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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
George Bush for President Committee, Inc. and J. Stanley Huckaby, as treasurer, et. al.	)	MUR 2667
	)	
	)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On February 6, 1990, the Commission determined that there was reason to believe the George Bush for President Committee and J. Stanley Huckaby, as treasurer, ("Bush Committee") violated 2 U.S.C. §§ 434(b), 441b(a), 441a(f), 441a(b)(1)(A), 26 U.S.C. § 9035, and 11 C.F.R. § 9033.2(b)(2). Also on that date the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, North Carolina, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990.

Subsequently, this Office received and granted numerous requests from the state parties for extensions of time to respond.

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1. For the purposes of this report, we refer to this group of respondents as the first group of state party committees.

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Additionally, the Commission granted the Bush Committee an extension of time until June 8, 1990 to respond to the reason to believe determination. On June 8, 1990, the Bush Committee submitted a voluminous response in this matter. This response is further discussed herein as it relates to the state party committees.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's

2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

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recorded vote on this issue."[3] This Office notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.[4]

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990.[5] These motions also asserted that the Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to

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3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

4. On July 2, 1990, this Office circulated a representative sample of this correspondence to the Commission. Slightly different responses were then received from the state parties of Massachusetts, Ohio, and Tennessee. A representative sample of this document is attached to this report at Attachment 6.

5. Virtually identical motions were submitted on behalf of the State Parties of California, Colorado, Pennsylvania, Texas, Maryland and Illinois. A representative sample was provided to the Commission as an attachment to the General Counsel's Report dated June 25, 1990.

respond to the complaint and supplement.[6]

At this juncture, the Commission's reason to believe determinations regarding the Bush Committee remain intact. The purpose of this report is to analyze possible violations of the Act by all the state party committees noted above, as well as to analyze possible violations by the RNC. This legal analysis will examine any responses submitted by the state parties, and will also analyze materials submitted by the Bush Committee.[7] Thus, in many respects this General Counsel's Report is substantially the same as the one considered by the Commission at its February 6, 1990 meeting, as supplemented by additional materials gathered to date.[8] An additional section has been added discussing the respondents named in the supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the

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6. See Attachment 7 for a representative sample of this motion received from the state party committees of Colorado, Maryland, Illinois and Pennsylvania. The state party of California also included a substantive response with its motion. See Attachment 5.

7. Substantive responses were submitted by the New Mexico, California and Georgia Republican Party committees.

8. Attachments to this report include the Bush Committee's Initial Response, ("Att. 1, __,"), The Bush Committee's Second Response ("Att. 2, __,"), the Georgia Republican State Party ("Att. 3, __,"), the New Mexico Republican State Party ("Att. 4, __") and the California Republican State Party ("Att. 5, __").

complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited

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contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.[9]

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that

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9. The previous General Counsel's Report in this matter dated January, 12, 1990, discussed only those respondents noted in the complaint. Because persons named in the supplement have been notified and afforded an opportunity to respond, this report also includes an analysis of possible violations of the Act by the second group of state parties.

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some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a

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$46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

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4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse

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the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and

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political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated.[10] Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of any government provided transportation and communications. (Att. 1, 32-33) According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other

10. The Bush Committee's response to the Commission's reason to believe determination is also discussed in this section as it relates to the allegations in the complaint and supplement regarding the state party committees.

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costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit").[11] (See Att. 1, 22-31) According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[12] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would take place. Id. at 24-25. These costs included "travel, accommodation, advance, and non-specific ground costs for

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11. Many of the state party committees and the RNC have requested copies of this affidavit and the Bush Committee's response to the complaint. Because the Bush Committee has not waived the Act's confidentiality provisions, and consistent with the Commission's investigatory privilege under the Freedom of Information Act, this Office declined to accommodate this request.

12. These costs were such things as White House communications, ground costs for specific events, and advance costs. (Att. 1, 23) These latter costs were to be allocated on a "hard time" basis. Id.

the entire trip." Id. at 27.[13]

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Id. at 23-24. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." Id. at 26. The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." Id. at 26-27. According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Id. at 28. Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were

13. Excluded from these payments were costs associated with campaign employees traveling with the Vice President, such as the campaign press secretary. Id. at 27.

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advanced by party personnel. Id.

The Bush Committee's June 8, 1990 Response to the Commission's reason to believe determinations ("Second Response") includes an affidavit by Craig Fuller, former chief of staff for the Office of the Vice President. (Att. 2, p. 117) It reiterates that on fundraising trips travel costs were billed by the Office of the Vice President to either the RNC or the state parties. Id. at 118.

2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. See Holiday Affidavit at Att. 1, 22. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. Id. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations.

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Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. (Att. 2, 120) It is undisputed, however, that such press conferences were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. Id. at 79. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[14]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[15] The complaint asserts

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14. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. See Att. 2, 113. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Excerpts on the letterhead of the Office of the Vice President are grouped at Att. 2, 158-177 and 205-232. Excerpts on the letterhead of the Bush for President Committee are grouped at Att. 2, 178-204 and 235-330. In some instances the same document was released by both groups on their respective letterheads on the same date. See Excerpts from the 59th Annual Convention of LULAC (Att. 2, 160 and 279); Convention of Business and Professional Women's Clubs (Att. 2, 171 and 310). These releases are included in the discussion infra of each individual stop.

15. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. See Alexander Affidavit at Att. 2, 124. The "Presidential

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that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not campaign-related because they were on behalf of party entities and thus "private and closed to the press." See, e.g., Att. 1, 7-9. The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. (Att. 2, 125) According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

Id. at 126. As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that

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(Footnote 15 continued from previous page)
Trust" was a separate program run by the RNC for the presidential general election.

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serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's appearances at fundraising events would be campaign-related and thus reportable campaign expenses. Moreover, in the event such fundraisers are reportable campaign expenses, it follows that travel to the cities in which they were held would also be a reportable campaign expenses. Similarly, if any other campaign activity occurred in a given city (either at press conferences or in the context of other events) beyond incidental contacts, travel costs to the city would be a campaign expense also required to be paid for by the Bush Committee. Additionally, if such fundraisers were paid for by party entities, the costs of such fundraisers would be viewed as contributions to the Bush Committee by these entities.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the

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Bush Committee argues that these events were party related because they were "private and closed to the press." (Att. 1, 7) This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance is a bona fide party building event. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit (page 11, supra) regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. (Att. 1, 15-16) Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in

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most instances they have failed to provide any specific information regarding any of these factors for the events in question. Additionally, in instances where they have provided copies of speeches, it appears that the Vice President did expressly advocate his candidacy.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;
>
> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

(Att. 2, 129) Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

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B. Specific Trips Cited In the Complaint

As discussed in the General Counsel's Report dated January 10, 1990, the complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[16] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s) of the trip (official/party/campaign) provided by the Bush Committee.

16. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign[17]
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. (Att. 1, 38) According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former

17. The chart of this activity contained in the previous General Counsel's report mistakenly indicated that this Ohio trip was a mix of party and campaign activity. The Bush Committee's Initial Response and the analysis of this trip in that General Counsel's Report indicate that the trip was paid for by the campaign. This Ohio trip is further discussed in this section at 3.1.ii.

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because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives was considered official business.[18]

Regarding the New York City fundraising event, respondents have not rebutted the Regulations' presumption that this was a campaign event. In fact, rather than rebutting the presumption, the speech actually buttresses the presumption that this election year appearance by the Candidate was election-related. Specifically, the remarks refer to "Democrats running for President hammering away at the negatives, trying to distort the record and tear down our success," and juxtapose the present economic situation with "the last Administration--under the Democrats--." Mr. Bush also compares himself to Harry Truman who "[f]orty years ago, he was fighting against the odds...." Additionally, Mr. Bush notes that "It's an uphill fight for our Republican team this year. After eight years of one party in the White House, no matter how successful, some good people yearn for change...." These references to the success of the Reagan Administration and to Mr. Bush's candidacy, in the context of partisan appeals, indicate the fundraiser was for the purpose of

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18. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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influencing Mr. Bush's election. Indeed, the Bush Committee even distributed a copy of this speech as a press release on its campaign letterhead. See Att. 2, 273.[19] Therefore, the Regulations require that travel costs to New York be considered qualified campaign expenses and be reported as such.[20]

As illustrated above, it appears that the New York City trip involved campaign activity, including a fundraiser paid for by the RNC.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston

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19. The Bush Committee's Initial Response included a copy of this speech on the letterhead of the Office of the Vice President. (Att. 1, 44) Its second response includes a copy of this speech on the letterhead of the campaign. (Att. 2, 273) The latter press release lists Alixe Glen as the person to contact for follow up information. During this period the Bush Committee made salary and expense reimbursements to Ms. Glen, indicating that she was an employee of the campaign.

The titles on both press releases note the event was a "Presidential Trust" luncheon. According to the Alexander Affidavit, such events were fundraisers by the RNC for the presidential general election. (Att. 2, 126)

20. The General Counsel's Report dated January 12, 1990, also discussed Mr. Bush's appearances before both the National Organization of Black Law Enforcement Executives and a New York Times Editorial Board Luncheon, which were apparently paid for by the Office of the Vice President. Because these events do not impact upon possible violations by the state party committees, they are omitted from the discussion of this stop.

The New York Republican Party was not alleged to have made any of the expenditures in question. Consequently, consistent with the previous General Counsel's report, no recommendations are made regarding it.

on July 7, 1988, was campaign-related activity.[21] The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner. (Att. 1, 50)

As an initial matter, respondents have failed to present any evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered election-related and travel to Boston is considered an election expense.

Other events in Boston on that day also may have been election-related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[22] At that event, Mr. Bush offered a list of issues on

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21. No specific new information has been provided by the Bush Committee in its most recent response. Consequently, the analysis of this trip is unchanged from the one contained in the General Counsel's Report signed January 12, 1990.

22. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties'

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which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was campaign-related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer

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(Footnote 22 continued from previous page)
apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception. Cf. MUR 2715.

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Ann Richards' speech critical of Mr. Bush.[23] The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner. (Att. 1, 56)

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[24]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he

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23. No specific new information has been provided by the Bush Committee in its most recent response. Consequently, the analysis of this trip is unchanged from the one contained in the General Counsel's Report signed January 12, 1990.

24. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been election related.

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had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," his references to Ms. Richards, as well as the prearranged nature of the press conference, are evidence that the remarks at the press conference went beyond incidental contacts and appear to be election-related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[25] Victory '88 Luncheon [and] Media Interview" as the events planned.[26] (Att. 1, 61) Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered election-related and the cost of travel to this stop must be considered to be an election expense.

The press conference held in that city is described in a news article attached to the complaint as part of a "a campaign swing to the Carolina's." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as

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25. Respondents apparently use the term "press availability" interchangeably with "press conference".

26. No specific new information has been provided by the Bush Committee in its most recent response. Consequently, the analysis of this trip is unchanged from the one contained in the General Counsel's Report signed January 12, 1990.

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saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina, - July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner.[27] Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered election-related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and

27. No specific new information has been provided by the Bush Committee in its most recent response. Consequently, the analysis of this trip is unchanged from the one contained in the General Counsel's Report signed January 12, 1990.

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Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[28] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin, - July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon.[29] Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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28. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

29. No specific new information has been provided by the Bush Committee in its most recent response. Consequently, the analysis of this trip is unchanged from the one contained in the General Counsel's Report signed January 12, 1990.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.[30]

vii. Point Pleasant, New Jersey; Bay Head, New Jersey - July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

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30. The General Counsel's Report dated January 9, 1990 also discussed Mr. Bush's appearance at an Italian festival. Because this event does not appear to have implicated state party committees, we do not repeat this discussion.

