



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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2000 FEB 22 P 4:49

February 22, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Leslie Bright
Associate General Counsel

Rhonda J. Vosdinger
Assistant General Counsel

Delanie DeWitt Painter
Attorney

SUBJECT: Oral Hearing -- Buchanan for President, Inc. (LRA # 512)

AGENDA ITEM
For Meeting of: 3-01-00

I. INTRODUCTION

Based upon an inquiry conducted pursuant to 26 U.S.C. § 9039(b) and 11 C.F.R. § 9039.3, on July 15, 1999, the Commission determined that Patrick J. Buchanan and Buchanan for President, Inc. (collectively "the Committee") must repay \$63,750 to the United States Treasury for matching funds received in excess of the candidate's entitlement for matched contributions later determined to have been non-matchable. 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii).¹ Attachment 1. On October 12, 1999, the Committee submitted a written response to the repayment determination and requested the opportunity to address the

¹ The repayment determination was an additional repayment determination based on facts not used as the basis for the Commission's repayment determination on January 14, 1999, which arose from the Commission's audit of the Committee. See 11 C.F.R. §§ 9038.2(f), 9039.3(b)(4).

Commission in open session in order to demonstrate that a lesser repayment is required.² 11 C.F.R. § 9038.2(c)(2)(ii). Attachment 2. The Commission granted the Committee's request for an oral hearing and scheduled the hearing for January 12, 2000. On January 5, 2000, the Committee requested a postponement of the oral hearing, and on January 10, 2000, the Commission granted the Committee's request. The oral hearing has been rescheduled for March 1, 2000.³

II. INQUIRY AND REPAYMENT DETERMINATION

The Commission determined that Patrick J. Buchanan and the Committee must repay \$63,750 to the United States Treasury for matching funds received in excess of the candidate's entitlement for matched contributions later determined to have been non-matchable. The Commission's repayment determination is made up of two distinct portions: \$62,116 for matching funds related to improper reattributions, and \$1,634 for matched contributions that were later refunded. The majority of the repayment determination, \$62,116, was based on a random sample of 324 sample items selected from a population of 7,220 matched contributions.⁴ Forty-seven of these sample items appeared to have been improperly reattributed. The Commission sent surveys to contributors to verify certain contributions and reattributions, including the 47 sample items. Based on the survey responses, eight of the sample items appeared to have been matchable, and 31 of the sample items should not have been matched and were considered "errors."⁵ After determining which sample items were errors, the Commission projected an error rate of 9.57% with a sampling error of $\pm 3.69\%$ and a confidence level of 95%. Applying this projected error rate to the total population, the Commission calculated a repayment amount of \$62,116 for non-matchable contributions.

Specifically, the available information indicated that the reattributions associated with the 31 errors were not proper. See 11 C.F.R. §§ 110.1(k), 9034.2(c)(1). It appeared that the contribution checks were drawn on the original contributors' accounts and there was no indication that the reattributees were joint owners of the accounts. See *id.* Survey responses and contacts with contributors and reattributees raised questions about whether the contributors and

² On September 30, 1999, the Commission granted the Committee a 15-day extension of time, until October 12, 1999, to respond to the Commission's repayment determination.

³ By letter dated February 7, 2000, the Committee requested additional documents to enable its statistical consultant to prepare for the oral hearing. Specifically, the Committee requested the database containing the population of 7220 observations, the database or spreadsheet of the sample results, the basis for the calculation of the 3.69% margin of error, and an explanation of the exclusions from the sample. On February 16, 2000, this Office provided the requested materials to the Committee. Attachment 5. The materials provided to the Committee are available for the Commission's review in the Office of General Counsel.

⁴ The population was made up of all of the matched contributions from all contributors who were associated with any reattribution that was submitted for matching.

⁵ With respect to the remaining eight sample items, the contributors associated with two sample items were deceased and there was no response to the survey for six sample items. These eight sample items were not treated as errors.

retributees sufficiently understood the nature of the transactions to make proper reattributions and whether Committee representatives gave contributors incorrect instructions about how to retribute contributions. For example, it was not clear whether contributors who stated that they reattributed a portion of their contributions to minor children made proper reattributions. See 11 C.F.R. § 110.1(i). There was also insufficient evidence to verify whether any of the retributees gave the original contributors funds to make the contributions or reattributions. Several retributees had no recollection of giving the original contributor any funds to make the contribution or retribution. Those who indicated that they may have given funds to the original contributors stated that they gave cash, rather than checks, and none of them could document that they gave funds to the original contributor. Further, the use of the phrase "equitable ownership" in many of the retribution statements raised questions, because it appeared that the Committee and contributors incorrectly applied the matchability rule for contributions drawn on an escrow or trust account to all contributions. See 11 C.F.R. § 9034.2(c)(2).

The remaining amount of the repayment determination, \$1,634, was based on the Committee's refund of \$2,000 to two contributors who requested refunds after receiving correspondence and a telephone call from Commission staff. 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii), see 11 C.F.R. §§ 9036.1(b)(6), 9036.2(b)(1)(iv) (committees must submit a list of all refunds with their threshold submission and with subsequent matching fund submissions). The fact that the contributors requested the refund negated the donative intent necessary for matchability. See 11 C.F.R. § 9034.3(j). The Committee submitted the contributions and associated reattributions for a total of \$1,750 in matching funds. These contributions were included in two matching fund submissions with different error rates, two matched at a rate of 94.8% and five at a rate of 92.8%. The total amount of matching funds approved for the refunded contributions was \$1,634 ($5 \times \$250 \times .928$) + ($2 \times \$250 \times .948$).

III. REQUEST FOR ADMINISTRATIVE REVIEW OF REPAYMENT DETERMINATION

The Committee disputes both portions of the Commission's repayment determination. The Committee contends that the determination is based on "methods of questionable validity and reliability" and is "rife with errors." Attachment 2 at 10.

The Committee contests the sampling method used to calculate the majority (\$62,116) of the repayment amount and argues that the use of sampling was not appropriate to calculate the repayment amount in this matter. *Id.* at 2-7. The Committee contends that the use of a sampling technique "to justify onerous repayment determinations fails to meet the requirements of due process." *Id.* at 2. The Committee contends that the Commission has not demonstrated that the sampling in this case "is the only feasible method of audit and . . . a full audit would be a practical impossibility." *Id.* The Committee also argues that the cases cited in the Notice of Repayment Determination involved audits with larger populations than the 7,220 items involved in this matter.⁶ *Id.*

⁶ The Committee claims confusion about the correct population size because an October 22, 1997 memorandum from Robert J. Costa to Lawrence M. Noble lists a slightly larger population of 7,278. The Audit

Moreover, the Committee argues that several cases involving tax assessments where a New York state court rejected the use of sampling are "more analogous" to this matter, and that the use of a test period to extrapolate the amount of tax due over a period of years is "an exact analogue" to the method used by the Commission. *Id.* at 3-4, citing *Chartair, Inc. v. State Tax Comm'n*, 411 N.Y.S.2d 41 (N.Y. App. Div. 1978) (state tax commission's use of three-month test period audit to determine sales tax liability over a period of 43 months disapproved when sufficiently detailed records were available to determine the exact amount of tax); *Mohawk Airlines v. Tully*, 429 N.Y.S.2d 759 (N.Y. App. Div. 1980) (use of test period to estimate tax liability improper where records were readily available from which exact amount of tax could be determined); *Names in the News v. New York State Tax Commission*, 429 N.Y.S.2d 755 (N.Y. App. Div. 1980) (use of three-month test period audit to calculate tax arbitrary and capricious where records were available). The Committee also cites a case from the same New York state court involving Medicaid overpayments which follows the same reasoning as the taxation cases. Attachment 2 at 4, citing *Allen v. Comm'r of Social Services*, 500 N.Y.S.2d 204 (N.Y. App. Div. 1986) (where records were available for audit, fact that audit would be time consuming did not justify use of sampling).

