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July 20, 2009

Federal Election Commission
Audit Division
Attn: Ms. Paulia Nurthen and Mr. Alex Boniewicz
999 E Street, NW
Washington, D.C. 20463

**Re: Preliminary Report of the Audit Division
on Biden for President, Inc.**

Dear Ms. Nurthen and Mr. Boniewicz:

We are counsel to Biden for President, Inc. (the "Committee"). Pursuant to 11 C.F.R. § 9038.1(c)(2), the following information and materials are being provided and constitute a response in connection with the above-captioned matter. In sum, this response focuses on two findings contained in the Preliminary Audit Report ("PAR"): (i) that the Committee failed to provide timely "presumptive designation" notices to a material number of individuals (*see* PAR Finding 2); and (ii) that the Committee has an unresolved balance of \$129,300 in stale-dated checks (*see* PAR Finding 4).

1. **Failure to Provide Presumptive Designation Notices**

The audit staff identified \$1,092,899 in contributions from individuals that were presumptively designated for the general election, but for which the Committee was unable to produce copies of corresponding notification letters sent pursuant to 11 C.F.R. §110.1(b)(5)(ii)(B). The audit staff concluded that these contributions were eventually properly resolved, because the Committee obtained re-designations for them to the candidate's Senate campaign committee ("Citizens for Biden"), but determined that, because the re-designation letters were sent more than 60 days after the contributions were made, they were not an adequate substitute for the presumptive notices. The audit staff therefore determined that the Committee's re-designations were untimely. *See* PAR, p.12.

When this issue was raised by audit staff during the fieldwork phase of the audit, the Committee expressed confidence that the presumptive notices were sent and explained they had been lost inadvertently when the Committee changed locations in the spring of 2008. The Committee staff member responsible for managing the sending and retention of all Committee "cure letters" recalled specifically that the notices were sent,

but her critical medical condition at the time made a formal declaration impractical (she died on September 20, 2008). Moreover, the Committee computer containing the template used to send the notices was unavailable, because it had been "wiped clean" and sold pursuant to Committee wind-down efforts, which included the sale of Committee assets.

To substantiate its contention that the presumptive notices were sent, the Committee provided a range of circumstantial evidence, which is set forth on page 13 of the PAR. This evidence included copies of the Committee's entire library of cure letter templates, which included a presumptive designation notice, and a contribution compliance chart used by Committee staff to review and cure problematic contributions. The chart specifically identified the need for Committee staff to send presumptive designation notices to contributors who contributed in excess of \$2,300. Indeed, the Committee noted in a written submission, dated September 26, 2008, that documentation demonstrating that the Committee had regularly and comprehensively sent other cure letters supported its claim that the presumptive notices were sent, because it was unlikely that the Committee would have sent this array of letters and omitted the presumptive notice, which requires no action by the contributor unless he or she objects to the designation. Select Committee staff also expressed to audit staff that the individual responsible for managing the sending and retention of the Committee's cure letters was renowned for being conscientious and meticulous, and it was inconceivable to them that she would have overlooked such an important compliance matter. Finally, Committee staff contacted a number of contributors, who recalled receiving the presumptive notice but had not retained it because no action was required on their part.

The PAR notes the Committee's inability to produce copies of presumptive notices from contributors and finds the Committee's circumstantial evidence insufficient to substantiate that the presumptive designation notices were sent. In response, the Committee submits herewith several sworn declarations from individuals to support that the presumptive notices were in fact sent.

First, the Committee provides declarations from a number of contributors who recall receiving a presumptive designation notice from the Committee. None of these individuals retained a copy of the presumptive notice, because, unlike other "cure" letters, no action is required by the contributor unless he or she objects to the designation. **Exhibit A.**

In addition, the Committee is providing a declaration executed by a Committee staff member who worked directly for the now deceased staff member responsible for managing the Committee's sending and retention of cure letters. **Exhibit B.** His declaration unequivocally confirms that he regularly sent presumptive designation letters to contributors who made primary election contributions in excess of \$2,300. The declaration also indicates that the presumptive notices were sent regularly at the direction of the now deceased staff member.

In view of these declarations, which buttress the Committee's earlier circumstantial evidence, we ask that the Final Audit Report accept the Committee's contention that presumptive designation letters were sent.

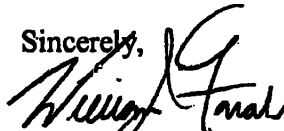
2. Stale-Dated Checks

The PAR indicates that the Committee has an unresolved balance of \$129,300 in stale-dated checks. This figure is overstated by \$48,400.00.¹ In particular, several general election contribution refund checks treated as stale-dated checks in the PAR have been resolved, either by issuance of a replacement check (which has been negotiated), or by the contributor's authorization to transfer the funds to Citizens for Biden and/or Unite Our States. A table listing and explaining the resolution of each of these checks is attached, along with the necessary supporting documentation. See **Exhibit C**.

* * *

Should you have any questions or require additional information or clarifications regarding this response, please do not hesitate to contact us.

Sincerely,



William J. Farah
Phu D. Huynh

(Attachments)

¹ This reduced figure also accounts for a stale-dated check listed in the spreadsheet prepared by the audit staff for \$2,700 that in fact should have been issued for only \$2,300. See Check No. 1152.