the Committee has produced documents that demonstrate \$201,050 of that amount is not excessive. As a result, Counsel argues that contributions unresolved by documentation totals only \$640,239.

Based on the Audit staff's review of the documentation submitted, the Committee has not demonstrated that contributions totaling \$951,454 were not in excess of the limitation. Of this amount, \$854,404 requires refund. The difference, \$97,050, has been

either refunded, reattributed or redesignated. However, as previously stated such actions were not timely.

Misstatement of Financial Activity — 2 U.S.C. §434(b). The Audit staff's reconciliation of the Committee's reported activity to its bank activity revealed a material misstatement with respect to ending cash on hand at December 31, 1998. Specifically, reported ending cash on hand was understated by a net amount of \$171,385.

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

Transfers From the Friends of Schumer Committee — 11 CFR §§104.3(a) and 110.3(c). The Committee did not report receiving transfers, totaling \$229,848, from the Candidate's 1996 congressional committee. Further, the Committee did not disclose properly the contributions within the transfers that were received subsequent to the 1996 general election.

In response to the interim audit report, the Committee filed amended disclosure reports which disclosed the above transfers on Schedule A, as well as those contributors whose contributions were received after the 1996 general election (by Friends of Schumer) on memo Schedules A.

Itemization of Contributions Received from PACs/Other Political Committees — 2 U.S.C. §§434(b) and 431(13). The Committee did not itemize twenty-four contributions from PACs/Other Political Committees, totaling \$67,950.

In response to the interim audit report, the Committee filed amended disclosure reports disclosing the above contributions.

Itemization of Contribution Refunds — 2 U.S.C. §434(b) and 11 CFR §104.3 (b). During audit fieldwork, the Audit staff identified 60 contribution refunds, totaling \$58,225, that were not reported. Moreover, the disclosure of the related contribution transaction(s) was also deficient.

In response to the interim audit report, the Committee filed amended disclosure reports disclosing the contribution refunds.

Disclosure of Information on Reports of Expenditures — 2 U.S.C. §434(b). The Audit staff identified 289 disbursements, totaling \$6,354,835, that were not disclosed properly. The majority of the disclosure errors consisted of 267 disbursements, totaling \$6,332,663, that were summed by payee, by reporting period and disclosed as a single entry for each payee.

In response to the interim audit report, the Committee filed amended disclosure reports which materially disclosed the above disbursements, including the date and amount of each disbursement.

Filing of 48 Hour Notices — 2 U.S.C. §434(a). The Audit staff reviewed all contributions greater than or equal to \$1,000 with a receipt date between August 27, 1998 and September 12, 1998 and between October 15, 1998 and October 31, 1998. The Audit staff identified 1,407 contributions, totaling \$1,534,500, that required 48 hour notices. The Committee did not file notices for 57 contributions totaling \$89,500. Of the remaining 1,350 notices filed, totaling \$1,445,000, 180 notices, totaling \$186,500, were filed late.

In response to the interim audit report, Counsel for the Committee stated that of the 180 notices identified, nearly every one was filed within 72 hours and all of them were filed before the election. Further, the Committee did not present evidence that 48-hour notices for 57 contributions, totaling \$89,500, were filed.

Schumer '98 Joint Fundraising Activities — 11 CFR. §102.17(b) and (c). The Committee was a participant in two joint fundraisers. The joint fundraising representatives were Victory in New York (Victory) and Win New York (Win); neither of which were audited. Regarding the Victory joint fundraising activity, a question arose during fieldwork concerning the Committee's share of expenses — it appeared the Committee either did not pay its proportionate share or did not report all contributions related to the activity. In response to the interim audit report, the Committee provided a detailed schedule of all Victory contributions and also filed amended memo Schedules A which disclosed additional contributor information in support of the joint fundraising proceeds.

Our review of the Win joint fundraising activity which reportedly raised approximately \$729,000 identified only \$3,750 in expenses allocated to the Committee. The Committee received \$176,850 in joint fundraising proceeds or 24.3% of the total distributed proceeds, while the other participant's allocable share was \$549,764 (75.7%). Win did not report any joint fundraising expenses on its original disclosure reports through December 31, 1998. Absent documentation identifying the joint fundraising expenses, it was not possible to verify the accuracy of the Committee's reports filed with respect to memo Schedules A or determine if either participant received/made a reportable in-kind contribution.

In response to the interim audit report, Counsel for the Committee stated, in part, that expenses related to Win were paid by the Committee as part of the Committee's pre-existing overhead and administrative expenses.

If the total joint fundraising expenses paid by the Committee exceeded \$6,667, it is likely that the Committee made an excessive in-kind contribution to the Liberal Party. The dollar value of any potential excessive in-kind contribution cannot be calculated without documentation supporting total joint fundraising expenses which was not provided in response to the interim audit report.

22.07.025.2656



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A99-04

***REPORT OF THE AUDIT DIVISION
ON
SCHUMER '98***

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Schumer '98 (the Committee), undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

B. AUDIT COVERAGE

The audit covered the period January 1, 1997 through December 31, 1998. During this period, the Committee reported a beginning cash balance of \$0; total receipts for the period of \$16,825,676; total disbursements for the period of \$16,671,881; and an ending cash balance of \$153,795.¹

C. CAMPAIGN ORGANIZATION

The Committee registered with the Federal Election Commission on April 28, 1997, as the principal campaign committee for Charles E. Schumer, Democratic Candidate for the U.S. Senate from the state of New York. The Treasurer of the Committee during the

¹ Figures in this report are rounded to the nearest dollar. Ending cash, as initially reported, was materially misstated. See Finding II.B.

period covered by the audit was Steven D. Goldenkranz. Mr. Goldenkranz continues as Treasurer. The Committee maintains its headquarters in Brooklyn, New York.

To manage its financial activity, the Committee maintained five operating accounts and six investment accounts. The audit indicated the Committee was financed primarily through contributions from individuals (\$10,410,758), transfers of excess campaign funds from Friends of Schumer, the Candidate's 1996 congressional committee (\$5,299,010), contributions from political action committees (\$585,248), and interest/dividends from investments (\$454,700).