The Committee further contends that to comport with due process, sampling methods must be "valid and reliable" and it must have "a full opportunity to review the methods used and the records and information upon which the determination has been based." *Id.* at 4. The Committee claims that it has insufficient information to "definitively address either the validity or reliability of the method." *Id.* For example, the Committee states that it has no "handbook or manual" that explains the "dollar unit sampling" method. *Id.* at 5. The Committee also argues that it is unable to effectively challenge the repayment determination because it was not timely provided with information it requested concerning the investigation, and it did not receive other requested information.⁷ *Id.* at 5-7.

In addition, the Committee questions the Commission's calculations. The Committee states that the sampling error of $\pm 3.69\%$ is nearly 33% of the error rate of 9.57%. The

staff's final corrected calculations, summarized in a memorandum dated July 12, 1999, indicate that the population size was 7,220. Attachment 1 at Attachment E.

⁷ In a letter dated August 24, 1999, received by facsimile transmission on August 25, 1999, the Committee requested two specific memoranda sent between this Office and the Audit Division and "any documents including memoranda, oral contacts, questionnaires, etc. that form the basis of the Audit Staff's factual conclusions that certain of the 48 sample items appear to be 'improperly reattributed.'" On October 8, 1999, this Office provided the requested memoranda, with attachments, and copies of the surveys completed by contributors related to the sample items which were considered to be improperly reattributed. Attachment 3. The materials provided to the Committee are available for the Commission's review in the Office of General Counsel. This Office did not provide copies of reports prepared by our investigator, electronic messages, or communications between this Office and the Audit staff, which are protected from disclosure by the attorney work product privilege. Moreover, this Office did not provide documents the Committee should have in its possession, such as contribution checks, and documents that appeared to be beyond the scope of the request. Although the Committee's response states that the Committee "requests the opportunity to supplement its response . . . if necessary, after it has conducted a more thorough review of the documents," Attachment 2 at 6, n. 14, the Committee has neither submitted a supplement to its response nor contacted this Office to indicate that a supplement is necessary.

Committee suggests that at most, the Commission "can use no more than a 5.88% error figure (9.57% -3.69%), since this is the largest figure that the Audit Division's methods can truly establish." *Id.* at 7.

Moreover, the Committee argues that the survey results were not correctly interpreted and that it was not proper to consider particular contributions as "errors." *Id.* at 6-10. The Committee asserts that the Commission incorrectly defined reattributions as errors if the retributee did not have the right to withdraw funds from the contributor's bank account, but "refused to consider the responses of contributors indicating that the retributee gave the contributor the money to make the donation." *Id.* at 7. The Committee argues that this "contradicts regulations providing that contributions are matchable if reattributed to persons who owned the contributed funds who had the requisite donative intent." *Id.* at 6. The Committee asserts that the Commission "concluded that lack of equitable ownership of a bank account precluded a proper reattribution, failing to consider the possibility of equitable ownership of the funds within the bank account." *Id.* at 7 (emphasis in original). The Committee states that the survey responses related to ten of the errors reported that the contributors "receiv[ed] money from retributees," and that there is no evidence they did not do so. *Id.*

The Committee also questions the survey verification process, and contends there are flaws in the Commission's treatment of specific reattributions as errors based on the survey responses. *Id.* at 8-10. For example, the Committee argues that Anna Newton's response indicates that she did not understand the meaning of "reattribution" and that her "uninformed response" to the survey should not be treated as an error. *Id.* at 8. The Committee states that Catherine Radecki responded that her reattributed contributions were drawn on an escrow or trust account and thus, her reattribution should not have been treated as an error. *Id.* In addition, the Committee argues that: James Pettit's response was incomplete; John W. Kremer stated he did not make the reattributions; Sheila Thomsen made a proper reattribution to her husband; and that these reattributions were incorrectly treated as errors. *Id.* at 8-9.

With respect to the remaining portion of the repayment determination (\$1,634) arising from refunded contributions, the Committee states that it "does not understand the basis of this calculation or the rationale for requiring repayment of only a portion of the matching funds apparently received in connection with these contributions." Attachment 2 at 2, n.2. The Committee argues that there is "no rationale for reducing the amount of the repayment by a figure that represents the projected error rate that was applied to the initial submissions." *Id.*

IV. ANALYSIS

The larger portion of the repayment determination (\$62,116), related to improper reattributions, was calculated using a sampling technique. Statistical sampling was necessary in this inquiry because verification of each of the thousands of matched contributions related to reattributions would have been pragmatically impossible. Sufficient records are not available to

enable the Commission to verify that each of the reattributions was proper.⁸ Because the repayment amount is based on a sampling technique, the Committee may provide sufficient evidence that any or all of the 31 sample items considered to be errors are related to properly reattributed, matchable contributions in order to support its contention that the Commission should reduce the repayment amount.

The survey responses for the 31 errors indicated that the reattributee did not have the right to withdraw funds from the contributor's bank account; thus, the contributed funds appear to have belonged to the contributor rather than to the reattributee. While responses from contributors of ten of these sample items and telephone conversations with several reattributees indicated that some reattributees may have given contributors money to make the contributions or reattributions, additional documentation would be necessary to support a conclusion that these reattributions were proper. The contributors and reattributees provided no additional information and it appears that some of these reattributions may have been to minors. See 11 C.F.R. § 110.1(i).⁹ Moreover, depending on the circumstances, these transactions could have resulted in non-matchable contributions if they involved a contribution in the name of another, or the reattributees lacked the donative intent to make a contribution because they were giving the contributor funds for some other reason, such as a gift. See 2 U.S.C. § 441f; 11 C.F.R. §§ 9034.3(e) and (i). Reattributees contacted by telephone who indicated that they gave or may have given funds to the original contributors stated that they gave cash, rather than checks.¹⁰ However, none of the reattributees had documentation or other evidence to verify that funds were given to the original contributor to make the contribution or reattribution.

The Committee may provide additional information concerning the reattribution of these contributions to support its assertion that the reattributions were proper. Such documentation should demonstrate that the reattributees had the right to withdraw funds from the original contributor's bank account or that the contributed funds belonged to the reattributee, and that the reattributee had the donative intent to make the contribution. See 11 C.F.R. §§ 110.1(k), 9034.2, 9034.3. For example, the Committee could provide evidence that a reattributee provided money to the original contributor to make the contribution, such as a copy of a check or other negotiable

⁸ The practical impossibility of verifying each of the reattributions is demonstrated by the difficulty of conducting an investigation using surveys of contributors to obtain information concerning the 47 apparent errors in the sample of 324 items. In many cases, several contacts with contributors were necessary to obtain the requested information, and some contributors never responded. It is possible that the Committee may have less difficulty obtaining additional information from the contributors and reattributees related to the 31 sample items considered to be errors.