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The Bush Committee's most recent response includes a copy of the Vice President's opening statement at this event that discusses the environment and medical waste. (Att. 2, 153) As the Bush Committee notes, the opening statement at this news conference does not contain any specific election-related remarks. Nevertheless, these issues were two visible ones in the 1988 presidential campaign. More importantly, press reports quote Mr. Bush as stating during this news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by voters "for what he really is." Id. Thus, the Candidate's appearance at this party sponsored function where he discussed his campaign strategy for the general election, appears to have gone beyond "incidental contacts."

viii. **Memphis**, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon.[31] (Att. 1, 67) Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the

31. No specific new information has been provided by the Bush Committee in its most recent response. Consequently, the analysis of this trip is unchanged from the one contained in the General Counsel's Report signed January 12, 1990.

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political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law

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Enforcement Banquet, and a Victory '88 Reception.[32] (Att. 1, 68) Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered election-related. Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.[33]

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. (Att. 1, 6) The

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32. No specific new information has been provided by the Bush Committee in its most recent response. Consequently, the analysis of this trip is unchanged from the one contained in the General Counsel's Report signed January 12, 1990.

33. The General Counsel's Report dated January 12, 1990 also noted Mr. Bush's appearance before a law enforcement organization. Because there is no indication that the state parties were involved with this event, we do not repeat this discussion.

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response notes, however, that each of these trips "also included an event on behalf of another political entity." Id. The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." Id.[34] Each of these trips is discussed below.

i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. (Att. 1, 34) The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.[35]

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event. See Att. 1, 7.

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34. Respondents have not in all instances identified this sponsoring entity.

35. It appears that this event was one of the "rare instances" noted in the Alexander Affidavit where a Victory '88 event was to benefit the RNC. (Att. 2, 126-127) This will be verified during discovery.

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The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner. (Att. 2, 260)[36] Moreover, a review of these remarks indicates that this event was election related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." See Att. 2, 260. Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with those of Michael Dukakis, the likely Democratic nominee. Id. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[37]

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36. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

37. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.[38]

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[39] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." Id. at 7. The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was a fundraiser for the RNC. (Att. 2, 82-83) The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference

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38. The Bush Committee's Second Response includes a copy of the Vice President's prepared statements at a press conference. (Att. 2, 159) These do not appear to contain any election related remarks. Respondents have stated that they cannot verify whether this document was actually distributed at that event. See Att. 2, 113.

39. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee. (Att. 2, 160 and 279) No specific new information has been provided by the Bush Committee in its most recent response regarding the alleged party building activity. Consequently, the analysis of this aspect of the trip remains the same as in the General Counsel's Report signed January 12, 1990.

and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. (Att. 1, 36). The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". (Att. 1, 8) The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and fundraiser." (Att. 3, 338)[40] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

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40. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." (Att. 1, 9) The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." (Att. 3, 339) The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. (Att. 3, 338) Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988". (Att. 2, 291)[41] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be election related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice

41. An identical press release on the letterhead of the Office of the Vice President was also provided. (Att. 2, 167)

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President notes that these two issues present "two fundamentally opposed views of what America is and what America should be."[42] If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. (Att. 2, 113) Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent election related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a

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42. The document produced by the Bush Committee includes handwritten notations in the margin apparently referring to Governor Dukakis. See Att. 2, 167-169.

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political fundraiser.[43] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch." (Att. 1, 8-9)

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account. (Att. 4, 371)

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." (Att. 4, 410) Noting that the complaint fails to allege that Mr. Bush engaged in express advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and

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43. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, (Att. 2, 171); the other is on the letterhead of the Bush Committee (Att. 2, 310). A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead. Id. at 317.

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did not include any solicitation for campaign funds by Mr. Bush. Id. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event. Id.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." (Att. 4, 373) Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. Id. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". (Att. 4, 373) Additionally, the internal documents produced by the State Party in response to the Commission's discovery requests refer to this event as "Bush Reception," "George Bush Fundraiser," "Reception For George Bush," George Bush Event," "Bush Event," "Bush recp.," and "Bush Visit."[44] Thus, these events may be campaign related.

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44. See Att. 4, 388, 389, 390, 391, 400 and 401.

3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[45] (Att. 1, 5) The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. Our conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. (Att. 2, 129) The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. (Att. 1, 3). Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". Id. at 26. This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. (Att. 2, 77 and 125-126) Consequently,

45. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. (Att. 2, 129) As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[46] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions,

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46. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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respondents chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[47] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. (Att. 2, 130) The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event. Id. at 94-95.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has

47. The supplement notes three trips made to California.

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presented any specific information rebutting this presumption, the Regulations require this event to be considered a reportable campaign event. It follows also that travel to this stop is also considered a reportable campaign expense.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. (Att. 2, 131) Regarding the two fundraising events, neither the state party committee nor the Bush Committee has presented any specific information rebutting the Regulatory presumption that these were campaign events for the purpose of influencing Mr. Bush's election. In the absence of such a rebuttal, the regulations require these functions to be considered reportable campaign events. It follows also that travel costs to these stops are also considered reportable campaign expense.[48]

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48. The Bush Committee's Second Response includes a copy of excerpts of remarks made by the Vice President at the Fraternal Order of Police event. Because there is no indication that this event was paid for by a party committee, we do not analyze these remarks in this report.

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2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. (Att. 2, 99) Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Other than asserting that these fundraisers were private and closed to the press, respondents have not rebutted the Regulations' presumption that these fundraising events were for the purpose of influencing Mr. Bush's election. In the absence of such a rebuttal, these events must be considered reportable campaign expenditures. Moreover, it follows that

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travel to these stops must also be reported as a campaign expense.[49]

ii. **Houston, Texas - June 9, 1988**

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statute. (Att. 2, 129) Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were election related. For example, the Bush Committee asserts that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. (Att. 2, 103-104) Moreover, because the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group), the Regulatory presumption requires that these events are reportable campaign expenditures. Thus, travel to this stop would also be required to be paid for by the Bush Committee.[50]

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49. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip. See Att. 5, 416.

50. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented. The attached sample questions seek information on this issue from the state party.

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iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." (Att. 2, 184) These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was election related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". Id. at 184. The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.

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> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

In the opinion of this Office this speech constitutes election related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Accordingly, pursuant to the regulatory presumption, this event should be considered a reportable campaign expenditure. Moreover, it follows that travel to this stop should also be reported as a campaign expense.

3. Travel said to Be Entirely Campaign related

i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, however, it asserts that the Committee has considered this to campaign related. (Att. 2, 93) However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. Id. at 129. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Because it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee

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or the Republican National Committee, consistent with the regulatory presumption, these events must be considered reportable campaign expenditures. Thus, payments by other entities result in possible violations of the Act.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred. As previously noted, the Commission found reason to believe the Bush Committee and its treasurer violated 2 U.S.C. §§ 434(b), 441b(a), 441a(f), 441a(b)(1)(A), 26 U.S.C. § 9035, and 11 C.F.R. § 9033.2(b)(2).[51]

As discussed in this report, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover,

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51. The bases of the Commission's determinations was that the Bush Committee was required to report the costs of possible campaign-related activities funded by state party committees as in-kind contributions. Its failure to report these expenditures and the possible receipt of excessive in-kind contributions look to possible violations of 2 U.S.C. §§ 434(b) and 441a(f). Additionally, the issue is further raised whether these in-kind contributions would cause the Bush Committee to exceed its overall primary spending limitation as well as its state-by-state limitations. The Bush Committee's reports indicate as of December 31, 1988, it spent $22,936,275.79 on expenditures subject to the primary limitation, leaving only $113,725.21 in funds available for primary spending. Because the spending noted in this report which apparently should have been reported by the Bush Committee (notably travel to various stops), would appear to exceed this amount, it appears the Bush Committee would have exceeded its primary limitation in violation of 2 U.S.C. § 441a(b)(1)(A), 26 U.S.C. § 9035 and 11 C.F.R. § 9033.2(b)(2). Moreover, the Bush Committee's receipt of contributions made by the state accounts of party committee looks to possible violations of 2 U.S.C. § 441b(a).

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because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[52]

VI. INVESTIGATION

This Office further recommends that the Commission approve the attached subpoenas and requests for production of documents to the RNC and the various state party organizations. These subpoenas seek specific information regarding the functions, activities, and allocations noted herein. We are aware from our conversations with counsel for the RNC and some of the state party committees that they may be resistive to providing such information. This Office believes compulsory process will best expedite this matter.

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52. Because North Carolina law prohibits corporate and union funds, this Office recommends only violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, this Office recommends only violations of 2 U.S.C. § 441a(a)(2)(A) as to them.

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VII. RECOMMENDATIONS

1. Find reason to believe the Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as treasurer,violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

2. Find reason to believe the Michigan Republican State Committee (Federal Account/Non-Federal Account) and Ronald D. Dahlke, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

3. Find reason to believe the Ohio Republican Party Committee (Federal Account/Non-Federal Account) and Virginia S. Cheney, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

4. Find reason to believe the North Carolina Republican Executive Committee (Federal Account/Non-Federal Account) and Carl G. Ward, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

5. Find reason to believe the Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

6. Find reason to believe the South Carolina Victory '88 (Federal Account/Non-Federal Account and Tony Deny, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

7. Find reason to believe the Republican Party of Wisconsin (Federal Account/Non-Federal Account) and Robert R. Barrow, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

8. Find reason to believe the Georgia Republicans (Federal Account/Non-Federal Account), and Marvin H. Smith, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

9. Find reason to believe the New Jersey Republican State Committee (Federal Account/Non-Federal Account) and Robert D. Franks, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

10. Find reason to believe the Tennessee Republican Party (Federal Account/Non-Federal Account) and Robert C. Brannon, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

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11. Find reason to believe the Republican Party of Florida (Federal Account/Non-Federal Account) and Shirlee Brown, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

12. Find reason to believe the Republican Campaign Committee of New Mexico (Federal Account/Non-Federal Account) and Barbara Baltz, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

13. Find reason to believe the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(a)(2)(A), and 11 C.F.R. § 102.5.

14. Find reason to believe the California Republican Party, Victory '88 (Federal Account/Non-Federal Account), and Paul Hancock, as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(a)(2)(A), and 11 C.F.R. § 102.5.

15. Find reason to believe the Texas Republican Congressional Committee (Federal Account/Non-Federal Account) and Martha Weisend, as treasurer violated 2 U.S.C. §§ 441b(a), 441a(a)(2)(A), and 11 C.F.R. § 102.5.

16. Find reason to believe the Colorado Republican Federal Campaign Committee (Federal Account/Non-Federal Account) and Douglas L. Jones, as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(a)(2)(A), and 11 C.F.R. § 102.5.

17. Find reason to believe the Republican State Central Committee of Maryland (Federal Account/Non-Federal Account) and Susan L. Saum, as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(a)(2)(A), and 11 C.F.R. § 102.5.

18. Find reason to believe the Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yoros, as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(a)(2)(A), and 11 C.F.R. § 102.5.

18a. Find reason to believe the Republican Party of Kentucky (Federal Account/Non-Federal Account) and Larry J. Steinberg,as treasurer, violated 2 U.S.C. §§ 441b(a), 441a(a)(2)(A), and 11 C.F.R. § 102.5.

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19. Approve the appropriate letters, and the attached subpoenas, and factual and legal analysis.[53]

12/14/90
Date

Lawrence M. Noble
General Counsel

Attachments
1. Bush Committee Initial Response (Attached also in General Counsel's report Dated January 9, 1990)
2. Bush Committee Second Response
3. Georgia State Party Response
4. New Mexico State Party Response
5. California State Party Response
6. Sample State Party Response Noted In Footnote 4
7. Sample State Party Response Noted In Footnote 6
8. Sample Factual and Legal Analysis
9. Subpoenas

Staff Person: Patty Reilly

53. The proposed factual and legal analyses are identical for all respondents. Consequently, a sample is attached for Commission approval. The subpoenas to all respondents are also uniform for the first four pages, and thus a sample of these pages is also attached. The actual proposed questions to the the RNC are attached, as are sample questions to the state party committees.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DELORES HARRIS
COMMISSION SECRETARY

DATE: DECEMBER 21, 1990

SUBJECT: MUR 2667 - GENERAL COUNSEL'S REPORT DATED DECEMBER 14, 1990

The above-captioned document was circulated to the Commission on TUESDAY, DECEMBER 18, 1990 at 4:00 p.m.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	XXX
Commissioner Elliott	XXX
Commissioner Josefiak	XXX
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	XXX

This matter will be placed on the meeting agenda for TUESDAY, JANUARY 8, 1990.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2667
George Bush for President Committee, Inc. and J. Stanley Huckaby, as treasurer, et al.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on January 17, 1991, do hereby certify that the Commission took the following actions in MUR 2667:

1. Failed in a vote of 3-3 to pass a motion to approve the recommendations submitted in the General Counsel's report signed December 19, 1990, as amended by the General Counsel's Errata dated January 3.