D. AUDIT SCOPE AND PROCEDURES

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed (see Findings II.C. and D.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as the completeness and accuracy of the information disclosed (see Findings II.E. and F.);
5. proper disclosure of committee debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to committee bank records (see Finding II.B.);
7. adequate recordkeeping of committee transactions; and
8. other audit procedures that were deemed necessary in the situation (see Findings II.G. and H.).

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

II. AUDIT FINDINGS AND RECOMMENDATIONS

A. APPARENT EXCESSIVE CONTRIBUTIONS

Section 441a(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 431(11) of Title 2 of the United States Code states that the term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

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

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office. The term "anything of value" includes all in-kind contributions.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitations may be deposited into a campaign depository or returned to the contributor. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR 110.1(b) or 110.1(k). If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Sections 110.1(b)(2)(i) and (ii) of Title 11 of the Code of Federal Regulations states, in relevant part, that *contributions to candidates, with respect to any election* means – in the case of a contribution designated in writing by the contributor for a particular election, the election so designated. Contributors to candidates are encouraged to designate their contributions in writing for particular elections. In the case of a contribution not designated in writing by the contributor for a particular election, the next election for that Federal office after the contribution is made.

Section 110.1(b)(4) of Title 11 of the Code of Federal Regulations states, in part, that a contribution shall be considered to be designated in writing for a particular election if the contribution is made by check, money order, or other negotiable instrument which clearly indicates the particular election with respect to which the contribution is made; the contribution is accompanied by a writing, signed by the contributor, which clearly

indicates the particular election with respect to which the contribution is made; or, the contribution is redesignated in accordance with 11 CFR 110.1(b)(5).

Section 110.1(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that a contribution designated in writing for a particular election, but made after that election, shall be made only to the extent that the contribution does not exceed net debts outstanding from such election. To the extent that such contribution exceed net debts outstanding, the candidate or the candidate's authorized political committee shall return or deposit the contribution within ten days from the date of the treasurer's receipt of the contribution as provided by 11 CFR 103.3(a), and if deposited, then within sixty days from the date of the treasurer's receipt the treasurer shall take the following action. Refund the contribution using a committee check or obtain a written redesignation by the contributor for another election in accordance with 11 CFR 110.1(b)(5); or obtain a written reattribution to another contributor in accordance with 11 CFR 110.1(k)(3). In order to determine whether there are net debts outstanding from a particular election, the treasurer shall calculate net debts outstanding as of the date of the election. For purpose of this section, *net debts outstanding* means the total amount of unpaid debts and obligations incurred with respect to an election, including the estimated cost of raising funds to liquidate debts incurred with respect to the election, less the sum of the total cash on hand available to pay those debts and obligations and the total amounts owed to the candidate or political committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectibility of those credits, refunds, returns, or receivables.

Section 110.1(b)(5) of Title 11 of the Code of Federal Regulations states, in relevant part, that the treasurer of an authorized political committee may request a written redesignation of a contribution by the contributor for a different election if the contribution exceeds the limitation on contributions set forth in 11 CFR 110.1(b)(1). A contribution shall be considered to be redesignated for another election if the treasurer of the recipient authorized committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request a refund of the contribution and within 60 days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a signed redesignation of the contribution for another election.

Section 110.1(b)(6) of Title 11 of the Code of Federal Regulations states, in part, that a contribution shall be considered to be made when the contributor relinquishes control over the contribution. A contributor shall be considered to relinquish control over the contribution when it is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee. A contribution that is mailed to the candidate, or to the political committee or to an agent of the political committee, shall be considered to be made on the date of the postmark.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate

writing. A contribution made by more than one person that does indicate the amount to be attributed to each contributor shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request a return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within 60 days from the date of the treasurer's receipt of the contribution, the contributors provide a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 110.1(l)(5) of Title 11 of the Code of Federal Regulations states, in part, that if a political committee does not retain the written records concerning redesignations or reattributions, the redesignation or reattribution shall not be effective and the original designation or attribution shall control.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, in relevant part, that any contribution which appears to be illegal under 11 CFR 103.3(b)(3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

The Audit staff's initial review of contributions conducted during audit fieldwork identified 836 apparent excessive contributions from 789 individuals, 36 partnerships, and 11 political committees totaling \$999,879. Of this amount, excessive contributions totaling \$97,050 were reattributed, redesignated or refunded, but not in a timely manner. With respect to the remaining \$902,829 in apparent excessive contributions, the Audit staff noted the following:

Sole Account Holders

In many instances a contribution in the amount of \$2,000 was made by check drawn on an account solely held by an individual. The Committee disclosed these contributions as being designated \$1,000 to the primary election and \$1,000 to the general election. In other instances (other than a \$2,000 check), contributions aggregating greater than \$1,000 were disclosed as being designated to both the primary and general election. However, during audit fieldwork no documentation was made available for review in support of such designations.

Joint Account Holders

In many instances contributions in the amount of \$2,000 or greater were made by check drawn on a joint account. Only one of the account holders' signatures appeared on the check. In the case of a \$2,000 check, the Committee disclosed this contribution as being attributed \$1,000 to each account holder for either the primary or general election. In the case of a \$4,000 check the Committee disclosed these contributions as being attributed \$1,000 to each account holder for the primary election and attributed \$1,000 to each account holder for the general election. Again, no documentation was made available for review during audit fieldwork in support of the aforementioned reattributions or redesignations.

Check Memo Line Designations

Our review of copies of checks made available identified many cases where it appeared that the memo line of the check had been annotated "primary election," "general election," or "primary/general" by someone other than the contributor. Given this inconsistency, the Audit staff pursuant to 11 CFR §110.1(b)(2)(ii) applied such contributions to either the primary or general election based on the date of the contributor's check.