⁹ Minor children may make contributions if the decision to contribute is made knowingly and voluntarily by the child, the funds contributed are owned or controlled exclusively by the child, such as the child's income, the proceeds of a trust for which the child is the beneficiary or a savings account opened and maintained exclusively in the child's name; and the contribution is not the proceeds of a gift for the purpose of providing the funds to be contributed and is not in any way controlled by any other individual. 11 C.F.R. § 110.1(i)

¹⁰ If these individuals had given currency directly to the candidate, the contributions would not have been matchable. See 11 C.F.R. § 9034.3(j). Moreover, cash contributions in excess of \$100 would have exceeded the limitations on currency contributions at 2 U.S.C. § 441g.

instrument made payable to the original contributor at the time of the reattribution for the amount reattributed. *See id.* The Committee could also provide documentation that any reattributees who were minor children made the contributions knowingly and voluntarily from funds they owned or exclusively controlled, and that the funds were not the proceeds of a gift for the purpose of providing funds to be contributed and were not in any way controlled by any other individual. *See* 11 C.F.R. § 110.1(i)

Specifically, with respect to the particular errors questioned in the Committee's response, the Committee could provide documentation to demonstrate that these sample items were not errors. The following information concerning these sample items may be helpful to the Committee. Anna Newton contacted this Office by telephone and the meaning of "reattribution" was explained to her. Since Ms. Newton responded "no" to the question of whether Andrew Newton had the right to withdraw from her bank account, the reattribution was an error. On the written survey, Catherine Radecki responded "yes" to the question of whether her contribution check was drawn on an escrow or trust account. However, it is not clear that she understood the question because she added the handwritten notation "my bank;" this notation appears to be irrelevant to the question of whether the account was an escrow or trust account. Ms. Radecki also responded that the reattributees had no right to withdraw funds from her account. There was no indication on the face of her checks that the account was a trust or escrow account, and telephone contacts with some of the reattributees indicated that it was not a joint account. Thus, the reattribution was an error because the reattributed did not have the right to withdraw from Ms. Radecki's account. Similarly, James Pettit did not respond to the written question of whether Emily Jane Pettit had the right to withdraw from his account, but in a telephone contact with our investigator, Mr. Pettit clarified that it was not a joint account. Likewise, the response of John W. Kremer that he did not make the reattribution raises questions about whether the reattribution was proper. Mr. Kremer also stated that the reattributed did not have the right to withdraw funds from his account. Finally, Sheila Thomsen reattributed funds to her son David A. Thomsen, who has the same first name as her husband. This fact was clarified in a telephone contact with Ms. Thomsen.

With respect to the remaining portion of the repayment determination (\$1,634) based on refunded contributions, the repayment calculation used the amount of matching funds actually paid for the refunded contributions, as determined by the error rates applicable to the submission of those contributions for matching. This calculation is consistent with the Commission's calculation of similar repayments in other matters. *See* Attachment 4.

Attachments

1. Letter from Kim Bright-Coleman to Patrick J. Buchanan dated July 23, 1999 with attached Notice of Repayment Determination
2. Buchanan for President, Inc. response dated October 12, 1999

3. Letter from Joel J. Roessner to John J. Duffy dated October 8, 1999 (without enclosures)
4. Memorandum from Lawrence M. Noble to the Commission dated July 8, 1999, Alexander for President, Inc., Buchanan for President, Inc., Clinton/Gore '96 Primary Committee, Inc.: Matching Fund Error Rates (LRA # 559)
5. Letter from Delanie DeWitt Painter to Rhonda Rivens dated February 16, 2000 (without enclosures)

Vasding



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

July 23, 1999

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Patrick J. Buchanan
c/o John J. Duffy, Esq.
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Buchanan for President, Inc. - Repayment
Determination (LRA # 512)

Dear Mr. Buchanan:

On July 15, 1999, the Commission determined that Patrick J. Buchanan and Buchanan for President, Inc. (collectively, "the Committee") must repay \$63,750 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1) and 11 C.F.R. § 9038.2(b)(1)(iii). See 11 C.F.R. §§ 9038.2(f); 9039.3(a)(2). The determination is based on the Commission's inquiry into the matchability of certain reattributed contributions under 26 U.S.C. § 9039(b) and 11 C.F.R. § 9039.3. Enclosed is the Notice of Repayment Determination, which sets forth the legal and factual reasons for the repayment determination. This repayment must be made to the Secretary of the Treasury within 90 calendar days of your receipt of this Notice. 11 C.F.R. § 9038.2(d).

If the Committee disputes the Commission's determination that a repayment is required, the Commission regulations at 11 C.F.R. § 9038.2(c)(2) provide you with the opportunity to submit in writing, within 60 calendar days after service of the Notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Moreover, a Committee that has submitted written materials may at the same time request an opportunity to address the Commission in open session based on the legal and factual materials submitted. 11 C.F.R. § 9038.2(c)(2)(ii). The Commission will consider any written legal and factual materials timely submitted and any oral hearing when deciding whether to revise the repayment determination. 11 C.F.R. § 9038.2(c)(3). Such materials may be submitted by counsel. 11 C.F.R. § 9038.2(c)(2)(i)

Patrick J. Buchanan

Page 2

If you have any questions related to matters covered in this Notice, please contact Delanie DeWitt Painter, the attorney assigned to this case, at (202) 694-1650.

Sincerely,



Kim Bright-Coleman
Associate General Counsel

Enclosure

Notice of Repayment Determination (with attachments)

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Patrick J. Buchanan and
Buchanan for President, Inc.

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LRA # 512

NOTICE OF REPAYMENT DETERMINATION

I. INTRODUCTION

On June 16, 1998, the Federal Election Commission ("the Commission") opened an inquiry under 26 U.S.C. § 9039(b) and 11 C.F.R. § 9039.3 ("the 9039 inquiry") to determine whether the reattribution of certain contributions to Patrick J. Buchanan and Buchanan for President, Inc. (collectively "the Committee") were proper and whether the Committee received any matching funds for non-matchable contributions. Based upon this inquiry, on July 15, 1999, the Commission determined that Patrick J. Buchanan and Buchanan for President, Inc. must repay \$63,750 to the United States Treasury for matching funds received in excess of the candidate's entitlement for matched contributions later determined to have been non-matchable. 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii). Therefore, the Committee is ordered to repay \$63,750 to the United States Treasury within 90 calendar days after service of this determination. 11 C.F.R. §§ 9038.2(c)(1) and (d)(1). This Notice of Repayment Determination sets forth the legal and factual basis for the repayment determination. See 26 U.S.C. § 9038(b)(1), 11 C.F.R. §§ 9038.2(c)(1) and (f), 9039.3(a)(2) and (b)(4).

II. BACKGROUND

Patrick J. Buchanan was a candidate for the Republican Party presidential nomination in the 1996 primary elections. The Committee registered with the Commission on February 16, 1995. On May 31, 1995, the Commission determined that Mr. Buchanan was eligible to receive

matching funds under the Presidential Primary Matching Payment Account Act, 26 U.S.C. §§ 9031-9042 ("Matching Payment Act"). The Committee received \$10,983,475 in matching fund payments from the United States Treasury.

On January 14, 1999, the Commission considered the Report of the Audit Division on the Committee and determined that the candidate and Committee must repay \$44,791 to the United States Treasury for non-qualified campaign expenses.¹ The repayment determination set forth in this Notice is an additional repayment determination based on facts not used as the basis for the previous determination. See 11 C.F.R. §§ 9038.2(f); 9039.3(b)(4).

III. SUMMARY OF INVESTIGATION

During the Commission's audit of the Committee pursuant to 26 U.S.C. § 9038, the Commission conducted a sample review of the Committee's matched contributions that revealed potentially significant problems with reattributions.² To determine the magnitude of the problem, the Commission conducted an additional sample review. The Commission identified a population of 7,220 matched contributions from all contributors who were associated with any reattribution submitted for matching. From this universe, the Commission drew an additional

¹ The Audit Report also included a payment of \$27,431 for stale-dated Committee checks. See 11 C.F.R. § 9038.6.

² For example, the audit revealed reattributions to numerous individual reattributees, reattributions of the entire amount of contribution checks and possible reattributions to minors. In addition, the reattribution documents generally state that the reattributee "maintain[s] equitable ownership of the account" from which the original contribution was drawn. See Attachment B. The reattribution documents appear to be a form prepared by the Committee that was provided to the contributors with a form letter informing them about the matching fund process and the \$250 maximum matchable amount and suggesting that if their "contribution can be partially attributed to your spouse, or other member of your family, the Committee can submit it for additional matching funds." See Attachment C. It is not clear why the reattribution statements use the term "equitable ownership," which appears in the regulations governing matchability of contributions drawn on an escrow or trust account. 11 C.F.R. § 9034.2(c)(2).

random sample of 324 items. Forty-seven of these sample items appeared to have been improperly reattributed.³

To verify the contributions and reattributions, the Commission sent surveys to contributors who had reattributed all or a portion of their contributions.⁴ See Attachment A. The survey asked the contributors to verify the amounts and dates of their contributions, state whether the contribution checks were drawn on an escrow or trust account, and verify the amounts, dates and name(s) of the reattributee(s) for each reattribution. *Id.* In addition, the survey asked each contributor to provide the current mailing address for each reattributee, and indicate whether the reattributee had the right to withdraw funds from the contributor's bank accounts and whether the reattributee gave the contributor any money to make the contribution or reattribution. *Id.* The Commission received responses for 39 of the 47 sample items.⁵ Based on the responses, eight of

³ Originally, the sample size was 325 items, and 49 sample items appeared improperly reattributed. However, as discussed *infra* at note 7, one item was subsequently deleted from the sample because it was refunded. Moreover, one of the sample items was not valid because it would have been an error in the original matching fund submission.