   Commissioners McDonald, McGarry, and Thomas voted affirmatively for the motion; Commissioners Aikens, Elliott, and Josefiak dissented.

2. Decided by a vote of 5-1 to

   a) Find reason to believe the Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

(continued)

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b) Find reason to believe the Michigan Republican State Committee (Federal Account/Non-Federal Account) and Ronald D. Dahlke, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

c) Find reason to believe the Ohio Republican Party Committee (Federal Account/Non-Federal Account) and Virginia S. Cheney, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

d) Find reason to believe the North Carolina Republican Executive Committee (Federal Account/Non-Federal Account) and Carl G. Ward, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

e) Find reason to believe the Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

f) Find reason to believe the South Carolina Victory '88 (Federal Account/Non-Federal Account) and Tony Deny, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

g) Find reason to believe the Republican Party of Wisconsin (Federal Account/Non-Federal Account) and Robert R. Barrow, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

(continued)

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h) Find reason to believe the Georgia Republicans (Federal Account/Non-Federal Account) and Marvin H. Smith, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

i) Find reason to believe the New Jersey Republican State Committee (Federal Account/Non-Federal Account) and Kathleen A. Donovan, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

j) Find reason to believe the Tennessee Republican Party (Federal Account/ Non-Federal Account) and Robert C. Brannon, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

k) Find reason to believe the Republican Party of Florida (Federal Account/Non-Federal Account) and Shirlee Brown, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).

l) Find reason to believe the Republican Campaign Committee of New Mexico (Federal Account/Non-Federal Account) and Barbara Baltz, as treasurer, violated 2 U.S.C. § 441a(a)(2)(A).

m) Find reason to believe the Republican National Committee and William J. McManus, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5.

(continued)

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n) Find reason to believe the California Republican Party, Victory '88 (Federal Account/ Non-Federal Account) and Paul Hancock, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), and 11 C.F.R. § 102.5.

o) Find reason to believe the Texas Republican Congressional Committee (Federal Account/Non-Federal Account) and Martha Weisend, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), and 11 C.F.R. § 102.5.

p) Find reason to believe the Colorado Republican Federal Campaign Committee (Federal Account/Non-Federal Account) and Douglas L. Jones, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), and 11 C.F.R. § 102.5.

q) Find reason to believe the Republican State Central Committee of Maryland (Federal Account/Non-Federal Account) and Susan L. Saum, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), and 11 C.F.R. § 102.5.

r) Find reason to believe the Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yoros, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), and 11 C.F.R. § 102.5.

(continued)

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s) Find reason to believe the Republican Party of Kentucky (Federal Account/ Non-Federal Account) and Larry J. Steinberg, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5.

t) Approve the appropriate letters and the subpoenas and factual and legal analyses as recommended in the General Counsel's report dated December 19, 1990, subject to amendment as moved by Commissioner Josefiak during the Commission meeting.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

Jan 22, 1991
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

March 7, 1991

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

LMN (1992)

SUBJECT: Revisions to the Factual and Legal Analysis in MUR 2667

On March 6, 1991, revisions to the factual and legal analysis in this matter were circulated to the Commission. Through a miscommunication, the revisions were circulated informationally rather than for a vote. Consequently, attached for the Commission's review are a revised sample factual and legal analysis, a revised set of sample questions, and three types of sample reason to believe notification letters. These documents reflect the concerns raised by the Commission at its January 15 and 17, 1991 executive sessions regarding MUR 2667. Please note that references in the factual and legal analysis to "election related events" have been changed to "candidate related events." Additionally, we have also requested the RNC and the State Parties to identify entities receiving proceeds from the fundraising events and to list the amount each entity received.

Recommendation

Approve the attached sample factual and legal analysis, sample questions, and sample letters.

Attachments
1. Sample Factual and Legal Analysis (1)
2. Sample Questions (2)
3. Sample Reason to Believe Letters (3)
4. Commission Certification

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
George Bush for President Committee, Inc. and J. Stanley Huckaby, as treasurer, et. al.	)	MUR 2667
	)	
	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. **Qualified Campaign Expenses**

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. **Campaign Travel**

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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the nature of the event --(any Presidential campaign connections?); and

the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

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9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered a candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate related expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin, - July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. **Memphis, Tennessee - July 23, 1988**

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. **Travel Paid By the Bush Committee and Other Entities**

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/DONNA ROACH DR
COMMISSION SECRETARY

DATE: MARCH 11, 1991

SUBJECT: MUR 2667 - MEMORANDUM TO THE COMMISSION DATED MARCH 7, 1991

The above-captioned document was circulated to the Commission on THURSDAY, MARCH 7, 1991 at 4:00 P.M.

Objection(s) have been received from the Commissioner(s) as indicated by the name(s) checked below:

Commissioner Aikens	
Commissioner Elliott	XXXXX
Commissioner Josefiak	
Commissioner McDonald	
Commissioner McGarry	
Commissioner Thomas	

This matter will be placed on the meeting agenda for TUESDAY, MARCH 19, 1991.

Please notify us who will represent your Division before the Commission on this matter.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2667
George Bush for President Committee, Inc. and J. Stanley Huckaby, as treasurer, et al.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on March 19, 1991, do hereby certify that the Commission took the following actions in MUR 2667:

1. Decided by a vote of 6-0 to limit Question 1 recommended in the General Counsel's report dated March 7, 1991, to those activities and events in which the state party was involved.

   Commissioners Aikens, Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision.

(continued)

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2. Decided by a vote of 4-2 to approve the sample factual and legal analysis, sample questions and sample letters as recommended in the General Counsel's report dated March 7, 1991, subject to amendment of question 1 as noted above.

Commissioners Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioners Aikens and Elliott dissented.

Attest:

3-20-91
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gordon Strauss, Esquire
Thompson, Hine and Flory
2900 DuBois Tower
511 Walnut Street
Cincinnati, OH 45202

RE: MUR 2667
Ohio Republican Party's Federal Candidates Campaign Committee (Federal Account/Non-Federal Account) and Virginia S. Cheney, as treasurer

Dear Mr. Strauss:

On February 16, 1990, the Federal Election Commission notified your clients, the Ohio Republican Party's Federal Candidates Campaign Committee (Federal Account/Non-Federal Account) and Virginia S. Cheney, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Virginia S. Cheney, Treasurer
Ohio Republican Party's Federal Candidates
Campaign Committee
(Federal Account/Non-Federal Account)

c/o Gordon Strauss, Esquire
Thompson, Hine and Flory
2900 DuBois Tower
511 Walnut Street
Cincinnati, OH 45202

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Ohio Republican Party Committee	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Virginia S. Cheney, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. **Qualified Campaign Expenses**

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. **Campaign Travel**

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
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> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

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11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin, - July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamin Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2667
Colorado Republican Federal
Campaign Committee (Federal
Account/Non-Federal Account)
and Douglas L. Jones, as
treasurer

Dear Mr. Ginsberg:

On May 29, 1990 the Federal Election Commission notified your clients, the Colorado Republican Federal Campaign Committee (Federal Account/Non-Federal Account) and Douglas L. Jones, as treasurer, of a complaint and a supplement to that complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and Chapters 95 and 96 of Title 26, U.S. Code. A copy of both the complaint and the supplement were enclosed with that notification.

On July 10, 1990 the Commission considered your clients' motions to dismiss the complaint and supplement and determined not to grant these motions. Your clients were notified of this determination by letter dated July 17, 1990.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations contained in the complaint and supplement, on January 17, 1991 the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter.

Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

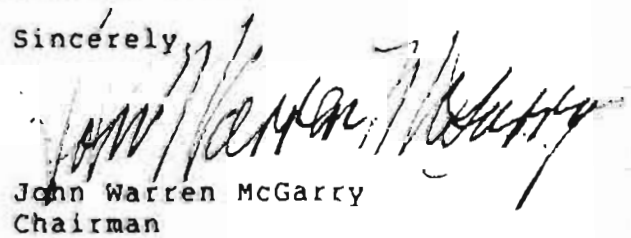
If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,



John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 2667
	)	

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Douglas L. Jones, Treasurer
Colorado Republican Federal Campaign Committee
(Federal Account/Non-Federal Account)

c/o Benjamin Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

96043712325

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

9604371236

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Colorado Republican Federal Campaign Committee (Federal Account/Non-Federal Account) and Douglas L. Jones, as treasurer	)	MUR 2667

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. **Travel Said To Be Entirely Non-Campaign Related**

i. **New York, New York - June 30, 1988**

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

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9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

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14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamin Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2667
Republican National Committee and
William J. McManus, as treasurer

Dear Mr. Ginsberg:

On February 16, 1990, the Federal Election Commission notified your clients, the Republican National Committee and William J. McManus, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: William J. McManus, Treasurer
Republican National Committee

c/o Benjamin L. Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 22nd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal Analysis in MUR 2667 notes a number of events in which Vice President George Bush participated.

I. TRIPS NOTED IN THE COMPLAINT

1. Trips said to be non-campaign related

1. For each of the nine trips noted in the complaint which were said to be non-campaign related, identify the person(s) determining that the trip was not campaign related. List the criteria used in making this determination.

2. For each such trip, state whether a fundraising event was held. For each such fundraising event, identify each sponsoring entity and state the purpose for which the fundraiser was held. List all costs paid by the sponsoring entity for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the Bush Committee for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the RNC for candidate expenses including but not limited to travel, subsistence, and other like expenses. Specify where these costs are reported on the RNC's FEC reports (report, schedule, page, line). If any cost is reported as a combined entry, list all other amounts composing this entry.

3. For each fundraising event noted above, identify persons associated with the RNC who communicated with the sponsoring entity or the Bush Committee. Identify the person(s) with whom they communicated. Specify the content of each such communication.

4. For each trip said not to be campaign related, identify each stop in which a press conference was held. For each press conference, identify the person(s) advancing the press conference and state his or her relationship with the Bush Committee and the RNC.

5. For each such press conference identify all persons making press statements or responding to press questions.

6. For each such press conference, state whether materials were distributed to the press. Attach copies of all such materials, specifying at which press conference they were issued. Attach all copies of statements issued by the Vice President, specifying at which press conference such statements were issued.

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2. Trips Said to be Campaign Related in Part

7. For the four trips noted in the complaint which were said to be campaign related in part, identify the person(s) determining that the trip was in part campaign related. List the criteria used in making this determination.

8. For each such trip, state whether a fundraising event was held. For each such fundraising event, identify each sponsoring entity and state the purpose for which the fundraiser was held. List all costs paid by the sponsoring entity for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the Bush Committee for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the RNC for candidate expenses including but not limited to travel, subsistence, and other like expenses. Specify where these costs are reported on the RNC's FEC reports (report, schedule, page, line). If any cost is reported as a combined entry, list all other amounts composing this entry.

9. For each fundraising event noted above, identify persons associated with the RNC who communicated with the sponsoring entity or the Bush Committee. Identify the person(s) with whom they communicated. Specify the content of each such communication.

10. For each trip said to be campaign related in part, identify each stop in which a press conference was held. For each press conference, identify the person(s) advancing the press conference and state his or her relationship with the Bush Committee and the RNC.

11. For each such press conference identify all persons making press statements or responding to press questions.

12. For each such press conference, state whether materials were distributed to the press. Attach copies of all such materials, specifying at which press conference they were issued. Attach all copies of statements issued by the Vice President, specifying at which press conference such statements were issued.