Contributions Received After the Primary Election but Designated by the Committee for the Primary Election

Certain contributor checks dated and received subsequent to the primary election were designated by the Committee for the primary election. Based on documentation made available, the Audit staff calculated that the Committee did not have primary debt as of September 15, 1998 (date of the primary election).

Although requested during audit fieldwork, the Committee could not produce a statement which demonstrated that as of the date of the primary election it had net outstanding primary debts. Therefore, contributions totaling \$62,400 received after September 15, 1998 and designated for the primary election by the contributor should have been refunded. These contributions are not included in the excessive contributions discussed above.

The Audit staff discussed these matters with the Committee representatives at the exit conference and presented them with detailed schedules of the excessive contributions. The Committee representatives were confident that these were merely recordkeeping issues.

In the response period following the exit conference, the Committee provided a calculation of its net debt position as of September 15, 1998. The Audit staff determined that certain components of the net primary debt calculation were not supported by sufficient vendor documentation. Specifically, from August 24, 1998 through September 14, 1998, the Committee made payments to its media vendor totaling \$3,279,080. Although requested, the

Committee did not provide the necessary documentation to determine if these payments were for primary or general election media.

In the interim audit report, the Audit staff recommended that the Committee:

- (a) provide evidence and/or documentation that demonstrated the contributions were not excessive;
- (b) with respect to the media payments noted above, provide copies of media ads, station invoices and print materials, including distribution dates related to the \$3,279,080 in payments;
- (c) provide any other relevant documentation that demonstrated that the above payments related to either the primary or general elections; and,
- (d) absent such evidence, refund the above contributions (\$902,829 + \$62,400) and provide evidence of such refunds (copies of the front and back of the negotiated refund checks). If funds are not available to make the necessary refunds, the Audit staff recommended that the contributions be disclosed as debts on Schedule D (Debts and Obligations) until such time that funds become available to make the refunds.

In response to the interim audit report, Counsel for the Committee stated that the Committee's compliance staff had the task of processing over \$17 million in receipts and expenditures, most of it in just seven weeks between the mid-September primary and the November general election. Counsel also stated:

"Over the course of the year-long audit of the Committee's books and records, only \$61,540 in contributions from individuals and political action committees exceeded the \$2,000 individual and \$10,000 PAC aggregate primary and general elections limits, representing less than 0.36% of the total amount raised by the Committee. The auditors did not identify a single issue related to any contributions from prohibited sources, such as corporations or foreign nationals."

"Overall, Schumer '98 did an exceptional job of ensuring that both the letter and the spirit of the Federal Election Campaign Act's statutory contribution limits were followed, but with respect to a small percentage of contributions, they are unable to fully demonstrate that the Committee obtained and retained documents related to the largely ministerial regulatory task of collecting redundant written redesignations and reattributions where the donor's intent to abide by the contribution limits was clear and unambiguous."

• The Commission acknowledges that the designation and attribution documentation requirements are a regulatory burden on candidate committees and in its 2000 recommendation to Congress the Commission proposed changes that would remove this unnecessary burden. See page 4 for additional discussion regarding this issue.”

“The Schumer ’98 staff had procedures in place to ensure compliance with the Federal Election Campaign Act of 1971, as amended (the ‘Act’). The compliance and fundraising staff distributed copies of the ‘Contribution Limits and Restrictions’ fact sheet to donors instructing them how to properly designate their checks before making a contribution. See Exhibit 1. In addition, they carefully followed the six-step redesignation and reattribution process set forth in the Commission’s regulations which require campaigns to request and obtain a letter signed by the donor, that restates the donor’s intent to have his or her \$2,000 election-cycle contribution allocated \$1,000 for the primary and \$1,000 for the general elections. With respect to a small percentage of contributions, Schumer ’98 is unable to demonstrate that it obtained and maintained all of the records related to its redesignation and reattribution efforts. The auditors identified \$902,829 in such contributions and the Committee has produced documents demonstrating that \$201,050 of that amount is not excessive. As a result, contributions unresolved by documentation totals only \$640,239, representing 3.7% of the \$17 million raised and spent by the Committee. [Footnote omitted]”

Counsel’s representation of excessive contributions and their relationship to total contributions raised by the Committee is misplaced. It should be noted that of the \$17 million that Counsel portrayed as processed by the Committee’s compliance staff, approximately \$5 million was transferred to the Committee from the Candidate’s 1996 congressional committee; the Committee raised approximately \$10,400,000 from individuals. Counsel attempts to characterize excessive contributions as either “resolved as excessive” (\$61,540) or “unresolved by documentation but within the per person election limits set forth in the Act” (\$640,239). Regardless how characterized by Counsel, the contributions when examined in the relevant context of the Act and Commission regulations were still excessive.²

² After citing that the Commission, on numerous occasions, has recommended that Congress amend the Act by changing the contribution limits from a per-election basis to an election-cycle basis, Counsel suggests that the Commission can, by amending its own regulations, eliminate the unnecessary election

Counsel acknowledges that under 11 CFR 110.1 a candidate committee is required to count a donor's contribution against the \$1,000 limit for the next scheduled election unless the donor designates in writing that the contribution is for a different election. Given this interpretation, Counsel went on to state:

"The Act does not require this interpretation. It simply states that the per person election limit is \$1,000. 2 U.S.C. §441a(a)(1)(A). The presumption of the § 110.1 regulation is that donors intend to violate the election limit when they write a \$2,000 contribution prior to the date of the primary election to a Senate candidate but inadvertently or unknowingly fail to write '\$1,000 primary / \$1,000 general' on the memo line of their check. Obviously, donors have no such intent to make excessive primary election contributions. They are simply combining their \$1,000 primary and \$1,000 general election contributions in a single check, in compliance with the Act. The regulatory presumption should be that individuals intend to comply with the law, rather than break it."