⁴ Surveys were sent to a total of 57 contributors, including 43 contributors associated with the 47 sample items, one contributor associated with a sample item that was subsequently deleted, one contributor associated with a sample item that was not valid, five contributors with numerous reattributions, and seven spouses of contributors who also reattributed contributions. The surveys requested information about all of each individual's contributions and reattributions. However, the Commission's repayment determination is based only upon the 47 sample items, not the other reattributions.

⁵ The Commission did not obtain information concerning the remaining eight sample items because two of the samples were related to contributors who are now deceased and six sample items are associated with four contributors who refused to respond to the survey, including one contributor who answered some introductory questions in a telephone conversation but refused to continue. Sample items for which there was no response, or for which there was an incomplete response to the survey were not treated as errors. Commission staff contacted several contributors by telephone to clarify responses or obtain complete information and also contacted a number of reattributees to obtain additional information.

the sample items appear to have been matchable, and 31 of the sample items should not have been matched and are considered "errors."⁶

In addition, two contributors stated in a letter dated May 17, 1999 that they requested refunds of their contributions totaling \$2,000 from the Committee after receiving correspondence and a telephone call from Commission staff "because of an apparent misunderstanding about a form we were sent by the campaign after we made the contributions." Attachment D. The contributors each made a \$1,000 contribution and subsequently reattributed \$750 of that contribution to three reattributees in \$250 amounts. Although the retribution forms were completed, it does not appear that the two contributors intended to retribute their contributions. The Committee refunded the contributions with two \$1,000 checks made payable to the two contributors rather than to the reattributees and the checks were accompanied by a note stating "I am sorry about the misunderstanding." In addition to the repayment amount calculated based on the sample review, the matching funds approved totaling \$1,634 based on these individuals' contributions and reattributions must be repaid because the contributions have been refunded.⁷

26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii).

⁶ The survey responses for the 31 "errors" indicated that the reattributee did not have the right to withdraw funds from the contributor's bank accounts; thus, the contributed funds appear to have belonged to the contributor rather than to the reattributee. While responses from contributors of 10 of these sample items and telephone conversations with several reattributees indicated that some reattributees may have given contributors money to make the contributions or reattributions, it is not clear that these reattributions were proper because the contributors and reattributees provided no additional information and it appears that some of these reattributions may have been to minors. See 11 C.F.R. § 110.1(i). Moreover, depending on the circumstances, these transactions could have resulted in non-matchable contributions if they involved a contribution in the name of another, or the reattributees lacked the donative intent to make a contribution because they were giving the contributor funds for some other reason, such as a gift. See 2 U.S.C. § 441f; 11 C.F.R. §§ 9034.3(e) and (i).

⁷ A retribution of \$250 of one of these contributions was originally one of the sample items. Because it has been refunded, this item is not being treated as an error and has been deleted from the sample. In addition, one reattributee is not reflected in the Committee's database as a matched contribution, although a retribution form for \$250 was filled out in her name. It appears that this retribution may have been attributed to one of the two

IV. BASIS FOR REPAYMENT DETERMINATION

The Commission has determined that Patrick J. Buchanan and the Committee must repay \$63,750 to the United States Treasury for matching funds received in excess of the candidate's entitlement based on matched contributions later determined to have been non-matchable. 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii). The repayment amount includes \$62,116 for matching funds related to improper reattributions and \$1,634 for matched contributions that were later refunded. The Commission calculated the percentage of non-matchable contributions related to improper reattributions in the total population ("error rate") and the associated repayment amount based on the survey information concerning the 47 sample items. The Commission projected an error rate of 9.57% non-matchable items in the population with a sampling error of $\pm 3.69\%$ and a confidence level of 95%.⁸ See Attachment E. The Commission calculated a repayment amount of \$62,116 for non-matchable contributions based on the projected error rate applied to the total population.⁹ *Id.* The repayment of \$1,634 for refunded contributions is based upon the total amount of matching funds paid for the refunded contributions $(5 \times \$250 \times .928) + (2 \times \$250 \times .948)$.¹⁰

original contributors. Thus, the contributions and reattributions were submitted for \$1,750 in matching funds, rather than \$2,000.

⁸ The population consisted of 7,220 matched contributions from contributors associated with any reattribution submitted for matching. The sampling error of $\pm 3.69\%$ is consistent with the tolerable sampling error of 4% used in the review of matching fund submissions, and the Commission generally uses a 95% confidence level in sample projections.

⁹ It is not clear whether the eight sample items for which there was no response, or an incomplete response, to the survey were related to improper reattributions. Thus, it is possible that the Committee received more than \$62,116 in matching funds based upon non-matchable contributions related to improper reattributions.

¹⁰ The Committee submitted the contributions and reattributions for a total of \$1,750 in matching funds, \$250 for each of the two original contributors and \$250 for each of five reattributees. See 26 U.S.C. § 9034(a). The contributions were in two matching fund submissions with different error rates, based on the sample review of the

The use of statistical sampling to project certain components of a large universe is a legally acceptable technique. *See, e.g., Georgia v. Califano*, 446 F. Supp. 404 at 409 (N.D. Ga. 1977) (use of statistical sampling to audit Medicaid overbilling was not arbitrary and capricious where it was the "only feasible method of audit." review of individual claims would be a "practical impossibility" and Georgia had the opportunity to challenge the statistical sample). The "[p]rojection of the nature of a large population through review of a relatively small number of its components has been recognized as a valid audit technique." *Id.* Moreover, courts have generally deferred to agency expertise in upholding the use of statistical sampling.¹¹ *See, e.g., Chaves County Home Health Service v. Sullivan*, 931 F.2d 914 (D.C. Cir. 1991), *cert. denied*, 112 S.Ct. 407 (1993) (upheld use of sampling audit to recoup Medicaid overpayments to health care providers).

Statistical sampling has generally been upheld when audits of the universe of cases would be "impossible." *Michigan Dep't of Educ. v. U.S. Dep't of Educ.*, 875 F.2d 1196, at 1205-1206 (6th Cir. 1989)(upheld use of sample of 259 out of a total of 66,368 payment authorizations to determine amount of disallowed expenditures of federal funds by a vocational rehabilitation

submission; two were matched at a rate of 94.8% and five were matched at a rate of 92.8%. Thus, the total amount of matching funds approved for the refunded contributions was \$1,634 (5 x \$250 x .928) + (2 x \$250 x .948).

¹¹ Courts have deferred to agency expertise in considering challenges to an agency's accounting rules. In *A.T. & T. Co. v. United States*, the Supreme Court stated that it could not overrule an agency's accounting system unless it is "so entirely at odds with fundamental principles of correct accounting as to be the expression of a whim rather than an exercise of judgment." 299 U.S. 232, 236-37 (1936). The Commission's use of sampling is consistent with accepted accounting principles and would be entitled to judicial deference.

program). There is "no case law that states how large a percentage of the entire universe must be sampled." *Id.* at 1205. In *Ratanasen v. California*, the court approved:

the use of sampling and extrapolation as part of audits in connection with Medicare and other similar programs provided the aggrieved party has an opportunity to rebut such evidence. To deny public agencies the use of statistical and mathematical audit methods would be to deny them an effective means of detecting abuses in the use of public funds. Public officials are responsible for overseeing the expenditure of our increasingly scarce public resources and we must give them appropriate tools to carry out the charge.