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3. Trips Said to Be Campaign Related

13. For each such trip noted in the complaint, state whether a fundraising event was held. For each such fundraising event, identify each sponsoring entity and state the purpose for which the fundraiser was held. List all costs paid by the sponsoring entity for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the Bush Committee for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the RNC for candidate expenses including but not limited to travel, subsistence, and other like expenses. Specify where these costs are reported on the Bush Committee's FEC reports (report, schedule, page, line). If any cost is reported as a combined entry, list all other amounts composing this entry.

14. For each fundraising event noted above, identify persons associated with the RNC who communicated with the sponsoring entity and the Bush Committee. Identify the person(s) at the sponsoring entity with whom they communicated. Specify the content of each such communication.

II. Trips Noted in the Supplement

1. Trips said to be non-campaign related

15. For all the trips noted in the supplement to the complaint, specify for each whether it was considered non-campaign related, campaign related in part, or totally campaign related. For each trip said to be non-campaign related, identify the person(s) determining that the trip was not campaign related. List the criteria used in making this determination.

16. For each non-campaign related trip, state whether a fundraising event was held. For each such fundraising event, identify each sponsoring entity and state the purpose for which the fundraiser was held. List all costs paid by the sponsoring entity for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the Bush Committee for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the RNC for candidate expenses including but not limited to travel, subsistence, and other like expenses. Specify where these costs are reported on the RNC's FEC reports (report, schedule, page, line). If any cost is reported as a combined entry, list all other amounts composing this entry.

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17. For each fundraising event noted in your answer above, identify persons associated with the RNC who communicated with the sponsoring entity or the Bush Committee. Identify the person(s) with whom they communicated. Specify the content of each such communication.

18. For each trip said not to be campaign related, identify each stop in which a press conference was held. For each press conference, identify the person(s) advancing the press conference and state his or her relationship with the Bush Committee and the RNC.

19. For each such press conference identify all persons making press statements or responding to press questions.

20. For each such press conference, state whether materials were distributed to the press. Attach copies of all such materials, specifying at which press conference they were issued. Attach all copies of statements issued by the Vice President, specifying at which press conference such statements were issued.

2. Trips Said to be Campaign Related in Part

21. For each trip noted in the supplement said to be campaign related in part, identify the person(s) determining that the trip was in part campaign related. List the criteria used in making this determination.

22. For each such trip noted above, state whether a fundraising event was held. For each such fundraising event, identify each sponsoring entity and state the purpose for which the fundraiser was held. List all costs paid by the sponsoring entity for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the Bush Committee for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the RNC for candidate expenses including but not limited to travel, subsistence, and other like expenses. Specify where these costs are reported on the RNC's FEC reports (report, schedule, page, line). If any cost is reported as a combined entry, list all other amounts composing this entry.

23. For each fundraising event noted in your answer above, identify persons associated with the RNC who communicated with the sponsoring entity or the Bush Committee. Identify the persons(s) with whom they communicated. Specify the content of each such communication.

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24. For each trip said to be campaign related in part, identify each stop in which a press conference was held. For each press conference, identify the person(s) advancing the press conference and state his or her relationship with the Bush Committee and the RNC.

25. For each such press conference identify all persons making press statements or responding to press questions.

26. For each such press conference, state whether materials were distributed to the press. Attach copies of all such materials, specifying at which press conference they were issued. Attach all copies of statements issued by the Vice President, specifying at which press conference such statements were issued.

3. Trips Said to Be Campaign Related

27. For each trip said to be campaign related, state whether a fundraising event was held. For each such fundraising event, identify each sponsoring entity and state the purpose for which the fundraiser was held. List all costs paid by the sponsoring entity for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the RNC for candidate expenses including but not limited to travel, subsistence, and other like expenses. List all costs paid by the Bush Committee for candidate expenses including but not limited to travel, subsistence, and other like expenses. Specify where these costs are reported on the RNC's FEC reports (report, schedule, page, line). If any cost is reported as a combined entry, list all other amounts composing this entry.

28. For each fundraising event noted in your answer above, identify persons associated with the RNC who communicated with the sponsoring entity and the Bush Committee. Identify the person(s) at the sponsoring entity with whom they communicated. Specify the content of each such communication.

The Commission requests the following documents and materials:

1. All fundraising invitations identified above, indicating on each the question to which it responds.

2. All documents distributed at the press conferences noted above, indicating on each document the press conference where it was distributed.

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3. All speeches given by Vice President Bush or any other person at any fundraiser noted above.

4. Copies of all itineraries, correspondence, memoranda, and other documents relating to the trips noted in your response to this subpoena.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican National Committee	)	MUR 2667
and William J. McManus, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
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> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin, - July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

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14. Respondents have not in all instances identified this sponsoring entity.

i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamin Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2667
Republican Party of Wisconsin
(Federal Account/Non-Federal
Account) and Robert R. Barrow, as
treasurer

Dear Mr. Ginsberg:

On February 16, 1990, the Federal Election Commission notified your clients, the Republican Party of Wisconsin (Federal Account/Non-Federal Account) and Robert R. Barrow, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Robert R. Barrow, Treasurer
Republican Party of Wisconsin
(Federal Account/Non-Federal Account)

c/o Benjamin L. Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd, day of April, 1991.

John Warren McGarry

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican Party of Wisconsin	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Robert R. Barrow, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. **Qualified Campaign Expenses**

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. **Campaign Travel**

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. **Party Fundraisers**

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
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> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina, - July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

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25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Richard P. Taylor, Esquire
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: MUR 2667
Republican State Central
Committee of Maryland (Federal
Account/Non-Federal Account)
and Susan K. Saum, as treasurer

Dear Mr. Taylor:

On May 29, 1990 the Federal Election Commission notified your clients, the Republican State Central Committee of Maryland (Federal Account/Non-Federal Account) and Susan K. Saum, as treasurer, of a complaint and a supplement to that complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and Chapters 95 and 96 of Title 26, U.S. Code. A copy of both the complaint and the supplement were enclosed with that notification.

On July 10, 1990 the Commission considered your clients' motions to dismiss the complaint and supplement and determined not to grant these motions. Your clients were notified of this determination by letter dated July 17, 1990.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations contained in the complaint and supplement, on January 17, 1991 the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter.

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Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Susan K. Saum, Treasurer
Republican State Central Committee of Maryland
(Federal Account/Non-Federal Account)

c/o Richard P. Taylor, Esquire
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican State Central Committee of Maryland (Federal Account/Non-Federal Account) and Susan K. Saum, as treasurer	)	MUR 2667

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
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> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. **Travel Said To Be Entirely Non-Campaign Related**

i. **New York, New York - June 30, 1988**

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

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The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina, - July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey; Bay Head, New Jersey - July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. **Travel Paid By the Bush Committee and Other Entities**

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Benjamin Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

RE: MUR 2667
South Carolina Victory '88 (Federal Account/Non-Federal Account) and Tony Denny, as treasurer

Dear Mr. Ginsberg:

On February 16, 1990, the Federal Election Commission notified your clients, the South Carolina Victory '88 (Federal Account/Non-Federal Account) and Tony Denny, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Tony Denny, Treasurer
South Carolina Victory '88
(Federal Account/Non-Federal Account)

c/o Benjamin L. Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
South Carolina Victory '88	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Tony Denny, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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the nature of the event --(any Presidential campaign connections?); and

the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. **Travel Paid By the Bush Committee and Other Entities**

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

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14. Respondents have not in all instances identified this sponsoring entity.

i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Craig S. Burkhardt, Esquire
Sorling, Northrup, Hanna, Cullen
and Cochran, Ltd.
Suite 800, Illinois Building
P.O. Box 5131
Springfield, IL 62705

RE: MUR 2667
Illinois Republican State
Central Committee (Federal
Account/Non-Federal Account)
and Thomas W. Ewing, as
treasurer

Dear Mr. Burkhardt:

On May 29, 1990 the Federal Election Commission notified your clients, the Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as treasurer, of a complaint and a supplement to that complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and Chapters 95 and 96 of Title 26, U.S. Code. A copy of both the complaint and the supplement were enclosed with that notification.

On July 10, 1990 the Commission considered your clients' motions to dismiss the complaint and supplement and determined not to grant these motions. Your clients were notified of this determination by letter dated July 17, 1990.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations contained in the complaint and supplement, on January 17, 1991 the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter.

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Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Thomas W. Ewing, Treasurer
Illinois Republican State Central Committee
(Federal Account/Non-Federal Account)

c/o Craig S. Burkhardt, Esquire
Sorling, Northrup, Hanna, Cullen
and Cochran, Ltd.
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

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8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as treasurer	)	MUR 2667

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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the nature of the event --(any Presidential campaign connections?); and

the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

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14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Charles H. Bell, Esquire
Nielsen, Merksamer, Hodgson,
Parrinello and Mueller
770 L Street, Suite 800
Sacramento, CA 95814

RE: MUR 2667
California Republican Party,
Victory '88 (Federal
Account/Non-Federal Account)
and Paul Hancock, as treasurer

Dear Mr. Bell:

On May 29, 1990 the Federal Election Commission notified your clients, the California Republican Party, Victory '88 (Federal Account/Non-Federal Account) and Paul Hancock, as treasurer, of a complaint and a supplement to that complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and Chapters 95 and 96 of Title 26, U.S. Code. A copy of both the complaint and the supplement were enclosed with that notification.

On July 10, 1990 the Commission considered your clients' motions to dismiss the complaint and supplement and determined not to grant these motions. Your clients were notified of this determination by letter dated July 17, 1990.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations contained in the complaint and supplement, on January 17, 1991 the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter.

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Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
	)	MUR 2667
	)	

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Paul Hancock, Treasurer
California Republican Party, Victory '88
(Federal Account/Non-Federal Account)

c/o Charles H. Bell, Esquire
Nielsen, Merksamer, Hodgson,
Parrinello and Mueller
770 L Street, Suite 800
Sacramento, CA 95814

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to) the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
California Republican Party,	)	MUR 2667
Victory '88 (Federal Account/Non-Federal	)	
Account) and Paul Hancock, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. **Committees Conducting Both State and Federal Activity**

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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the nature of the event --(any Presidential campaign connections?); and

the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. **Travel Said To Be Entirely Non-Campaign Related**

i. **New York, New York - June 30, 1988**

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

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9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina, - July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey; Bay Head, New Jersey - July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

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25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Andrew D. Leipold, Esquire
2000 One Logan Square
Philadelphia, PA 19103

RE: MUR 2667
Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yaros, as treasurer

Dear Mr. Leipold:

On May 29, 1990 the Federal Election Commission notified your clients, the Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yaros, as treasurer, of a complaint and a supplement to that complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and Chapters 95 and 96 of Title 26, U.S. Code. A copy of both the complaint and the supplement were enclosed with that notification.

On July 10, 1990 the Commission considered your clients' motions to dismiss the complaint and supplement and determined not to grant these motions. Your clients were notified of this determination by letter dated July 17, 1990.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations contained in the complaint and supplement, on January 17, 1991 the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter.

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Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Jacob D. Yaros, Treasurer
Republican Federal Committee of Pennsylvania
(Federal Account/Non-Federal Account)

c/o Andrew D. Leipold, Esquire
2000 One Logan Square
Philadelphia, PA 19103

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican Federal Committee	)	MUR 2667
of Pennsylvania	)	
(Federal Account/Non-Federal Account)	)	
and Jacob D. Yaros, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

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1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. **Qualified Campaign Expenses**

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. **Campaign Travel**

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. **Party Fundraisers**

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Martha Weisend, Treasurer
Texas Republican Congressional Committee
211 East 7th Street, Suite 620
Austin, TX 78701

RE: MUR 2667
Texas Republican Congressional Committee (Federal Account/Non-Federal Account) and Martha Weisend, as treasurer

Dear Ms. Weisend:

On May 29, 1990 the Federal Election Commission notified the Texas Republican Congressional Committee (Federal Account/Non-Federal Account) ("Committee") and you, as treasurer, of a complaint and a supplement to that complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act") and Chapters 95 and 96 of Title 26, U.S. Code. A copy of both the complaint and the supplement were enclosed with that notification.