Counsel argues that the Statutory and Regulatory provisions should be interpreted far more liberally than indicated by their plain language. The audit finding was based on documentation made available during the fieldwork; there were no presumptions or assumptions made as to whether a contributor did or did not intend to comply with the Act or Regulations. The Act with respect to the contribution limitation for individuals is clear. An individual may contribute \$1,000 to a candidate committee for the primary election and \$1,000 for the general election. The Regulations are clear with respect which election a specific contribution is applied. If made on or before the date of the primary election, it is a primary election contribution. If made after the date of the primary election, the contribution is applied to the next election. Specific documentation is required to reattribute a contribution from one donor to another. Specific documentation is required to redesignate a contribution from one election to another. The Commission does not view excessive contributions, unresolved by documentation but within the per person election limits, as permissible. A \$2,000 contribution for a primary election is \$1,000 in excess of the statutory \$1,000 per election limit.

Check Memo Line Designations

Counsel stated a major point of contention between the auditors and the Committee is the issue of annotations on the memo line of contribution checks. Counsel asserted that many \$2,000 contribution checks included the designation "\$1,000 primary / \$1,000 general" written or typed on the memo line, and were treated as excessive primary

designation requirement imposed on donors and free candidate committees from an unnecessary regulatory burden.

contributions because the auditors somehow determined that the donor did not make the annotation.

The Committee did in fact receive a number of \$2,000 contributions made by check and signed by one individual. In order for the contribution to be applied \$1,000 to the primary and \$1,000 to the general, the Committee must either (a) obtain and maintain additional documentation signed by the contributor in accordance with 11 CFR 110.1(b)(5) or (b) maintain the contribution instrument (e.g., check) or an attached writing signed by the contributor which clearly indicates the particular election with respect to which the contribution is made.

The Audit staff did in fact review such annotations. In a number of instances, the Audit staff noted checks from contributors having dissimilar surnames and addresses, annotated on the memo line in a similar manner and apparently in the same handwriting. Further, certain contributor checks were typed or computer-generated but the election designations in the memo line area were recorded in a completely different font and size. Given the patterns noted, the Audit staff did not consider such annotations to be contributor-generated. As previously stated, given this inconsistency the Audit staff applied such contributions to either the primary or general election, based on the date of the contribution. The response to the interim audit report did not contain any documentation from any of the contributors affirming such "annotations" questioned by the Audit Staff.

Net Debt and Pre-primary Media Payments

Counsel stated: "Although this issue was not raised by the auditors until after the Exit Conference, the Committee has produced evidence and documentation that the \$3,279,000 in pre-primary media expenditures during the period August 24, 1998 through September 15, 1998 were for primary election media. In the Interim Report, the auditors presumed that the entire \$3.3 million was used for general election media expenses, despite the fact that Senator Schumer was engaged in a contested primary. When it comes to pre-primary expenditures, the auditors presumed that they were for the general election, but, as discussed above, in the case of pre-primary contributions their presumption was different. As a result of this presumption that pre-primary expenditures were made for the election following the next scheduled election, the auditors contend that the Committee did not have a primary debt. Expenditures prior to the date of an election are under the law presumed to be for the next election. The position of the auditors is inconsistent with the FEC bright line rule applicable to presidential campaign expenditures."

“The auditors identified \$62,400 in post-primary contributions that were properly designated for the primary debt. As a result of the Committee’s demonstration that it was in a net debt position as of the primary date, these properly designated contributions should not be considered excessive.”

It should be noted the issue of whether or not the Committee had net primary debt was first addressed during the audit fieldwork. Numerous requests were made during fieldwork for the Committee’s calculation of its net primary debt position. No such calculation was made available. As previously stated, it was not until the response period following the exit conference that the Committee provided a calculation of its net debt position as of the date of the primary election. At that time, the Audit staff allowed additional time for the Committee to submit documentation for 7 disbursements totaling approximately \$3.3 million. The Committee still did not provide the necessary documentation and the matter was addressed in the interim audit report.

If the net primary debt statement was made available during fieldwork, the Audit staff would have followed the same procedures and requested any such documentation necessary to verify the accuracy of the Committee’s statement. Finally, contributions were not classified as excessive in the interim audit report as alleged by Counsel (see page 6, paragraph 2 of this report).

Based on the documentation made available in response to the interim audit report, the Audit staff verified that the Committee had sufficient net debt on the date of the primary election. Therefore, contributions totaling \$62,400 no longer require refund.

Summary of Excessive Contributions

Committee Counsel argues that contributions in excess of the statutory limits were not greater than \$61,540. Counsel further states that Schumer ‘98 is unable to demonstrate that it obtained and maintained all of the records related to its redesignation and reattribution efforts. Counsel goes on to state that the auditors identified \$902,829 in such contributions and that the Committee has produced documents that demonstrate \$201,050 of that amount is not excessive. As a result, Counsel argues that contributions unresolved by documentation totals only \$640,239.

The Audit staff has reviewed the documentation and determined contributions initially questioned totaling \$52,000 were not excessive and \$3,575 in additional excessive contributions were identified. As to the \$52,000 now viewed as not excessive, approximately \$32,000 was confirmed as duplicate entries or misspellings/entry errors and \$20,000 was cleared by the submission of adequate supporting documentation. It should be noted, a portion of the documentation submitted had already been made available during audit fieldwork and considered in our initial analysis.

Accordingly, the Committee has not demonstrated that contributions totaling \$951,454 (\$999,879 + \$3,575 - \$52,000) were not in excess of the limitation. Of this amount, \$854,404 requires refunds. The difference, \$97,050, has been either refunded, reattributed or redesignated. However, as previously stated such remedies were not timely (see Attachment 1).

B. MISSTATEMENT OF FINANCIAL ACTIVITY

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

The Audit staff's reconciliation of the Committee's reported activity to its bank activity revealed a material misstatement with respect to ending cash on hand at December 31, 1998. Specifically, reported ending cash on hand was understated by a net amount of \$171,385. This understatement was primarily due to the Committee not reporting transfers received from (1) Friends of Schumer, the Candidate's 1996 congressional committee (\$229,848), (2) joint fundraising activity (\$38,800) and (3) PAC/Other Political Committees (\$19,550). Further, the Committee reported a transfer of \$75,000 from the Democratic Senatorial Congressional Committee that it did not receive. The Committee also deposited certain excessive contributions, but only reported the amount up to the limitation and did not report the excessive portion (\$66,225) or related refunds (\$58,225). Finally, an unexplained difference of \$51,563 remained between the reported activity and bank activity.