11 F.3d 1467 at 1471 (9th Cir. 1993)(use of random sample of 3.4% to calculate Medi-Cal overbilling by doctor held valid). The *Ratanasen* court noted that other courts approving sampling methods "made no mention of a statistical 'floor' which auditors must exceed" to satisfy due process. *Id.* at 1472.

Statistical sampling is necessary in this inquiry because verification of each of the thousands of matched contributions related to reattributions would be pragmatically impossible. Moreover, it is appropriate to calculate a repayment based on non-matchable contributions using the same statistical sampling technique that is used to review matching fund submissions. The Commission has used a dollar unit sampling method in its review of matching fund submissions since 1980. See 11 C.F.R. § 9036.4(b). Moreover, the Committee will have an opportunity to seek administrative review of the repayment determination. 11 C.F.R. § 9038.2(c)(2).

The Commission may determine that portions of matching fund payments made to a candidate were in excess of the aggregate amount of the candidate's entitlement and must be repaid. 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1). For example, payments made on the basis of matched contributions later determined to have been non-matchable are subject to repayment. 11 C.F.R. § 9038.2(b)(1)(iii). Contributions are not matchable if they are reattributed to persons who did not own the contributed funds or lacked donative intent to

contribute. See 11 C.F.R. §§ 9034.2(a)(1); 9034.2(c)(1); 9034.3(i); *Guideline for Presentation in Good Order* ("Guideline") (August 1991) at Chapter V Exception Code G-3 at page 65 and Appendices 10, 11 and 21. Reattributed contributions made to presidential candidates who receive matching funds can be matched if the committee receives a writing signed by each contributor stating that the reattributed contribution constitutes the personal funds of the new contributor. 11 C.F.R. § 9034.2(c)(1)(ii);¹² *Guideline* at Appendices 10, 11 and 21. The writing should establish that the contribution is a gift of money made for the purpose of influencing the result of a primary election. 11 C.F.R. § 9034.2(a)(1).

The Commission's regulations provide that if a contribution, on its face or in the aggregate, exceeds the contribution limitations, the committee treasurer may obtain a written reattribution from the contributor within 60 days. 11 C.F.R. §§ 103.3(b)(3); 110.1(k)(3). A contribution is reattributed if the treasurer asks the contributor whether the contribution is intended to be a joint contribution by more than one person, informs the contributor that he or she may request a refund of the excessive portion, and within 60 days, the contributors provide a written reattribution, signed by each contributor, which indicates the amount to be attributed to each contributor if equal attribution is not intended. 11 C.F.R. § 110.1(k)(3)(ii).

The available information indicates that the Committee received matching funds for non-matchable contributions. The contributions appeared to be matchable when they were submitted for matching because the reattributees signed writings stating that the money was theirs and that they intended to make a contribution. See 11 C.F.R. § 9034.2(c)(1)(ii). The reattributions also generally appear to have been completed within 60 days. See 11 C.F.R. § 110.1(k)(3)(ii).

¹² Section 9034.2(c)(1) applies when it is not apparent from the face of the check that each contributor is a joint tenant of the account from which the check is drawn.

Nevertheless, the responses to the survey indicate that many of the reattributions were improper. The funds were contributed by checks drawn on the accounts of the original contributors, and the checks did not list the names of the reattributees. See 11 C.F.R. §§ 110.1(k); 9034.2(c)(1). Most of the original contributors stated that the reattributees did not have the right to withdraw funds from their accounts. There is insufficient evidence to verify whether any of the reattributees gave the original contributors funds to make the contributions or reattributions. Other possible problems with the reattributions include that some of the reattributees may have been minors, the contribution or retribution may have been made in the name of another, there is no evidence that the treasurer informed contributors that they could request a refund of the excessive portion of their contributions,¹³ and the reattributees may have lacked the donative intent to make a contribution even if they gave money to the contributor if those funds were given to the contributor for some purpose other than to contribute. See 2 U.S.C. § 441f; 11 C.F.R. §§ 110.1 (k)(3) and (i); 9034.3(e) and (i).

Moreover, the survey responses and contacts with contributors raise questions about whether the contributors and reattributees sufficiently understood the nature of the transactions to make proper reattributions. For example, the May 17, 1999 letter from two contributors stating that they requested refunds because of a "misunderstanding about a form we were sent by the campaign" indicates that they may not have understood the significance of their reattributions to six other individuals. See Attachment D. Several individuals who called staff of this Office for clarification of the survey did not appear to understand the meaning of "retribution." Other contributors' statements to staff of this Office raised questions about whether Committee

¹³ The form letter apparently sent by the Committee does not notify contributors that they could request a refund. See Attachment C.

representatives gave contributors incorrect instructions about how to reattribute contributions. For example, one contributor, who reattributed \$8,000 to eight of his children, stated that after he made the original contribution, the Committee called him and asked if he had children and whether they had bank accounts. Although he told the Committee representative that his children did not have bank accounts, the Committee sent him reattribution forms for his children.¹⁴ Another contributor stated that Committee representatives told her that it was acceptable to reattribute funds to anyone living in the same household. She reattributed funds to her adult daughter who resides with her, and her daughter signed the form, although the money was not her daughter's money. See 11 C.F.R. §§ 9034.2(a)(1) and (c)(1). Other contributors stated that they reattributed a portion of their contributions to minor children, including one contributor's seven-year-old son and another contributor's 13 year-old daughter. To the extent that the reattributees were minor children, it is not clear whether the reattributions were proper.¹⁵ See 11 C.F.R. § 110.1(i).

In addition, telephone contacts with a number of reattributees support the Commission's conclusion that the reattributions were improper and resulted in non-matchable contributions. None of the reattributees stated that he or she had the right to withdraw funds from the original contributor's account. Several had no recollection of giving the original contributor any funds to make the contribution or reattribution. One individual stated that her son-in-law paid the money for her and told her about it later. Another did not recall giving the original contributor any of

¹⁴ This contributor was not related to one of the 47 sample items.

¹⁵ Minor children may make contributions if the decision to contribute is made knowingly and voluntarily by the minor child, the funds contributed are owned or controlled exclusively by the minor child, such as the child's income, the proceeds of a trust for which the child is the beneficiary or a savings account opened and maintained exclusively in the child's name; and the contribution is not the proceeds of a gift for the purpose of providing the funds to be contributed and is not in any way controlled by any other individual. 11 C.F.R. § 110.1(i).

the \$350 attributed to him. Those who indicated that they gave or may have given funds to the original contributors stated that they gave cash, rather than checks.¹⁶ For example, one individual stated that he gave cash to the local fundraiser for the candidate. Another individual stated that he is an auto technician who does work for the contributor, who in turn does things for him such as donating the funds to the candidate. However, none of the reattributees had documentation or other evidence to verify that funds were given to the original contributor to make the contribution or reattribution.

Further, the use of the phrase "equitable ownership" in many of the reattribution statements also raises questions, because it appears that the Committee and contributors incorrectly applied the matchability rule for contributions drawn on an escrow or trust account to contributions that were not drawn on escrow or trust accounts. See 11 C.F.R. § 9034.2(c)(2). Several contributors and reattributees did not appear to understand the meaning of the term.

Finally, the matching funds totaling \$1,634 based on contributions that were subsequently refunded must be repaid because the refunded contributions are not matchable. 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii). The Commission's regulations provide that committees must submit a list of all refunds with their threshold submission and with subsequent matching fund submissions. See 11 C.F.R. §§ 9036.1(b)(6); 9036.2(b)(1)(iv); *Guideline* at 14, 31. The fact that the contributors requested the refund also negates the donative intent necessary for matchability. See 11 C.F.R. § 9034.3(i). Thus, the Committee must repay the \$1,634 in matching funds paid for the refunded contributions.