On July 10, 1990 the Commission considered the Committee's motions to dismiss the complaint and supplement and determined not to grant these motions. The Committee and you, as treasurer, were notified of this determination by letter dated July 17, 1990.

Consequently, after considering all of the Committee's submissions, and based upon further review of the allegations contained in the complaint and supplement, on January 17, 1991 the Commission found that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, the Committee and you, as treasurer, have an opportunity to demonstrate that no further action should be taken against the Committee and you, as treasurer. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter.

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Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Martha Weisend, Treasurer
Texas Republican Congressional Committee
(Federal Account/Non-Federal Account)

c/o Texas Republican Congressional Committee
211 East 7th Street, Suite 620
Austin, TX 78701

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April 1991.

John Warren McGarry

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Texas Republican Congressional Committee (Federal Account/Non-Federal Account) and Martha Weisend, as treasurer	)	MUR 2667

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. **Qualified Campaign Expenses**

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. **Campaign Travel**

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. **Committees Conducting Both State and Federal Activity**

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. **Party Fundraisers**

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion <u>infra</u> of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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the nature of the event --(any Presidential campaign connections?); and

the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larry J. Steinberg, Treasurer
Republican Party of Kentucky
(Federal Account/Non-Federal Account)
P.O. Box 1068
Frankfort, KY 40602

RE: MUR 2667
Republican Party of Kentucky
(Federal Account/Non-Federal
Account) and Larry J.
Steinberg, as treasurer

Dear Mr. Steinberg:

On January 17, 1991, the Federal Election Commission found that there is reason to believe Republican Party of Kentucky (Federal Account/Non-Federal Account) ("Committee") and you, as treasurer, violated 2 U.S.C.§§ 441b(a) and 441a(a)(2)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no action should be taken against you and the Committee. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted within 20 days of your receipt of this order and subpoena. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications or other communications from the Commission.

In the absence of any additional information which demonstrates that no further action should be taken against the Committee and you, as treasurer, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have attached a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis
Procedures
Designation of Counsel Form

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Larry J. Steinberg, Treasurer
Republican Party of Kentucky
(Federal Account/Non-Federal Account)

c/o Republican Party of Kentucky
P.O. Box 1068
Frankfort, KY 40602

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd, day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican Party of Kentucky	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Larry J. Steinberg, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. **Committees Conducting Both State and Federal Activity**

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. **Party Fundraisers**

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

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9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey; Bay Head, New Jersey - July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eric E. Doster, Esquire
Foster, Swift, Collins and Smith, P.C.
313 South Washington Square
Lansing, MI 48933-2193

RE: MUR 2667
Michigan Republican State Committee
(Federal Account/Non-Federal
Account) and Ronald D. Dahlke, as
treasurer

Dear Mr. Doster:

On February 16, 1990, the Federal Election Commission notified your clients, the Michigan Republican State Committee (Federal Account/Non-Federal Account) and Ronald D. Dahlke, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Ronald D. Dahlke, Treasurer
Michigan Republican State Committee
(Federal Account/Non-Federal Account)

c/o Eric E. Doster, Esquire
Foster, Swift, Collins and Smith, P.C.
313 South Washington Square
Lansing, MI 48933-2193

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd, day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Michigan Republican State Committee	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Ronald D. Dahlke, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

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7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. **Travel Said To Be Entirely Non-Campaign Related**

i. **New York, New York - June 30, 1988**

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina, - July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin, - July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Paul Kelly, Jr., Esquire
Hinkle, Cox, Eaton, Coffield and Hensley
218 Montezuma
P.O. Box 2068
Santa Fe, NM 87504-2068

RE: MUR 2667
Republican Campaign Committee of New Mexico (Federal Account/Non-Federal Account) and Barbara Baltz, as treasurer

Dear Mr. Kelly:

On February 16, 1990, the Federal Election Commission notified your clients, the Republican Campaign Committee of New Mexico (Federal Account/Non-Federal Account) and Barbara Baltz, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. § 441a(a)(2)(A). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Barbara Baltz, Treasurer
Republican Campaign Committee of New Mexico
(Federal Account/Non-Federal Account)

c/o Paul Kelly, Jr., Esquire
Hinkle, Cox, Eaton, Coffield and Hensley
218 Montezuma
P.O. Box 2068
Santa Fe, NM 87504-2068

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican Campaign Committee	)	MUR 2667
of New Mexico	)	
(Federal Account/Non-Federal Account)	)	
and Barbara Baltz, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
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> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. **Travel Paid By the Bush Committee and Other Entities**

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kenneth L. Connor, Esquire
719 North Calhoun Street
P.O. Box 311
Tallahassee, FL 32302

RE: MUR 2667
Republican Party of Florida (Federal Account/Non-Federal Account) and Shirlee Bowne, as treasurer

Dear Mr. Connor:

On February 16, 1990, the Federal Election Commission notified your clients, the Republican Party of Florida (Federal Account/Non-Federal Account) and Shirlee Bowne, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Shirlee Bowne, Treasurer
Republican Party of Florida
(Federal Account/Non-Federal Account)

c/o Kenneth L. Connor, Esquire
Republican Party of Florida
719 North Calhoun Street
P.O. Box 311
Tallahassee, FL 32302

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican Party of Florida	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Shirlee Bowne, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. **GENERATION OF MATTER**

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. **Party Building Activity**

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. **Committees Conducting Both State and Federal Activity**

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
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> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

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9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina, - July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey; Bay Head, New Jersey - July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

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14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

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25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Arthur C. Zeidman, Esquire
General Counsel
North Carolina Republican Executive Committee
1410 Hillsborough Street
Raleigh, NC 27605

RE: MUR 2667
North Carolina Republican
Executive Committee (Federal
Account/Non-Federal Account),
and Carl G. Ward, as treasurer

Dear Mr. Zeidman:

On February 16, 1990, the Federal Election Commission notified your clients, the North Carolina Republican Executive Committee (Federal Account/Non-Federal Account) and Carl G. Ward, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. § 441a(a)(2)(A), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. § 441a(a)(2)(A) as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Carl G. Ward, Treasurer
North Carolina Republican
Executive Committee
(Federal Account/Non-Federal Account)

c/o Arthur C. Zeidman, Esquire
General Counsel
North Carolina Republican
Executive Committee
(Federal Account/Non-Federal Account)
1410 Hillsborough Street
Raleigh, NC 27605

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd, day of April, 1991.

John Warren McGarry

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
North Carolina Republican Executive Committee (Federal Account/Non-Federal Account) and Carl G. Ward, as treasurer	)	MUR 2667

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

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1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rate for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. **Party Fundraisers**

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
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> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

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24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Edward Gross, Esquire
Gross & Novak
Brier Hill, Building C
P.O. Box 188
East Brunswick, NJ 08816

RE: MUR 2667
New Jersey Republican State
Committee (Federal
Account/Non-Federal Account) and
Kathleen A. Donovan, as treasurer

Dear Mr. Gross:

On February 16, 1990, the Federal Election Commission notified your clients, the New Jersey Republican State Committee (Federal Account/Non-Federal Account) and Kathleen A. Donovan, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Kathleen A. Donovan, Treasurer
New Jersey Republican State Committee
(Federal Account/Non-Federal Account)

c/o Edward Gross, Esquire
Gross & Novak
Colonial Oaks Office Park
Brier Hill, Building C
P.O. Box 188
East Brunswick, NJ 08816

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd, day of April, 1991.

John Warren McGarry

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
New Jersey Republican State Committee	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Kathleen A. Donovan, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

7. Committees Conducting Both State and Federal Activity

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. **Party Fundraisers**

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

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12. Respondents apparently use the term "press availability" interchangeably with "press conference".

news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

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14. Respondents have not in all instances identified this sponsoring entity.

i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. **Travel Said to be Entirely Non-Campaign Related**

i. **Baltimore, Maryland - July 14, 1988**

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Frank B. Strickland, Esquire
Wilson, Strickland & Benson, P.C.
1360 Peachtree Street, N.E.
Atlanta, GA 30309

RE: MUR 2667
Georgia Republicans (Federal Account/Non-Federal Account) and Marvin H. Smith, as treasurer

Dear Mr. Strickland:

On February 16, 1990, the Federal Election Commission notified your clients, the Georgia Republicans (Federal Account/Non-Federal Account) and Marvin H. Smith, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. § 441a(a)(2)(A). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Marvin H. Smith, Treasurer
Georgia Republicans
(Federal Account/Non-Federal Account)

c/o Frank B. Strickland, Esquire
Wilson, Strickland & Benson, P.C.
1360 Peachtree Street, N.E.
Atlanta, GA 30309

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd, day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

2604371-9

INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Georgia Republicans	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Marvin H. Smith, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. **Committees Conducting Both State and Federal Activity**

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. **Press Conferences**

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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the nature of the event --(any Presidential campaign connections?); and

the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

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9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

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11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina, - July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin, - July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. **Travel Paid By the Bush Committee and Other Entities**

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

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24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Maclin P. Davis, Esquire
Heiskell, Donelson, Dearman, et al.
511 Union Street, Suite 600
Nashville, TN 37219

RE: MUR 2667
Tennessee Republican Party Federal Election Account Victory '88 (Federal Account/Non-Federal Account) and Robert C. Brannon, as treasurer

Dear Mr. Davis:

On February 16, 1990, the Federal Election Commission notified your clients, the Tennessee Republican Party Federal Election Account Victory '88 (Federal Account/Non-Federal Account) and Robert C. Brannon, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Robert C. Brannon, Treasurer
Tennessee Republican Party
(Federal Account/Non-Federal Account)

c/o Maclin P. Davis, Esquire
Heiskell, Donelson, Dearman, Adams,
Williams & Kirsch
Suite 600, Nashville City Center
511 Union Street
Nashville, TN 37219

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

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WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd, day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Tennessee Republican Party	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Robert C. Brannon, as treasurer	)	

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

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Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. **Committees Conducting Both State and Federal Activity**

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

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campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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> the nature of the event --(any Presidential campaign connections?); and
>
> the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

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8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

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was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. Warren and Bloomfield Hills, Michigan - July 20, 1988

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina,
- July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin, - July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

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Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

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a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. **Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988**

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. **Travel Said to Be Campaign Related In Part**

i. **Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988**

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

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that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

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related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

April 25, 1991

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert Ruzzo, Esquire
Sherbune, Powers & Needham
One Beacon Street
Boston, MA 02108

RE: MUR 2667
Massachusetts Republican Party
(Federal Account/Non-Federal
Account) and Lawrence Novak, as
treasurer

Dear Mr. Ruzzo:

On February 16, 1990, the Federal Election Commission notified your clients, the Massachusetts Republican Party (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer, that the Commission had found reason to believe they had violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), as well as 11 C.F.R. § 102.5, a provision of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, was also provided to your clients at that time.

On May 22, 1990, after granting extensions of time to respond and providing your clients with copies of the complaint and supplement, the Commission considered your clients' motions to rescind the reason to believe determinations. On that date the Commission determined to grant this request. In doing so, the Commission did not adopt the legal reasoning of your motion. Rather, the Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter.

Consequently, after considering all submissions of your clients, and based upon further review of the allegations in the complaint and supplement, on January 17, 1991, the Commission found that there is reason to believe your clients violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

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Under the Act, you have an opportunity to demonstrate that no further action should be taken against your clients. You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 20 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena.

In the absence of any additional information which demonstrates that no further action should be taken against your clients, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

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If you have any questions, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

John Warren McGarry
Chairman

Enclosures
Order and Subpoena
Factual and Legal Analysis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
) MUR 2667
)

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

TO: Lawrence Novak, Treasurer
Massachusetts Republican Party
(Federal Account/Non-Federal Account)

c/o Robert Ruzzo, Esquire
Sherbune, Powers & Needham
One Beacon Street
Boston, MA 02108

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within twenty days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 23rd day of April, 1991.