The Audit staff discussed this matter with the Committee representatives at the exit conference and provided them with copies of the bank reconciliation schedules. The Committee representatives agreed to file the necessary amendments to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee file amended reports for the appropriate reporting period in 1997 and 1998 to correct the misstatements identified above.

In response to the interim audit report, Counsel stated that the ending cash on hand overstatement was due primarily to minor bookkeeping oversights in the processing of \$17 million. The Committee filed amended disclosure reports that materially corrected the misstated activity.

C. TRANSFERS FROM THE FRIENDS OF SCHUMER COMMITTEE

Section 104.3(a)(3)(vi) of Title 11 of the Code of Federal Regulations states, in relevant part, that an authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period for transfers from other authorized committee(s) of the same candidate, regardless of amount.

Section 104.3(a)(3)(i)(A) of Title 11 of the Code of Federal Regulations states, in part, that an authorized committee of a candidate for Federal office shall report the total amount of itemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees.

Section 104.3(a)(4)(i) of Title 11 of the Code of Federal Regulations states, in part, that the identification of each contributor and the aggregate year-to-date total for such contributor shall be reported for each person, other than any committee, who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions aggregate in excess of \$200 per calendar year, together with the date of receipt and amount of any such contributions.

Section 104.3(a)(4)(iii)(A) of Title 11 of the Code of Federal Regulations states, in relevant part, that an authorized committee of a candidate for Federal office shall report the identification of each authorized committee which makes a transfer to the reporting committee, together with the date and amount of such transfer.

Section 110.3(c)(4) of Title 11 of the Code of Federal Regulations states, in relevant part, that the contribution limitations of 11 CFR 110.1 and 110.2 shall not limit the transfers of funds between a candidate's previous Federal campaign committee and his or her current Federal campaign committee provided that the funds transferred are not composed of contributions that would be in violation of the Act.

Section 110.3(c)(4)(iii) of Title 11 of the Code of Federal Regulations states in relevant part that for purposes of the contribution limits, a contribution made after an election has been held, or after an individual ceases to be a candidate in an election, shall be aggregated with other contributions from the same contributor for the next election unless the contribution is designated for the previous election, or is designated for another election.

The Commission's long-standing interpretation of the reporting requirements is that when one authorized committee transfers funds to another committee authorized by the same candidate, the recipient committees must report the individual contributors that meet the itemization threshold. In 1978, the Commission addressed a situation where a candidate ran for two different Senate seats in successive elections. The Commission determined that "for purposes of disclosure under 2 U.S.C. § 434(b)(2), [post election] contributions to the now terminated Senate 1 committee need not be aggregated with those made to the 'new' Senate 2 committee but only to the extent they were expended by Senate 1 and not included in any direct or indirect transfers made by the Senate 1 committee to the Senate 2 committee." Advisory Opinion ("AO") 1978-19. In 1979, the Commission expressly concluded that a Senate committee may lawfully transfer all of its funds to a House Committee for the same candidate, "[i]f the House Committee reports funds received from the Senate Committee as contributions received from the original contributors." AO 1979-51. In 1982 and again in 1984, the Commission reached the similar conclusions in AO's 1982-1 and 1984-38.

The Committee reported receiving two transfers totaling \$5,299,010 (\$5,297,259 and \$1,751) from the Candidate's 1996 congressional committee, in June 1997 and January 1998 respectively. However, a "Schedule of Transfers to Schumer '98 from Friends of Schumer" provided by the Committee included 13 transfers totaling \$5,528,858, a difference of \$229,848.

Further, the Committee did not disclose properly the contributions within the transfers that were received subsequent to the 1996 general election. The Audit staff calculated that the amount transferred included \$351,076 in contributions received subsequent to the 1996 general election which, pursuant to 11 CFR §110.3(c)(4)(iii), are contributions to the candidate's primary election campaign for the U.S. Senate.³ Of this amount, \$336,298 in contributions required itemization on memo Schedules A.

The Audit staff discussed this matter with the Committee representatives at the exit conference and provided them with the schedule of transfers discussed above. The Committee representatives agreed to file the necessary amendments to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee file amended reports for the appropriate reporting periods in 1997 and 1998 to disclose the transfers that were not reported and to disclose the contributors whose contributions were received after the 1996 general election on memo Schedules A as required.

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

“The contributions to Friends of Schumer were itemized pursuant to the Regulations on its reports filed with the Commission. When transfers are made between a candidate’s authorized committee (e.g. from Friends of Schumer to Schumer ’98) in different election cycles, the receiving committee does not have to itemize contributions transferred between the committees as long as the original contributions count against the limits for the election for which the contributions were intended ... When a candidate’s authorized committees transfer funds in the same election cycle, the receiving committee does not need to re-itemize the sources of the funds transferred (the contributions that comprise the transfer) if the transferring committee has already itemized them in its report ... Such contributions received by a candidate’s authorized committee are aggregated with contributions from the same contributor for the next election ... Accordingly, contributions received and reported by Friends of

³ These contributions were included in our review of apparent excessive contributions.

Schumer after the 1996 election count against a contributor's per person 1998 election limits, but Schumer '98 was not required to re-itemize such contributions on its reports."

The Committee filed amended disclosure reports which disclosed the above transfers on Schedule A, as well as those contributors whose contributions were received after the 1996 general election (by Friends of Schumer) on memo Schedules A.

D. ITEMIZATION OF CONTRIBUTIONS RECEIVED FROM PACS/OTHER POLITICAL COMMITTEES

Sections 434(b)(2)(C) and (D) of Title 2 of the United States Code state, in part, that each report shall disclose, for the reporting period and calendar year, the total amount of contributions from political party committees and contributions from other political committees.