¹⁶ If these individuals had given currency directly to the candidate, the contributions would not have been matchable. See 11 C.F.R. § 9034.3(j). Moreover, cash contributions in excess of \$100 would have exceeded the limitations on currency contributions at 2 U.S.C. § 441g.

V. CONCLUSION

Therefore, the Commission has determined that Patrick J. Buchanan and Buchanan for President, Inc. (collectively "the Committee") must repay \$63,750 to the United States Treasury for matching fund payments received in excess of the candidate's entitlement based on matched contributions later determined to have been non-matchable. 26 U.S.C. § 9038(b)(1); 11 C.F.R. § 9038.2(b)(1)(iii). The repayment amount includes \$62,116 for matching funds related to improper reattributions and \$1,634 for matched contributions that were later refunded. Patrick J. Buchanan and Buchanan for President, Inc. is ordered to repay \$63,750 to the United States Treasury. 11 C.F.R. §§ 9038.2(c)(1) and (d)(1).

Attachments

- A. Example of survey form (completed by David M. Drew)
- B. Example of reattribution statement (completed by David M. Drew, *et al.*, dated October 21, 1995)
- C. Buchanan for President, Inc. form letter to contributors
- D. Letter from Tara and Stephen Hamilton to [Delanie] Painter dated May 17, 1999
- E. Memorandum from Robert J. Costa to Lawrence M. Noble dated July 12, 1999

QUESTIONNAIRE

David M. Drew - LRA #466

Documents reviewed by the Federal Election Commission indicate that you made the following contribution to Buchanan for President, Inc. (the "Committee") during the 1996 presidential primary election campaign, and that all or a portion of this contribution was reattributed to the individuals listed below.

Date	Amount
09/05/95	\$1,000

Please answer the questions by checking the appropriate box:

1. I made the contribution listed above.

YES	NO
<input checked="" type="checkbox"/>	<input type="checkbox"/>

If your answer is no, please list your contributions below by date and amount.

2. The contribution was made by a check drawn on an escrow or trust account.

YES	NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>

3. I reattributed the following amounts of my contribution to the following individuals on the following date:

Name	Amount	Date	Yes	No
Claudia Drew	\$250	10/21/95	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Marbach	\$250	10/21/95	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gwen Marbach	\$250	10/21/95	<input checked="" type="checkbox"/>	<input type="checkbox"/>

If any of the above information is incorrect, please note corrections.

ATTACHMENT A
Page 1 of 3

ATTACHMENT 1
Page 15 of 29

List any other individual to whom you reattributed any portion of any contribution and the amount and date of the reattribution.

Name _____
Address _____
Reattribution Date _____
Amount Reattributed _____

4. Please provide the current mailing address for Claudia Drew.
POB 7352
York PA 17404

Claudia Drew had the right to withdraw funds from any of your bank accounts.

YES	NO
<input checked="" type="checkbox"/>	<input type="checkbox"/>

Did Claudia Drew give you any money to make the contribution or reattribution?

YES	NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>

5. Please provide the current mailing address for Paul Marbach.
382 Richards Avenue Pike
Greentown, Pa 18951

Paul Marbach had the right to withdraw funds from any of your bank accounts.

YES	NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>

Did Paul Marbach give you any money to make the contribution or reattribution?

YES	NO
<input type="checkbox"/>	<input checked="" type="checkbox"/>

6. Please provide the current mailing address for Gwen Marbach.
382 Richards Avenue Pike
Greentown, Pa 18951

ATTACHMENT A
Page 2 of 3

ATTACHMENT 1
Page 16 of 29

Gwen Marbach had the right to withdraw funds from any of your bank accounts.

YES	NO
	<input checked="" type="checkbox"/>

Did Gwen Marbach give you any money to make the contribution or reattribution?

YES	NO
	<input checked="" type="checkbox"/>

Concerning the contribution of \$1000, check #5871, deposited into Buchanan For President on 9/05/95, I verify that:

1) \$250 of the above mentioned contribution represents my personal funds and my personal contribution to Buchanan For President, and that I maintain equitable ownership of the account.

Signature David M. Draw Date 10/21/95
Mr. David M. Draw

Occupation physician Employer self

2) \$250 of the above mentioned contribution represents my personal funds and my personal contribution to Buchanan For President, and that I maintain equitable ownership of the account.

Signature Claudia M. Draw Date 10/21/95
Claudia Draw
Please Print or Type Name Here

Occupation housewife Employer self

3) \$250 of the above mentioned contribution represents my personal funds and my personal contribution to Buchanan For President, and that I maintain equitable ownership of the account.

Signature Paul J. Marbach Date 10-21-95
PAUL J. MARBACH
Please Print or Type Name Here

Occupation Auto Technician Employer EGG? BEANS DODGE

4) \$250 of the above mentioned contribution represents my personal funds and my personal contribution to Buchanan For President, and that I maintain equitable ownership of the account.

Signature Gwen Marbach Date 10-21-95 ATTACHMENT B
Gwen Marbach Page 1 of 1
Please Print or Type Name Here

Occupation housewife Employer self

ATTACHMENT 1
Page 18 of 29

If the above statement is not true, please so note.

Buchanan *for* President

Date

Name
Add1
Add2
CSZ

Dear Name,

Thank you for your contributions totaling \$amt. It is the support and generosity of individuals such as yourself which will ensure the success of our America First campaign.

Presidential candidates are entitled to receive federal matching funds from the Treasury's Matching Payment Account in an amount up to \$250 per contributor. This, in effect, doubles the impact of your contributions for the first \$250.

If your contribution can be partially attributed to your spouse, or other member of your family, the Committee can submit it for additional matching funds. To expedite this matter, I have enclosed the form necessary, and kindly ask that you complete and return it to us as soon as possible. Enclosed is a postage-paid envelope for your convenience.

I apologize for any burden and appreciate your cooperation and continued support.

Sincerely,

Scott B Mackenzie
Treasurer

ATTACHMENT C
Page 1 of 1

enclosures

ATTACHMENT 1
Page 19 of 29

Attachment 1

STEPHEN AND TARA HAMILTON
30 DATER LANE
SADDLE RIVER, NJ 07458

May 17, 1999

Federal Election Commission
Washington, DC 20463
Attention: **Bonnie DeWitt Painter**

By Certified Mail

MAY 21 10 27 AM '99

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

Re: LRA #512
Stephen and Tara Hamilton

Dear Ms. Painter:

We have received correspondence and a telephone call from the FEC regarding contributions we made to Buchanan '96. Being unfamiliar with these matters, we referred the matter to an attorney and the Buchanan campaign itself.

However, in the meantime (at our request) the Buchanan campaign has refunded our respective \$1,000 contributions because of an apparent misunderstanding about a form we were sent by the campaign after we made the contributions. Copies of the refund checks are enclosed. We understand that the campaign will be adjusting its account with the FEC directly.

Trusting this satisfies the FEC's request for information, we remain

Yours sincerely,

Tara & Stephen Hamilton
Tara and Stephen Hamilton

ATTACHMENT 0
Page 1 of 3

ATTACHMENT 1
Page 20 of 29

Buchanan 2000

May 10, 1999

Dear Stephen & Tara,

I am sorry about the
misunderstanding and am pleased to
obey your request of a refund.

My best.