John Warren McGarry, Chairman
Federal Election Commission

ATTEST:

Marjorie W. Emmons
Secretary to the Commission

Attachments
Document Request and Questions

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INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from June 1, 1988 to August 31, 1988.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

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DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and requests for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

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The Commission's Factual and Legal analysis in MUR 2667 notes certain events that occurred in your state involving Vice President George Bush.

1. State the date(s) that Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

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6. Describe in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

7. For each speech given by the Vice President, describe the contents of the speech.

The Commission requests the following documents:

1. All documents associated with the payments noted in your response to question three, including but not limited to, checks (front and back), invoices, and payment requests.

2. All reports noted in your response to question four.

3. Invitations to all events noted in your response to question one.

4. Press releases issued by you regarding events noted in your response to question one.

5. All documents regarding events noted in your response to question one, including but not limited to, tapes, video tapes, and transcripts or news accounts.

6. All communications noted in your response to questions five and six.

7. Transcripts of all speeches noted in your response to question one.

8. All other documents associated with your answers noted above, indicating for each document the answer to which it corresponds.

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer	)	MUR 2667

FACTUAL AND LEGAL ANALYSIS

I. BACKGROUND

On February 6, 1990, the Commission found reason to believe the Republican State Parties of the following states, and their respective treasurers, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) and 11 C.F.R. § 102.5(a): Michigan, Ohio, Massachusetts, South Carolina, Wisconsin, Georgia, New Jersey, Tennessee, Florida, and New Mexico. The Commission also determined that the State Party of North Carolina and its treasurer violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 102.5(a).[1] The Commission further determined that the Republican National Committee ("the RNC") violated 2 U.S.C. § 441a(a)(2)(A). Respondents were notified of the Commission's determinations on February 21, 1990. Subsequently, the Commission received and granted numerous requests from the state parties for extensions of time to respond.

On May 22, 1990, in response to motions submitted by state parties and the RNC, the Commission determined to rescind its reason to believe determinations regarding these respondents in

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1. For the purposes of this document, we refer to this group of respondents as the first group of state party committees.

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order to afford them notice and an opportunity to respond to the complaint and supplement in this matter. Respondents were notified of this determination by letter dated May 29, 1990. Also on May 22, 1990, the Commission approved notification letters to other state party committees named in the supplement. These letters were mailed on May 29, 1990.[2]

Subsequently, many of the state parties against whom the Commission's reason to believe determinations were rescinded replied, asserting that the Commission has failed to act upon their motions, requesting again that the Commission terminate its enforcement proceedings, and stating that respondents could not proceed until they were "officially notified" of the Commission's recorded vote on this issue."[3] The General Counsel notified counsel that the Commission had indeed considered their request and determined not to terminate compliance proceedings. On June 29, 1990, respondents submitted additional correspondence, asserting that they had been injured by the Commission's denial of their motions and declined to respond to the complaint.

Similar motions were then filed by the state party committees who were first notified of the complaint and supplement on May 22, 1990. These motions also asserted that the

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2. These respondents are the State Parties and their respective treasurers of the following states: California, Maryland, Pennsylvania, Colorado, Illinois and Texas. For the purposes of this report, we refer to these respondents as the second group of state party committees.

3. Virtually identical motions were submitted on behalf of the Republican National Committee, and the state parties of North Carolina, Florida, South Carolina, Wisconsin, Massachusetts, Ohio, Michigan, Tennessee, and New Jersey.

Commission's investigation was defective because respondents were not notified at the time the complaint in this matter was filed. The Commission considered these motions on July 10, 1990 and determined not to grant them. Respondents were so notified. Subsequently, this second group of state party committees submitted virtually identical responses again asserting that the Commission's investigation was time-barred, and declined to respond to the complaint and supplement.

II. GENERATION OF MATTER

The Democratic Parties of Ohio, South Carolina, Tennessee and Michigan filed a complaint against George Bush for President, Inc., ("the Bush Committee") and J. Stanley Huckaby, as treasurer. A supplement to the complaint was also filed by one of the complainants. The factual bases of these allegations stem from the complainants' review of the Bush Committee's disclosure reports for the period ending July 31, 1988. These reports appear to indicate the Committee was close to reaching its $23,050,000 expenditure limitation for pre-nomination campaign activity. Citing reports of travel by Mr. Bush during June and July 1988, the complaint and supplement questioned the Bush Committee's reported expenditures of $475,008.36 for the month of July, alleging that this figure did not reflect all campaign activity conducted during this period. The supplement further alleges that because the Bush Committee had allegedly exhausted its pre-nomination limitation, entities other than the Bush Committee impermissibly paid for campaign activities prior to the Republican National Convention. Sixteen specific trips were noted in the

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complaint. Other trips are noted in the supplement. Complainants allege two alternative theories of violations.

First, the complaint alleges that the Bush Committee had spent or was about to expend funds in excess of the expenditure limitation established at 2 U.S.C. § 441a(b)(1)(A) for publicly financed campaigns for nomination to the Office of President. The complaint further alleges that the Committee failed to report expenditures in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9032.1, 9032.9 and 9033; abrogated its candidate agreement in violation of 11 C.F.R. § 9033.2(b)(2); failed to allocate campaign travel expenditures in violation of 11 C.F.R § 9034.7; and accepted prohibited contributions in the form of payments for travel costs from state party committee accounts containing impermissible funds in violation of 2 U.S.C. § 441b.

The complainants also argue alternatively that the travel expenditures for the trips must be considered general election expenditures and that the Bush Committee failed to report them as such in violation of 2 U.S.C. § 434(b); failed to pay qualified campaign expenses through the principal campaign committee in violation of 11 C.F.R. §§ 9002.1, 9002.11 and 9003.1; failed to allocate campaign travel expenditures in violation of 11 C.F.R. § 9004.7; accepted prohibited contributions in violation of 2 U.S.C. § 441b in the form of payments of campaign travel costs from state party accounts containing illegal funds; and accepted contributions from state party committees other than contributions

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to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2.

III. THE LAW

A. Initial Issues Presented

This matter presents the issue whether certain trips taken by the Vice President in June, July, and August of 1988, and paid for by the Office of the Vice President, the Republican National Committee ("RNC"), various state party committees, and the Bush Committee, were campaign-related. The Bush Committee asserts that some aspects of these trips were official functions, that other segments were party building, and that still other segments were campaign-related. To the extent trips were campaign-related activities, an analysis of the Act's prohibitions, limitations, and reporting requirements is required. Therefore, each trip is separately analyzed below. As is further explained, this analysis involves application of the presumption at 11 C.F.R. § 110.8(e)(2). Pursuant to that regulation, a party building event or appearance occurring on or after January 1 of the year of the election in which an individual is a candidate is presumptively for the purpose of influencing that candidate's election. The Regulations further provide that this presumption may be rebutted.

B. Applicable Provisions of the Statute and Regulations

1. Spending Limitations

26 U.S.C. § 9035 and 2 U.S.C. § 441a(b)(1)(A) establish limitations on the amount of qualified campaign expenses which may

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be incurred by a candidate for nomination to the Office of President who elects to receive public funds pursuant to 26 U.S.C. § 9031, et seq. In 1988, the expenditure limitation was $23,050,000. These statutory and regulatory provisions further provide limitations on amount that may be spent in any one state. There are also limitations for publicly financed candidates competing in the general election for the Office of President. Pursuant to 26 U.S.C. § 9003 and 2 U.S.C. § 441a(b)(1)(B), major party candidates in the 1988 presidential general election had a $46,100,000 expenditure limitation.

2 U.S.C. § 431(8) and (9) define "contribution" and "expenditure" as gifts, purchases, payments, or anything of value "made for the purpose of influencing any election for Federal Office."

2. Other Limitations

2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount which a multicandidate political committee may contribute to any candidate with respect to a particular election. Special expenditure limitations apply to national party committees regarding presidential general election campaigns; no such special expenditure limitations are statutorily provided with regard to primary campaigns. 2 U.S.C. § 441a(d). For the 1988 general election campaign, the Republican National Committee's coordinated party expenditure limit under this section was $8,300,000.

3. Reporting Obligations

2 U.S.C. § 434(b)(2) and (3) require the reporting by political committees of the total amounts of all contributions

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received and the itemization of all contributions in excess of $200. Pursuant to 2 U.S.C. § 434(b)(4) and (5), committees must report the total amounts of all disbursements and itemize all expenditures in excess of $200. 11 C.F.R. § 104.13 requires that in-kind contributions be reported as both contributions and expenditures. The Act also imposes reporting obligations regarding the making of the coordinated party expenditures discussed below. See 2 U.S.C. §§ 434(b)(6)(B)(iv) and 434(b)(4)(H)(iv).

4. Qualified Campaign Expenses

26 U.S.C. § 9033 requires that candidates desirous of being certified by the Commission as eligible to receive public funds for use in a campaign for nomination to the Office of President certify that they or their authorized committees will not incur qualified campaign expenses in excess of the limitations established at 26 U.S.C. § 9035. A qualified campaign expense is a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value incurred by or on behalf of a candidate or his or her authorized committee from the date the individual becomes a candidate through the last day of the candidate's eligibility and is made in connection with that candidate's campaign for nomination. 11 C.F.R. § 9032.9(a)(1) and (2).

5. Campaign Travel

Pursuant to 11 C.F.R. § 9034.7, expenditures made for travel related to the campaign of a candidate seeking nomination for election to the Office of President are deemed qualified

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campaign expenses and must be reported by the candidate's authorized committee. "If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related." 11 C.F.R. §§ 9034.7(b)(2). If a trip includes both campaign and non-campaign related activity, the portion of the cost allocable to the campaign is to be considered a qualified campaign expense and a reportable expenditure. Id.

6. Party Building Activity

The Regulations provide that a political party may reimburse the expenses of a presidential candidate engaged in party-building activities without the payments being considered a contribution, and without any unreimbursed expense being counted against the candidate's own expenditure limitations. 11 C.F.R. § 110.8(e)(1). Such payments are permissible only where "[t]he event is a bona fide party event or appearance," and "no aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election." 11 C.F.R. § 110.8(e)(1)(i) and (ii). An event or appearance, however, which occurs during the year of the election for which the individual is a candidate is presumptively for the purpose of influencing that candidate's election. This presumption may be rebutted by showing that the event or appearance at issue was party related. 11 C.F.R. § 110.8(e)(2)(ii) and (iii).

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7. **Committees Conducting Both State and Federal Activity**

Pursuant to 11 C.F.R. § 102.5, political committees, including state party committees, may conduct both state and federal activity. Such committees have two options for conducting both state and federal election activity. They may either establish a federal account, deposit into this account only permissible funds, and conduct all federal election activity from this account. Alternatively, committees may establish a single account composed solely of permissible funds. The Act establishes contribution limitations on contributions from persons and political committees, 2 U.S.C. § 441a, and prohibits contributions from corporations and labor unions. 2 U.S.C. § 441b(a).

IV. THE FACTS

A. Response and Issues Raised by the Responses

1. Allocation Policy

The Bush Committee's Initial Response to the complaint addresses a number of issues, including the method by which certain expenditures were allocated. Attached to the response was a "Statement By the Office of the Vice President" ("the Statement") setting out the general principles and special rules for political travel assertedly applied to the Vice President's travel costs. It states that the United States government paid for wholly official travel and the Vice President's campaign or "other appropriate political entity" paid for his political travel and travel-related expenses. This includes the actual costs of advance work and payments at pre-established rates for the use of

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any government provided transportation and communications. According to the Statement, if questions arose in allocating travel costs, such questions were resolved by charging the political entity more and the government less. The Statement also avers that on wholly political trips the travel costs, lodging and per diems for a small group of personnel needed to assist the Vice President in the performance of his official duties were paid by the Office of the Vice President. All other costs were paid by the campaign or appropriate political entity. Id.