Section 434(b)(3)(B) of Title 2 of the United States Code states that each report shall disclose the identification of each political committee which makes a contribution to the reporting committee during the reporting period, together with the date and amount of any such contribution.

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

The Committee did not itemize twenty-four contributions from PACs/Other Political Committees, totaling \$67,950. The dollar value of twenty-one of these contributions (\$57,450) was reported on the Detail Summary Page at Line 11c. but the contributions were not itemized on Schedules A. The other three contributions, totaling \$10,500, were not reported.

The Audit staff discussed this matter with the Committee representatives at the exit conference and provided them with a schedule of contributions discussed above. The Committee representatives agreed to file amended reports to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee file amended reports for the appropriate reporting periods in 1998 to disclose these contributions.

In response to the interim audit report, the Committee filed amended disclosure reports disclosing the above contributions.

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E. ITEMIZATION OF CONTRIBUTION REFUNDS

Section 434(b)(4)(F) of Title 2 of the United States Code states, in part, that each report shall disclose, for the reporting period and calendar year, the total amount of all disbursements for contribution refunds and other offsets to contributions.

Section 104.3 (b)(4)(v) of Title 11 of the Code of Federal Regulations states, in relevant part, that each authorized committee shall report the full name and address of each person who receives a contribution refund or other offset to contributions from the reporting committee, together with the date and amount of such refund or offset.

During audit fieldwork, the Audit staff identified 60 contribution refunds, totaling \$58,225, that were not reported. We noted cases where the Committee refunded an excessive contribution but did not disclose the refund on Schedule B for Line 20, as required. Moreover, the disclosure of the related contribution transaction(s) was also deficient. For example, even though the Committee received and deposited a contribution of \$1,500, in certain instances, it would only disclose \$1,000 on Schedule A for Line 11.

The Audit staff discussed this matter with the Committee representatives at the exit conference and provided them with a schedule of the contribution refunds discussed above. The Committee representatives agreed to file amended reports to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee file amended reports for the appropriate reporting periods in 1997 and 1998 to disclose these refunds.

In response to the interim audit report, the Committee filed amended disclosure reports disclosing the above contribution refunds.

F. DISCLOSURE OF INFORMATION ON REPORTS OF EXPENDITURES

Sections 434(b)(4)(A) and (5)(A) of Title 2 of the United States Code state that each report shall disclose expenditures made to meet candidate or committee operating expenses, and the name and address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet a candidate or committee operating expense, together with the date, amount, and purpose of such operating expenditure.

The Audit staff identified 289 disbursements, totaling \$6,354,835, that were not disclosed properly. The majority of the disclosure errors consisted of 267 disbursements, totaling \$6,332,663, that were summed by payee by reporting period and disclosed as a single entry for each payee. For example, during the reporting period April 1, 1998 through June 30, 1998, the Committee may have issued 15 payments, totaling \$150,000, of various amounts on various dates to vendor A. However, the Committee would itemize one payment of \$150,000 to this vendor.

The Audit staff discussed this matter with the Committee representatives at the exit conference and provided them with a schedule of all disclosure errors. The Committee representatives agreed to file amended reports to correct the public record.

In the interim audit report, the Audit staff recommended that the Committee file amended reports for the appropriate reporting periods in 1997 and 1998 to correct the disclosure irregularities noted above.

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

“The total amount paid to a vendor in a reporting period was disclosed by the Committee. A staff person simply decided to combine multiple payments to one vendor.”

The Committee filed amended disclosure reports which materially disclosed the above disbursements, including the date and amount of each disbursement.

G. FILING OF 48 HOUR NOTICES

Section 434(a)(6) of Title 2 of the United States Code requires that each treasurer of the principal campaign committee of a candidate shall notify the Secretary or the Commission, and the Secretary of State, as appropriate, in writing, of any contribution of \$1,000 or more received by any authorized committee of such candidate after the 20th day, but more than 48 hours before, any election. This notification shall be made within 48 hours after the receipt of such contribution and shall include the name of the candidate and the office sought by the candidate, the identification of the contributor, and the date of receipt and the amount of the contribution. The notification required under this paragraph shall be in addition to all other reporting requirements under this Act.

The Audit staff reviewed all contributions greater than or equal to \$1,000 with a receipt date between August 27, 1998 and September 12, 1998 and between October 15, 1998 and October 31, 1998. The Audit staff identified 1,407 contributions, totaling \$1,534,500, that required 48 hour notices. The Committee did not file notices for 57 contributions totaling \$89,500. Of the remaining 1,350 notices filed, totaling \$1,445,000, 180 notices, totaling \$186,500, were filed late.

The Audit staff discussed this matter with the Committee representatives at the exit conference and provided them with schedules of the identified items. The Committee had no comment with respect to this matter.

In the interim audit report, the Audit staff recommended that the Committee submit evidence that the 57 required 48 hour notices were filed or submit any written comments it considered relevant.

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

“The purpose of the 48-hour notice disclosure requirement is to make information available to the public prior to the election. Of the 180 48-hour notices identified by the auditors as filed late, nearly every one was filed within 72-hours and all of them were filed before the election. The Committee filed 95.9% of the 1,407 48-hour notices it was required to file but it does not have any additional evidence to submit with regard to the 57 48-hour notices identified as missing by the auditors.”

As noted above, the Committee did not present evidence that the 57 48-hour notices, totaling \$89,500, were filed.

H. SCHUMER '98 JOINT FUNDRAISING ACTIVITIES

Section 102.17(b)(1) of Title 11 of the Code of Federal Regulations states that participating committees may establish a separate political committee to act as fundraising representative for all participants. This separate committee shall be a reporting political committee and shall collect contributions, pay fundraising costs from gross proceeds and from funds advanced by participants, and disburse net proceeds to each participant.

Section 102.17(c)(1) of Title 11 of the Code of Federal Regulations states, in relevant part, that the participants in a joint fundraising activity shall enter into a written agreement. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant.

Section 102.17(c)(6) of Title 11 of the Code of Federal Regulations states, in relevant part, that the fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement.