Gay Buchanan

PO Box 2400
Dunn Loring, VA 22027

HQ 703.734.2700

TX 703.734.2705

Website www.gopatgo2000.org

E-mail hq@gopatgo2000.org

For more Buchanan 2000 News, click on the Treasurer

ATTACHMENT D
Page 2 of 3

ATTACHMENT 1
Page 21 of 29

BUCHANAN FOR PRESIDENT, INC. 01/99
PH 703-948-1996
6882 ELM STREET, STE. 210
MC LEAN, VA 22101

1026

NO. 7801990
BRANCH 8798

DATE 5/10/99

PAY TO THE ORDER OF

TARA J. HAMILTON

ONE THOUSAND

\$ 1000.00

DOLLARS

First Union National Bank
McLean, Virginia
#17 054007604

FOR Contribution Report

Ray Buchanan

⑆0000001026⑆ ⑆056007604⑆2000003789⑆32⑆

BUCHANAN FOR PRESIDENT, INC. 01/99
PH 703-948-1996
6882 ELM STREET, STE. 210
MC LEAN, VA 22101

1025

NO. 7801990
BRANCH 8798

DATE 5/10/99

PAY TO THE ORDER OF

STEPHEN C. HAMILTON

ONE THOUSAND

\$ 1000.00

DOLLARS

First Union National Bank
McLean, Virginia
#17 054007604

FOR Contribution Report

Ray Buchanan

ATTACHMENT

Page 3 of 3

ATTACHMENT

Page 22 of 29



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

July 12, 1999

Memorandum

To: Lawrence M. Noble
General Counsel

Through: James A. Pehrkon
Staff Director

From: Robert J. Costa
Assistant Staff Director
Audit Division

Subject: Buchanan for President, Inc. - Inquiry Pursuant to 26 U.S.C. §9039 (b) -
Response to Request for Assistance (LRA #512)—CORRECTION

Attached is a corrected version of our July 2, 1999 memorandum which detailed results of your survey and discussed the projected non-matchable amount. One item, a contribution reattributed to Jerome Bowe, should have been categorized as "would have been error in regular submission" and thus not included for purposes of this projection.

The attached memorandum contains the corrected figures - the projected amount of non-matchable contributions changed from \$64,618 to the corrected figure of \$62,116.

If you have any questions, please contact Wanda Thomas or Rick Halter at 694-1200.

Attachment: Buchanan for President, Inc. - Inquiry Pursuant to 26 U.S.C. §9039 (b) -
Response to Request for Assistance (LRA #512)—CORRECTION,
[including corrected Attachments #1 & #2]

ATTACHMENT E
Page 1 of 2

ATTACHMENT 1
Page 23 of 29



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20461

July 12, 1999

Memorandum

To: Lawrence M. Noble
General Counsel

Through: James A. Pehrkon
Staff Director

From: Robert J. Costa
Assistant Staff Director
Audit Division

Subject: Buchanan for President, Inc. - Inquiry Pursuant to 26 U.S.C. §9039 (b) -
Response to Request for Assistance (LRA #512)-CORRECTION

The Audit staff reviewed the surveys returned to the Office of General Counsel in response to the March 1999 mailing of surveys to contributors who had not responded to the previous mailings. The Audit staff used the same procedure as was employed in the review of responses from the previous mailings to determine whether contributions were properly reattributed. We considered a reattribution *unacceptable* if the original contributor indicated that the reattributee did not have the right to withdraw funds from the contributor's bank accounts, regardless of whether the response from the original contributor indicated the reattributee gave the contributor money to make the contribution. In its Memorandum of April 1, 1999, the Counsel's office agreed with this approach. In addition, the Counsel's office informed the Audit Staff that non-responses to the survey should not be counted as errors in projecting the error rate. Based on our review, we calculated that the projected dollar value of the errors is \$62,116. This projection is based on 31 confirmed errors out of 47¹ identified in our sample². The error rate is 9.57% with a sampling error of $\pm 3.69\%$.

ATTACHMENT E
Page 2 of 7

¹ Initially there were 49, however one item was deleted when the contributor requested and received a refund for her contribution (see Attachment 2, item 48, Hamilton, Tara J.) and one item was determined to not be a valid sample item (see Attachment 2, item 52, Sorrentino, Richard).

² For a detailed description of the sampling procedure, please refer to the October 22, 1997 memorandum to Lawrence M. Noble from Robert Costa.

ATTACHMENT 1
Page 24 of 29

See Attachments 1 and 2 for a detailed summary of the responses from the surveys. As noted on Attachment 2, page 2, there were 8 sample items for which no response or an incomplete response was received. No response was received from 6 contributors, and for 2 contributors the response indicated that those individuals were deceased. Although not quantifiable for projection purposes, the 6 non-responses, in light of the 31 exceptions, raise a question of whether those six items would have also resulted in exceptions if completed responses had been received.

The problem with unacceptable reattributions was further amplified when the reattribution of 17 items that were not included in the sample review because they either were or would have been errors in the original submissions were examined. The number of unacceptable reattributions increases to 48, indicating an error rate of 14.81% and a sampling error of $\pm 4.67\%$.

It should be noted that based on advice from the Counsel's office, neither the Title 2 nor the Title 26 aspects of this issue were addressed in the Audit Report approved by the Commission on January 14, 1999.

If you have any questions concerning this matter, please contact Wanda Thomas at 694-1200.

Attachments as stated

ATTACHMENT E
Page 3 of 7

ATTACHMENT 1
Page 25 of 29

Buchanan for President, Inc.

(Assignment)

Review of Reattributed Contributions**Summary of Sample Review**

(Subject)

	No. of Sample Occurrences
1 Population (Buchanan.S99) - 7220 Contributions	
2 Initial Sample	200
3 Less:	
4 Sample contribution refunded	1
5 Sample item in regular submission	1
6 Would have been errors in regular submission	14
7 Not reattributed Contributions	124
8 Usable sample items	60
9 Expanded Sample	125
10 Less:	
11 Selected in initial sample but did not meet criteria for review	3
12 Would have been errors in regular submission	5
13 Not reattributed Contributions	65
14 Usable sample items	52
15 Total Usable Sample Items	<u>112</u>
16 Total Acceptable Reattributions per initial review	65
17 Sample Errors:	
18 Reattribution of Business Check	2
19 Reattribution to person with different surname	22
20 Reattribution to person with same surname but not spouse	25
21 Total Errors from Initial Review (Excludes refunded sample contribution)	<u>47</u>
22 Combined Results from all Mailings	
23 Responses confirm errors (1st Mailing)	20
24 Acceptable Reattributions Based on Response to 1st Mailing	5
25 Revised Total Errors after Response to 1st Mailing	<u>42</u>
26 Responses confirm errors (2nd Mailing)	9
27 Acceptable Reattributions Based on Response to 2nd Mailing	3
28 Non-responses or partial response to either mailing (per OGC non-errors)	8
29 Responses to follow-up phone surveys	2
30 Revised Total errors	<u>31</u>

ATTACHMENT EPage 4 of 7ATTACHMENT 1Page 26 of 29

Buchanan for President, Inc.
 (Assignment)
Review of Responses to OGC's Mailings
 (Schedule)