The response also includes an affidavit by Edith E. Holiday, Director of Operations for the Bush Committee ("Holiday Affidavit"). According to the Holiday Affidavit, it was campaign policy that if a trip to a particular city involved any campaign-related event, then the campaign would pay for all travel and accommodations for the Candidate and those traveling for the Committee. Thus, for such trips, the only issues were the allocation of other than travel and accommodations costs.[4] This affidavit also discusses travel not campaign-related, but instead composed of a mix of official travel by Mr. Bush as Vice President, as well as his appearances at party fundraising events. According to the Holiday Affidavit, in an effort to avoid the appearance of impropriety, the political party entity benefiting from Mr. Bush's presence would receive all bills for a trip to a particular city where both non-partisan and party events would

4. These costs were such things as White House communications, ground costs for specific events, and advance costs. These latter costs were to be allocated on a "hard time" basis. Id.

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take place. These costs included "travel, accommodation, advance, and non-specific ground costs for the entire trip."

The Holiday Affidavit also states that because Mr. Bush traveled at all times on government conveyance, the Office of the Vice President, rather than the campaign, processed most of the bills for such trips. Thus, for totally campaign-related trips, the Office of the Vice President was directed to bill the Bush Committee for campaign-related costs. For trips involving both campaign-related and non-campaign related events, the "Office of the Vice President was directed that bills associated with the Vice President's travel and accommodation (based upon the hypothetical trip formula as appropriate) . . . should be presented to the campaign for payment." The campaign was also to receive bills for all other costs associated with campaign-related events and "an allocated portion of the non-specific ground costs of this trip using a hard time formula. . . . The direct costs of non-campaign related party fundraising events which occurred during the trips, and the Republican party entity's proportional share of the non-specific ground costs, were to be billed to the appropriate Republican Party entities by the Office of the Vice President." According to the Holiday Affidavit, it was Committee policy "not to provide campaign personnel to advance non-campaign related trips." Thus, the Holiday Affidavit asserts that the nine specific trips noted at section V.B.1., were advanced by party personnel.

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2. Press Conferences

Many of the itineraries for the sixteen trips questioned in the complaint included a press conference where Mr. Bush allegedly made campaign-related statements. The response states that of the nine non-campaign related trips at issue in the complaint, it was the policy of the Committee that no campaign personnel advance the press conferences, which usually occurred before or after the party fundraising events. Rather, advance work for press conferences was done by party personnel who structured the press conferences, granted press credentials and supervised the press conferences. The response further contends that these press conferences were non-campaign related because in opening statements Mr. Bush did not deal with campaign matters, but rather the reason for being in a certain city. The response argues that the newspaper articles attached to the complaint merely report "the Vice President's answers to press initiated questions," and thus, to the extent the press conferences were campaign activity, they were "incidental contacts" within the meaning of the Commission's Regulations. Consequently, respondents argue these press conferences do not render the trips in which they occurred campaign-related.

The Bush Committee's Second Response restates this position. The Fuller Affidavit states that the Vice President's press conferences were consistent with those held during the course of his vice presidency. Moreover, it asserts that any campaign remarks made at such press conferences were in response to press inquiries. It is undisputed, however, that such press conferences

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were scheduled on all trips but one that the Bush Committee had designated as non-campaign related. As described in greater detail below, the complaint alleges that Mr. Bush's comments at party sponsored press conferences were election-related activity on behalf of Mr. Bush's campaign.[5]

3. Party Fundraisers

The complaint and supplement note Mr. Bush's appearances at numerous "Victory '88" fundraising events.[6] The complaint asserts that it is "highly improbable" the Bush Committee can rebut the Regulations' previously discussed presumption that Mr. Bush's appearances at events held after January 1 in an election year are for the purpose of influencing his election. Complaint at 4. The specific events in question, occurring in various cities across the country between June 30, 1988 and July 24, 1988, are discussed separately at Section V, B. As a preliminary matter, however, the Bush Committee's Initial Response attempts to rebut this presumption by arguing these fundraising events were not

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5. The Bush Committee's Second Response includes materials that may have been distributed during press conferences. These relate to press conferences held in New York, Ohio, Georgia, New Jersey, Texas, Massachusetts, New Mexico, California, Colorado, Illinois, and Pennsylvania. Some excerpts are on the letterhead of the Office of the Vice President. Others are excerpts on the letterhead of the Bush for President Committee. In some instances the same document was released by both groups on their respective letterheads on the same date. These releases are included in the discussion infra of each individual stop.

6. According to the Bush Committee's Second Response, Victory '88 was the name given to the projects by state Republican parties to raise funds for volunteer and other exempt party-building activities during the 1988 election cycle. The "Presidential Trust" was a separate program run by the RNC for the presidential general election.

campaign-related because they were on behalf of party entities and thus "private and closed to the press." The Bush Committee's Second Response indicates that the Vice President was considered to be one of the "principal fund raising draw(s)" for the Republican Party. According to this account,

> It was clearly understood that fundraising events for the RNC or the State Parties were not George Bush for President Campaign events, and that Vice President Bush was present at such party events in his capacity as the party's second highest office holder, and not as a candidate for president. To my knowledge, great care was always taken to ensure that when the Vice President spoke it was in general party building terms, and not about the Presidential campaign.

As discussed below, in most instances, neither the Bush Committee nor the state party committees have provided specific information regarding these fundraising events that serves to rebut the Regulation's presumption.

V. ANALYSIS

A. Legal Framework

Two legal principles are critical to the following analysis. First, as previously noted, the Regulations state that a candidate's appearance at a party fundraiser after January 1 of an election year is presumptively for the purpose of influencing that candidate's election. Furthermore, the Regulations provide that if any campaign activity is conducted at a stop, other than "incidental contacts," travel to such stop is a campaign expense required to be reported by the candidate's committee. Consequently, if this presumption is not rebutted, Mr. Bush's

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appearances at fundraising events would be campaign related, therefore his expenses would be reportable campaign expenses.[7] As a result, travel costs to the cities in which these events were held would be reportable campaign expenses. If his expenses to attend such fundraisers were paid for by party entities, the payment or reimbursement of those expenses would be viewed as contributions to the Bush Committee by these entities. Additionally, costs associated with any other candidate activity, (i.e. press conferences) beyond incidental contacts would be viewed as candidate related expenses.

In the context of these legal principles, the Bush Committee makes two general arguments regarding the regulatory presumption at 11 C.F.R. § 110.1(e). First, in response to the complaint, the Bush Committee argues that these events were party related because they were "private and closed to the press." This statement, however, looks solely to access to the event and ignores the issue of what activities occurred during the event. The Regulations clearly contemplate that both the remarks made and the candidate's activities at such an event are also relevant to the inquiry as to whether an appearance should be considered candidate related. See 11 C.F.R. § 110.8(e)(1)(ii). Moreover, although the Bush Committee's Second Response provides the previously quoted statement in the Alexander Affidavit regarding the content of speeches at such events, as illustrated below, in some instances this statement is inconsistent with the prepared remarks given by

7. This assumes that the event was a bonafide party event under 11 C.F.R. § 110.8(e).

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the Vice President at these events. Additionally, in other instances where no new information has been provided whether or not the event was party building or campaign-related, the previously noted rebuttal is insufficient.

Second, for purported party building events occurring on trips that were said not to contain any campaign activity, the Bush Committee's Initial Response cites as a legal standard for rebuttal the Commission's decision in MUR 1790. They assert that express advocacy and solicitation of contributions constitute election-related activity, with the possibility that the "totality of the circumstances" must also be considered. Without reaching the merits regarding the sufficiency of this standard for rebuttal, respondents' argument fails due to a lack of evidence. Although respondents cite this standard, in most instances they have failed to provide any specific information regarding any of these factors for the events in question.

The Bush Committee's Second Response also provides some information regarding the criteria used by the Office of the Vice President in determining whether or not a trip was campaign-related. According to the Fuller Affidavit this criteria included, but was not limited to:

> who the event was for (campaign, RNC, or State Party);
>
> whether prepared remarks were proposed, and if so whether they mentioned the presidential campaign;

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the nature of the event --(any Presidential campaign connections?); and

the origin of the event (campaign-generated or the result of an outside invitation).

Again, the Bush Committee has not specifically applied this criteria to any of the events in question. Thus, to the extent that this criteria is used for rebuttal, it is also insufficient to rebut the regulatory presumption.

B. Specific Trips Cited In the Complaint

The complaint cites sixteen trips that are alleged to be campaign activity. The Bush Committee's Initial Response divides these trips into three categories. First, thirteen trips are said to involve no campaign events, but rather a mix of official travel and party building at Victory '88 functions. According to the response, either state party committees or the RNC paid for these trips.[8] Second, four trips are categorized as a mix of party building activity and campaign activity conducted by the Bush Committee. These trips are said to be paid for in part by the Bush Committee and in part by the RNC or state parties. Third, three trips are said to have been paid for by the Bush Committee in their entirety. The three categories of trips are discussed separately below, grouped in these categories. The following chart lists the trips in chronological order with the purpose(s)

8. As previously noted, an affidavit attached to the Initial Response states that because some party building activity was said to have occurred on these trips, the costs allocable to the Office of the Vice President were paid for by the RNC.

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of the trip (official/party/campaign) provided by the Bush Committee.

	Date	Destination	Purpose(s)
1.	06/22	Louisville, KY	Campaign
2.	06/24	Cincinnati OH	Campaign
3.	06/26	Columbus, OH	Party/Campaign
4.	06/30	New York, NY	Official/Party
5.	07/04	St. Louis, MO	Campaign
6.	07/06	Dallas, TX	Party/Campaign
7.	07/07	Boston, MA	Official/Party
8.	07/08	Atlanta, GA	Party/Campaign
9.	07/20	Warren and Bloomfield Hills, MI	Official/Party
10.	07/21	Charlotte, NC	Party
11.	07/21	Greenville, SC	Party
12.	07/22	Milwaukee, WI	Party
13.	07/22	Point Pleasant, NJ	Official/Party
14.	07/23	Memphis, TN	Official/Party
15.	07/23	Tampa, FL	Official/Party
16.	07/24	Albuquerque, NM	Party/Campaign

1. Travel Said To Be Entirely Non-Campaign Related

i. New York, New York - June 30, 1988

The complaint alleges that events held in New York City on June 30, 1988, were campaign events. Respondents deny this is the case. The schedule attached to the Initial Response indicates Mr. Bush attended a meeting with the New York Times Editorial Board, a Presidential Trust VIP Reception and a Presidential Trust VIP Luncheon (collectively "the fundraiser"), and a private meeting and address to the National Organization of Black Law Enforcement Executives. According to the newspaper account included with the complaint, the cost of the trip was shared by the RNC and the Vice President's Office, the former because the fundraiser was sponsored by the party and the latter because the Vice President's appearance before the law enforcement executives

was considered official business.[9]

Regarding the New York City event, respondents have submitted a copy of the Vice President's prepared text. However, merely providing the prepared text of the speech does not in and of itself rebut the Regulations' presumption at § 110.8(e). For example, respondents have not demonstrated that the solicitation for the event or the setting of the event was not for the purposes of influencing the Candidate's election.

ii. Boston, Massachusetts - July 7, 1988

The complaint further alleges that Mr. Bush's visit to Boston on July 7, 1988, was campaign-related activity. The Initial Response includes this trip with those asserted to be non-campaign related. As such, the Bush Committee asserts that the cost of the trip was paid by the national or state party entities. The daily schedule attached to the response shows that Mr. Bush's visit to Boston included the following events: a press conference, a meeting with Cardinal Law, a Victory '88 Reception, a meeting with Archbishop Iakovos, a meeting with "Greek leaders," a reception for dais guests, and the Greek Orthodox Archdiocese dinner.

As an initial matter, respondents have failed to present any

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9. At the time of Mr. Bush's June 30, 1988, trip to New York City, the Democratic convention was three weeks away. As of that date, the Bush Committee reported spending $22,107,000 of its $23,050,000 primary spending limitation. At that point, the state primaries were concluded and news reports at that time indicated that the Vice President had appeared to have received sufficient delegate support to secure the nomination. Press reports also indicated that the Bush Committee was trying to keep the candidate visible in the face of the high profile of the Democratic front-runner Michael Dukakis, who then was also the obvious nominee of his party.