Section 102.17(c)(7)(i)(A) of Title 11 of the Code of Federal Regulations states, in relevant part, that after gross contributions are allocated among participants under 11 CFR 102.17 (c)(6), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

Section 102.17(c)(8)(i)(B) of Title 11 of the Code of Federal Regulations states that after distribution of net proceeds, each political committee participating in a joint fundraising activity shall report its share of net proceeds received as a transfer-in from the fundraising representatives. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

Section 102.17(c)(8)(ii) of Title 11 of the Code of Federal Regulations states that the fundraising representative shall report all disbursements in the reporting period in which they are made.

The Committee was a participant in two joint fundraisers. The Committee and the *Democratic Senatorial Campaign Committee, Inc. (DSCC)* federal and non-federal accounts were participants in one joint fundraising effort. The joint fundraising representative was Victory in New York (Victory). In addition, the Committee and the Liberal Party of New York (Liberal Party) were the participants in the second joint fundraising effort. The joint fundraising representative was Win New York (Win). It should be noted that neither Victory nor Win was audited, however, disclosure reports filed by both joint fundraising representatives were reviewed.

Victory in New York

The Committee received \$684,800 in joint fundraising proceeds or 22.9% of the total distributed proceeds. The DSCC's federal account share was \$2,195,000 (73.4%), while its non-federal account share was \$109,000 (3.7%). Victory reported joint fundraising expenses totaling \$201,405. As a result, the Committee's share of the joint fundraising expenses was \$46,122 ($\$201,405 \times 22.9\%$).

Relative to the proceeds received, the Committee reported contributions, totaling \$686,780, on memo Schedules A. The difference between the amount reported on memo Schedules A (\$686,780) and the amount received by the Committee (\$684,800) should represent the dollar value of joint fundraising expenses allocated to the Committee by the joint fundraising representative. Based on the above, the Committee was allocated \$1,980 ($\$686,780 - \$684,800$) in joint fundraising expenses. However, as previously stated, the Committee's share of expenses based on the distribution of joint fundraising proceeds was \$46,122. The difference, \$44,142 ($\$46,122 - \$1,980$), represents either unreported contributions on memo Schedules A, which could result in additional excessive contributions received by the Committee or an in-kind contribution to the Committee by either the DSCC federal account or the DSCC non-federal account, or both.

Win New York

The Committee received \$176,850 in joint fundraising proceeds or 24.3% of the total distributed proceeds, while the Liberal Party's allocable share was \$549,764 (75.7%). Relative to the proceeds received, the Committee reported \$180,600 in contributions on memo Schedules A. The difference between the amount reported on memo Schedules A (\$180,600) and the amount received by the Committee (\$176,850) should represent the dollar value of joint fundraising expenses allocated to the Committee by the joint fundraising representative. Based on the above, the Committee was allocated \$3,750 ($\$180,600 - \$176,850$) in joint fundraising expenses on its original disclosure reports through December 31, 1998. However, Win did not report any joint fundraising expenses on its original disclosure reports through December 31, 1998. Absent documentation identifying

the joint fundraising expenses, it is not possible to verify the accuracy of the Committee's reports filed with respect to memo Schedules A or determine if either participant received/made a reportable in-kind contribution.

The Audit staff discussed these matters with the Committee representatives at the exit conference and provided them with schedules supporting the Audit staff's calculations. Subsequently, a Committee representative stated, with respect to Win, that the Committee paid all joint fundraising expenses since Committee staff conducted all joint fundraising activity by phone from its headquarters. Further, there were no fundraising events, catering charges, etc. relating to this joint fundraising effort.

In the interim audit report, the Audit staff recommended that the Committee, with respect to Victory:

- (a) provide a detailed schedule of all contributions received by the joint fundraising committee to include the contributor name, date and amount and a breakdown of how such contributions were allocated to each participant in accordance with the joint fundraising agreement;
- (b) file amended memo Schedules A disclosing additional contributor information in support of the joint fundraising proceeds received by the Committee, if necessary;
- (c) refund any excessive contributions to the contributors that may result from (b) above and provide evidence of such refunds;
- (d) provide an explanation of the \$44,142 difference between the amount of fundraising expenses allocated to the Committee by the joint fundraising representative (\$1,980) and amount of the Committee's share of joint fundraising expenses based on the distribution of proceeds (\$46,122);
- (e) should (d) above result in an in-kind contribution from the DSCC non-federal account, refund the dollar value of the in-kind contribution and provide evidence of such refund.

In response to the interim audit report, Counsel stated, with respect to Victory:

"The Committee amended its reports disclosing \$733,730 in contributions to the joint fundraising committee, Victory in New York, that were allocated to the Committee. The contributor information for the allocated expenditures is reported on amended Schedules A filed by the Committee. As a result of these amendments, the Committee's share of joint fundraising expenses allocated to the Committee was \$48,930 or 24.3%. The Committee's share of joint fundraising

expenses calculated by the auditors was \$46,122 (\$201,405 x 22.9%). As a result, the joint fundraising expenses allocated to the Committee were \$2,808 greater than the \$46,122 calculated by the auditors. These amendments demonstrate that the Committee was allocated its correct share of joint fundraising expenditures and that it did not receive an in-kind contribution from the DSCC's non-federal account."

The Committee provided a detailed schedule of all contributions received by the joint fundraising committee (Victory) to include the contributor name, date and amount and a breakdown of how such contributions were allocated to each participant in accordance with the joint fundraising agreement.

The Committee also filed amended memo Schedules A which disclosed additional contributor information in support of the joint fundraising proceeds.

Based on the above, the Audit staff did not identify any additional excessive contributions. As a result, the Committee materially complied with all recommendations.

In the interim audit report, the Audit staff recommended that the Committee, with respect to Win:

- (a) provide a detail schedule of all joint fundraising expenses paid by either participant, to include the identity of the entity paying such expenses;
- (b) file amended memo Schedules A disclosing additional contributor information in support of the joint fundraising proceeds received by the Committee, if necessary, and;
- (c) refund any excessive contribution to the contributors that may result from (b) above and provide evidence of such refunds.