Original Contributor	Sample Rebuttal	Date	Sample Amount	Occurs	wid rights	Give \$ for credit	Error Amount	Not an Error	Comments
Unacceptable Rebuttal									
1 Brown, Tom	Brown, Carlia	09/20/95	250.00	1	no	n/a	250.00		
2 Brown, J.D.	Brown, Patrick F.	04/11/96	100.00	1	no	yes	100.00		
3 Davis, Aimee B	Bush, Maria	02/05/96	100.00	1	no	blank	100.00		
4 Davis, Mary Frances Purcell	Davis, Jane F.	06/10/96	200.00	1	no	unclear	200.00		
5 Tomberg, Christine	Doehner, Constance	05/08/96	250.00	1	no	no	250.00		Per investigator's telephone conversation Meaning donor's sister-in-law, based on letter (form not completed)
6 Swanson, Erna L.	Fox, Roderick J.	06/21/95	250.00	1	no	unclear	250.00		
7 Headlee, Richard H.	Headlee, Tana	02/17/96	250.00	1	no	no	250.00		
8 Clarkbone, Ann	Hickson, Robert	09/19/95	250.00	1	no	no	250.00		Per investigator's telephone conversation
9 Hoffman, Frederic L.	Hoffman, Michael	02/15/96	250.00	1	no	no	250.00		
10 Humphreys, Alyssa D.	Humphreys, Stuart	04/19/96	250.00	1	no	no	250.00		Stuart is 7 yrs old; phone solicitor's suggestion No wid rights; gave money to original donor. Sample item in regular submission but not an error. See Review criteria (flow chart MAR 2/1 (2))
11 Jeffries, Kathleen	Jeffries, Calvin	09/17/96	250.00	1	no	yes	250.00		
12 Jones, Owen A.	Jones, Augusta	07/27/95	250.00	1	no	yes	250.00		
13 Bertus, David	Katson, Charles L.	09/19/96	250.00	1	no	no	250.00		
14 Kirmse, Laura L.	Kirmse, Christina	02/16/96	250.00	1	no	no	250.00		
15 Keener, John W.	Kremer, David	07/03/96	115.00	1	no	no	115.00		
16 Drew, David M.	Marbach, Paul J.	09/05/95	250.00	1	no	no	250.00		
17 McCoy, Dennis	McCoy, Michael	05/09/96	200.00	1	no	no	200.00		
18 McLaughlin, Richard A.	McLaughlin, Keats C.	06/05/96	250.00	1	no	yes	250.00		No wid rights; gave money to original donor.
19 Radacki, Catherine	McKethon, Jean	02/19/96	250.00	1	no	no	250.00		
20 McCutchen, Sr., Joe	Najjarano, Lisa	04/19/96	125.00	1	no	no	125.00		
21 Newton, Anna L.	Newton, Andrew	05/28/96	100.00	1	no	blank	100.00		
22 Pratt, Jr., James A.	Pattil, Emily Jane	09/30/95	250.00	1	blank	no	250.00		Can't remember if money given for contribution no response to "wid rights" question
23 Harbaugh, Kimberly S.	Phillips, Joseph M.	02/28/96	250.00	1	no	yes	250.00		
24 Lester, Erna	Shew, Robert	01/26/96	50.00	1	no	no	50.00		
25 Sheerin, Thomas	Sheerin, Brett	11/03/95	225.00	1	no	no	225.00		
26 Sheerin, David K.	Sheerin, Michael	02/27/96	250.00	1	no	no	250.00		
27 Cardova, Patricia	Shva, Patricia	05/09/95	250.00	1	no	yes	250.00		
28 Thomson, Sheila M.	Thomson, David A.	04/11/96	250.00	1	n/a	n/a	250.00		per response, all attributed to Sheila and David J
29 Watkins, Barbara L.	Watkins, William F.	06/15/95	250.00	1	no	yes	250.00		
30 Watkins, Barbara L.	Zaremba, Ann	06/15/95	250.00	1	no	yes	250.00		
31 Siclan, Frank		05/08/96	50.00	1	no	yes	50.00		No wid rights; gave money to original donor.
Total Errors			6,515.00	31			6,515.00		

Buchanan for President, Inc.
(Assignment)

Review of Responses to OGC's Mailings
(Subj-c)

Original Contributor	Sample Recipient	Date	Sample Amount	Occurs	yes/no	Gifts for Contrib.	Error Amount	Mail In Error	Comments
Acceptable Reattributions									
32 Trent, Arnie	Aufy, Stephen O.	11/24/95	200.00	1	yes	no		200.00	
33 Bellinger, Geraldine	Brown, Theron	03/11/96	250.00	1	yes	yes		250.00	
	Henzel, Matthew R.	11/07/95	230.00	1	yes	no		230.00	Richard Henzel's son
	Urbk, Jerome A.	09/28/95	150.00	1	yes	yes		150.00	
36 Jarnewic, Donald P.	Kern, Laura	04/15/96	200.00	1	yes	blank		200.00	
37 Huck, Susan	Yarnovich, Mary Della	04/02/96	125.00	1	yes	yes		125.00	acct jointly owned by Donald, Mary (son, mother)
38 Nigro, MD, Samuel A.	Bedel, Julie H.	09/19/96	150.00	1	yes	yes		150.00	
39 Tombergs, Christine	Nigro, Jon A.	09/13/96	250.00	1	yes	yes		250.00	
Total	Ovassel, Lucien			8	yes	no			

ATTACHMENT 3 of 7
Page 6

ATTACHMENT 1 of 2
Page 28

Incomplete or Non-response									
40 Cocoros, George	Cocoros, C.B.	03/07/95	250.00	1	n/a	n/a			Per returned questionnaire, George Cocoros is Deceased
41 Corey, Clark L.	Cook, Brenda	04/12/95	100.00	1	n/a	n/a			No response received
42 Hutchinson, Cheryl	Hutchinson, Elsie	03/04/96	250.00	1	n/a	n/a			No response received
43 Roedel, Mary K.	Roedel, Chae B.	11/02/95	100.00	1	n/a	n/a			No response received
44 Slad, Elia	Hanauer, Larry	10/19/95	250.00	1	n/a	n/a			No response received
45 Slad, Elia	Slad, Andrea	10/19/95	250.00	1	n/a	n/a			No response received
46 Slad, Elia	Slad, Mrs. Jerome C.	01/24/95	250.00	1	n/a	n/a			No response received
47 Tarrant, George	Durkin, T.R.	07/10/95	250.00	1	n/a	n/a			No response received
Total				8	n/a	n/a			Deceased

This is Kern was refunded to the contributor.
Hankton, Tara J.
Hankton, Max

48 Bryson, Craig	Bryson, Nathaniel	11/06/95	250.00	1	no	yes			web error in reg. submission (cashier's check \$8,000)
50 Huck, Susan	Bedel, Julie H.	12/29/95	100.00	1	n/a	n/a			Not a retribution
51 Rogge, Mary Elia	Myrner, Arna	09/19/95	250.00	1	n/a	n/a			web error in reg. submission- no response received
52 Sorrentino, Richard	Bowe, Jerome	05/04/95	100.00	1	no	no			web error in reg. submission- amt submitted > \$250

The Committee refunded the contribution on 5/10/99

Buchanan for President, Inc.
 (Assignment)
Review of Responses to OGC's Mailings
 (Subject)

Original Contributor	Sample Restrictive Incomplete or Non-Responses Not Involving Original 47 Sample Errors	Date	Sample Amount	Occurs	yes/no	Gave \$ for Cont.	Error Amount	Not an Error	Comments
53 Bryson, Kathleen									
54 Charlone, John									
55 McCoy, Dorothy									
56 Walsh, Howard J.									
57 Brown, Sandra									
58 Cordova, Wayne									
59 Hamilton, Stephen									
60 Nelson, Ernest									
61 Powell, Donald									
62 Powell, Rilla									
Bryson, Craig, Isiah, and Darryl Mooney, K. Chouler, P. Corneil, K. McCoy, Dennis Walsh, Mary and Howard Jr.									

Total listed above
 Names listed above more than once:
 Huck, Susan - lines 37 and 50
 Slad, Ella - lines 44-46
 Tomberg, Christine lines 5 and 39
 Watkins, Barbara L. lines 28-30
 Number Questionnaires mailed

No response received
 No response received
 The Committee refunded the contribution on 5/10/99
 No response received
 No response received
 No response received

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

John J. Duffy
202.429.8020
jduffy@steptoe.com

RECEIVED
FEDERAL ELECTION
COMMISSION MAIL ROOM

OCT 12 1999

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202.429.3800
Facsimile 202.429.3902
www.steptoel.com

LHA 512

October 12, 1999

Via HAND DELIVERY

The Honorable Scott Thomas
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

**Re: Buchanan for President, Inc. : Response to Notice of Repayment
Determination and Request for Oral Hearing**

Dear Chairman Thomas:

On behalf of Buchanan for President, Inc. (the "Committee"), we submit herewith its response to the Audit Division's Notice of Repayment Determination.

The Committee requests an oral hearing as permitted by 11 C.F.R. § 9038.2(c)(2)(ii).

Sincerely,

John J. Duffy

ATTACHMENT 2
Page 1 of 32