In response to the interim audit report, Counsel stated, with respect to Win:

"Expenses related to the Win New York joint fundraising committee were paid by the Committee as part of the Committee's pre-existing overhead and administrative expenses. The Schumer '98 staff raised funds for Win New York by phone from Committee headquarters. There were no fundraising events, catering charges, etc. related to the Win New York joint fundraising effort. The only costs were administrative expenses such as rent, phone charges, and staff salary owed by the Committee whether it participated in the Win New York joint fundraising activity or not. The Committee disclosed the overhead and administrative expenses

on its reports but because no additional overhead or administrative expenses were incurred related to the Committee's participation in the Win New York joint fundraising activity, a detailed schedule of joint fundraising related expenditures can not be provided. In the event that there were any costs, they were *de minimus* and within the contribution limits between the joint fundraising participants to one another."

The Committee filed amended memo Schedules A which disclosed \$179,350 in contributions relative to the proceeds received (\$176,850). Based on the above, the Committee was allocated \$2,500 in joint fundraising expenses, a reduction from the original allocation of \$3,750.

In calendar year 1999, Win disclosed operating expenses of \$194 (unitemized) and an additional transfer to the Liberal Party of \$2,150. Further, in April 1999, Win filed an amended report covering the period 11/24/98 through 12/31/98. However, Win's beginning cash on hand was \$5,000 less than originally reported. No explanation was provided. Win also disclosed \$4,253 on lines 12 (Transfers From Affiliated/Other Party Committee) and 21b (Other Federal Operating Expenditures). There were no supporting schedules filed with respect to either line item. It is possible this \$4,253 represents an in-kind contribution. In calendar year 2000, Win filed reports but did not disclose any receipt or disbursement activity.

As previously stated, the Audit staff did not audit Win. If, in fact, the Committee paid all joint fundraising expenses, the dollar value of contributions on amended memo Schedules A should equal the dollar value of joint fundraising proceeds received. Therefore, the amended memo Schedules A are not accurate. Further, according to Win disclosure reports the joint fundraising effort raised approximately \$729,000 and the Liberal Party received approximately 75% of the proceeds. If the total joint fundraising expenses paid by the Committee exceeded \$6,667, it is likely that the Committee made an excessive in-kind contribution to the Liberal Party. The dollar value of any potential excessive in-kind contribution cannot be calculated without documentation supporting total joint fundraising expenses.

It is the opinion of the Audit staff that the Committee did not comply fully with the recommendations pertaining to the Win joint fundraising activity.

	A	B	C	D	E	F
1	Summary of Excessive Contributions					
2	Final Audit Report Analysis					
3						
4						
5	Excessive Individual Primary Election Contributions Resolved Untimely					\$91,050.00
6	Excessive Individual Primary Election Contributions Unresolved				\$586,194.00	
7	Less: Contributions Determined not to be Excessive Based on Response to Interim Audit Report				<u>(\$9,775.00)</u>	
8	Excessive Individual Primary Election Contributions Requiring Refund					\$576,419.00
9	Total Excessive Individual Primary Election Contributions					<u>\$667,469.00</u>
10						
11						
12						
13	Excessive Individual General Election Contributions Resolved Untimely					\$5,000.00
14	Excessive Individual General Election Contributions Unresolved				\$243,610.00	
15	Less: Contributions Determined not to be Excessive Based on Response to the Interim Audit Report				<u>(\$32,650.00)</u>	
16	Excessive Individual General Election Contributions Requiring Refund					\$210,960.00
17	Total Excessive General Election Contributions					<u>\$215,960.00</u>
18						
19						
20						
21	Excessive Partnership/PAC/Other Political Committee Contributions Resolved Untimely					\$1,000.00
22	Excessive Partnership/PAC/Other Political Committee Contributions Unresolved				\$73,025.00	
23	Less: Contributions Determined not to be Excessive Based on Response to Interim Audit Report				<u>(\$6,000.00)</u>	
24	Excessive Partnership/PAC/Other Political Committee Contributions Requiring Refund					\$67,025.00
25	Total Excessive Partnership/PAC/Other Political Committee Contributions					<u>\$68,025.00</u>
26						
27						
28	Total Excessive Contributions Resolved Untimely		(Sum of Lines 5 + 13 + 21)			\$97,050.00
29	Total Excessive Contributions Requiring Refund		(Sum of Lines 8 + 16 + 24)			<u>\$854,404.00</u>
30	Total Excessive Contributions		(Sum of Lines 9 + 17 + 25)			<u>\$951,454.00</u>

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FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

April 10, 2001

Mr. Steven D. Goldenkranz, Treasurer
Schumer '98
1551 East 23rd Street
Brooklyn, NY 11210

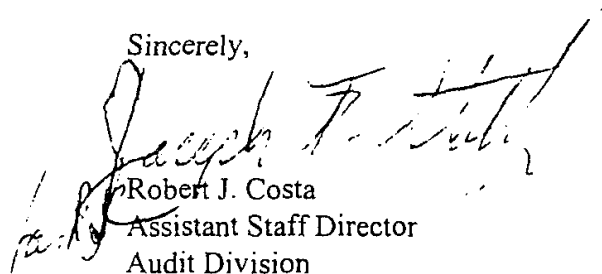
Dear Mr. Goldenkranz:

Attached please find the Report of the Audit Division on Schumer '98. The Commission approved the report on April 6, 2001.

The Commission approved Final Audit Report will be placed on the public record on April 13, 2001. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220.

Any questions you have related to matters covered during the audit or in the report should be directed to Jeff Spilizewski or Tom Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,


Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated
cc: Jim Lamb; Ryan, Phillips, Utrecht & MacKennon

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CHRONOLOGY

SCHUMER '98

Audit Fieldwork	June 16, 1999 - March 29, 2000
Interim Audit Report to the Committee	July 7, 2000
Response Received to the Interim Audit Report	August 24, 2000
Final Audit Report Approved	April 6, 2001

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