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evidence rebutting the regulatory presumption that the Victory '88 fundraiser was for the purpose of furthering Mr. Bush's candidacy. Pursuant to that presumption, therefore, the fundraiser is considered candidate related and travel to Boston is considered an candidate expense.

Other events in Boston on that day also may have been candidate related. For example, according to news articles attached to the complaint, Mr. Bush attended a press conference paid for by either the RNC or the Massachusetts Republican State Committee.[10] At that event, Mr. Bush offered a list of issues on which he differed from the obvious Democratic nominee, Michael Dukakis. The Vice-President also allegedly criticized Mr. Dukakis' proposed "Conventional Defense Initiative." See Complaint at Exhibit 10. According to the article, "the Bush campaign also distributed to reporters today material challenging Dukakis' record on economics, prison furloughs, welfare and education," and "New Hampshire Gov. John H. Sununu (R), a leading Bush surrogate, willingly stepped to the podium to toss darts at Dukakis...." Id.

As previously discussed, respondents argue that the press

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10. The Bush Committee does not explicitly characterize the press conferences as either official events, or as party building events. Nonetheless, because of the connection between these conferences and the party fundraisers in most cities, and in view of the national and/or state parties' apparent payments for and orchestration of them, these press conferences may be party events and thus presumptively campaign-related under 11 C.F.R. § 110.8(e)(2). Thus, to the extent these press conferences are sponsored by political parties, it is doubtful that any campaign related activity can be considered "incidental contacts" within the purview of the Regulatory exception.

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conferences noted in the complaint are "incidental contacts." However, Mr. Bush's comparisons to Michael Dukakis, coupled with the appearance of a second person criticizing Governor Dukakis, and the alleged distribution by staff of campaign materials, suggest that this press event was beyond an "incidental contact" and was candidate related.

iii. **Warren and Bloomfield Hills, Michigan - July 20, 1988**

Vice President Bush visited Michigan on July 20, the third day of the Democratic convention, during which Michael Dukakis' name was placed in nomination and two days after Texas Treasurer Ann Richards' speech critical of Mr. Bush. The daily schedule provided by respondents for this date cites the following events attended by Mr. Bush: Captive Nations Welcome, Media Interviews, Staff Photo with Captive Nations Leadership, Captive Nations Banquet, and Victory '88 Dinner.

Because no specific information was presented rebutting the presumption that the Victory '88 political fundraiser was campaign-related, the Regulations require that this event be considered campaign-related. Accordingly, travel to Michigan is a reportable election expense.[11]

In addition to the issue of the political fundraiser, evidence in the complaint suggests the press conference held in that city (referred to as "media interviews" by the Bush

11. During this stop Mr. Bush also made a speech at a Captive Nations Banquet. In light of his remarks at the event, this aspect of the trip does not appear to have been candidate related.

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Committee) was also campaign-related. This press conference was apparently prearranged by either the RNC or the Michigan Republican State Party. According to press accounts attached to the complaint, Mr. Bush referred to the Democratic Convention, and stated with regard to Texas Treasurer Ann Richards, "I employed 400 people in her state, my state, I'll carry Texas." Complaint at Exhibit 12. Mr. Bush allegedly referred to Ms. Richards "several times" during the news conference, noting he had allegedly voted more times in Texas than had Richards. Mr. Bush's prediction that he would "carry Texas," and his references to Ms. Richards are evidence that the remarks at the press conference went beyond incidental contacts and appear to be candidate related.

iv. Charlotte, North Carolina,
- July 21, 1988

The daily schedule for this visit provided by the Committee lists "Press Availability,[12] Victory '88 Luncheon [and] Media Interview" as the events planned. Regarding the fundraising event, once again respondents have not provided any specific information rebutting the presumption that this event was an election expenditure. In the absence of a rebuttal, this fundraiser must be considered candidate related and the cost of travel to this stop must be considered to be a candidate expense.

The press conference held in that city is described in a

12. Respondents apparently use the term "press availability" interchangeably with "press conference".

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news article attached to the complaint as part of a "a campaign swing to the Carolinas." Complaint at Exhibit 13. Respondents have not specifically identified which party entity paid for this event. The article quotes Mr. Bush on the question of unity or disunity at the ongoing Democratic Convention as saying: "But that's got nothing to do with me .... My business is to take on Michael Dukakis." Id. Mr. Bush's references to his opponent, at an event paid for by a party committee, raises the inference that this press conference was beyond an "incidental contact" and was campaign-related.

v. Greenville, South Carolina, - July 21, 1988

Mr. Bush traveled to Greenville, South Carolina on the final day of the Democratic Convention and the day of the Michael Dukakis's address to that body. The daily schedule for Mr. Bush's visit includes a "Press Availability," Victory '88 Reception, and Victory '88 Dinner. Respondents' initial response did not refute the reported statement of the executive director of the state Republican Party that the fundraising events would raise money "to be used to aid the Bush campaign in the state." Complaint at 13. Furthermore, respondents have not presented any specific information rebutting the Regulations' presumption that the Victory '88 fundraising events were campaign-related. Therefore, pursuant to 11 C.F.R. § 110.8(e), the fundraiser must be considered candidate related, and the travel costs to this city are reportable campaign expenditures.

This trip also included a news conference. The complaint

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states that "[a]t an airport news conference, Mr. Bush indicated his intention to spell out the differences between himself and Governor Dukakis on a range of issues. And South Carolina Governor Carroll Campbell, who accompanied Mr. Bush, specifically attacked Governor Dukakis by name." Id.[13] Respondents did not address this particular aspect of the complaint. Therefore, given this alleged discussion of campaign strategy and partisan attacks, this press conference appears to go beyond incidental contacts.

vi. Milwaukee, Wisconsin,
- July 22, 1988

On July 22, 1988, the day following Michael Dukakis' address to the Democratic Convention, Vice President Bush traveled to Milwaukee, Wisconsin. The daily schedule for Mr. Bush on this date included a Press Availability, a "Tour, Briefing and Breakfast with Italian Community Center Officers and Volunteers" and a Victory '88 Luncheon. Once again, respondents have not provided any specific information to rebut the regulatory presumption that the luncheon fundraiser was campaign-related. Consequently, it is considered a reportable expense. Again, travel costs to this state would also be a reportable campaign expense.

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13. The news article attached to the complaint at Exhibit 14 cites an airport meeting with the press, but does not quote Governor Campbell. At that meeting, the article states, Mr. Bush "said he was confident he would win his home state of Texas and expressed his intention to focus on the differences between himself and Mr. Dukakis." This account also quotes Mr. Bush as stating that the trip was party building activity for the party and not a campaign event.

Mr. Bush also appeared at a press conference in this city. News accounts indicated Mr. Bush stated "that he and his GOP surrogates will travel the country detailing Dukakis' record, including his support of federal gun control, his opposition to the death penalty and his veto of a bill passed by the Massachusetts legislature to require the recitation of the Pledge of Allegiance in schools." Complaint at Exhibit 15. This apparent statement of campaign strategy and its focus on campaign issues at a party sponsored news conference appears to go beyond an incidental contact, and transforms this into a campaign event.

vii. Point Pleasant, New Jersey;
Bay Head, New Jersey
- July 22, 1988

Mr. Bush's official schedule for later on July 22 included a "statement" at Jenkinson Beach South, Point Pleasant, New Jersey, a "press availability" at that site, and a Victory '88 Dinner at Bay Head, New Jersey. Once more, the initial response fails to provide any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Consequently, consistent with the Regulations' presumption, this event must be considered for the purpose of influencing Mr. Bush's election. In that event, travel to New Jersey would be a reportable expense by the Bush Committee.

The Bush Committee's most recent response includes a copy of the Vice President's opening statement at the Point Pleasant event that discusses the environment and medical waste. As the

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Bush Committee notes, the opening statement does not contain any specific election-related remarks. However, press reports quote Mr. Bush as stating during the news conference that he would "be a good president for the environment." Complaint at Exhibit 16. He also allegedly discussed Michael Dukakis' acceptance speech at the Democratic Convention and stated his intention to ensure that Dukakis be perceived by the voters "for what he really is." Id. Although the Bush Committee has responded generally that any campaign responses made at press conferences were the result of direct press questions, no information was provided for the specific New Jersey event. Also, respondents have not provided any information regarding surrogate activity or on the distribution of literature at the press conference. Therefore the respondents have not rebutted the presumption at section 110.8(e).

viii. Memphis, Tennessee - July 23, 1988

On July 23, 1988, on the second day following the Democratic convention, Mr. Bush appeared in Memphis, Tennessee. There he attended a briefing on the Mississippi River, a "press availability," and a Victory '88 Luncheon. Once again, respondents have not presented any specific information to rebut the presumption that the Victory '88 political fundraiser was campaign-related. Thus, the costs of the political fundraiser are reportable expenditures. It follows that the cost of the travel to this stop also would be a reportable expense.

The press account attached to the complaint indicates that the briefing and press availability took place on the banks of

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the Mississippi River where Mr. Bush heard from the Coast Guard, the Corps of Engineers and the Memphis State Center for River Studies on efforts to keep the river open to traffic despite a drought. During the "press availability" after the briefing, Mr. Bush allegedly discussed the presidential campaign. He is quoted as stating that he disagreed with Dukakis on the issue that competence, not ideology, matters noting "I think I'm very competent ... but ideology matters. Do you want to set the country back to the very liberal policies that have failed?" Mr. Bush was then said to have discussed his campaign strategy, noting "I will have as a personal assignment, trying to be sure the American people ... know the differences in ideology." Again, these comments regarding campaign strategy, at a press function planned by party entities, seem to go beyond "incidental contacts." Thus, there is a second basis for determining that the cost of this trip should be reported as a campaign expense.

ix. Tampa, Florida - July 23 and 24, 1988

The last of these purported non-campaign trips noted in the complaint occurred in Tampa, Florida, on July 23 and 24, 1988. The schedule included a "press availability," a National Airborne Law Enforcement staff photo, a National Airborne Law Enforcement Banquet, and a Victory '88 Reception. Once again, Respondents have not provided any specific information to rebut the Regulations' presumption that the fundraiser was a campaign appearance by Mr. Bush. Therefore, pursuant to 11 C.F.R. § 110.8(e), this event is considered candidate related.

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Moreover, because campaign activity was conducted at this stop, travel to Tampa is considered a reportable expense.

The complaint alleges that at the press conference, Vice President Bush pointed to differences between Governor Dukakis and Senator Bentsen and suggested the Democrats' show of unity in Atlanta was illusory. However, the complaint makes only this general allegation and has not provided any specific documentation supporting this allegation. Thus, it is unclear whether costs associated with the press conference were reportable campaign expenditures.

2. Travel Paid By the Bush Committee and Other Entities

The Bush Committee's Initial Response states that four of the trips cited in the complaint were, in fact, campaign-related and all travel costs, and most other costs associated with these trips, have been allocated to the campaign. The response notes, however, that each of these trips "also included an event on behalf of another political entity." The costs of these other events (as well as unspecified ground related services said to be paid by White House Communications) were paid by the "sponsoring political entity." [14] Each of these trips is discussed below.

14. Respondents have not in all instances identified this sponsoring entity.

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i. Cincinnati, Ohio - June 24, 1988

This trip included a press conference, a GOP Women Leadership meeting, a "Victory 88" Major Donor Reception, a meeting with "Agriculture Leaders," a Key GOP Regional Leaders meeting, a "Victory though Unity in 88" Rally, and a "Victory 88" Fundraising Dinner. The response states that the Bush Committee would be billed for all costs associated with all events (including travel) except for the Victory 88 functions. These latter two events were to be paid for by the RNC.

Regarding the fundraising events at this stop, respondents initially stated as a rebuttal to the Regulations' presumption that the events were "private and closed to the press," without specifically addressing any particular fundraising event.

The Bush Committee's Second Response, however, includes a press release on its own letterhead of excerpts of remarks made by the Vice Republican President at the Victory '88 Dinner.[15] Moreover, a review of these remarks indicates that this event was candidate related.

For example, in the excerpts, the Vice President is quoted stating that he wanted to use the presidential campaign to "talk about the fundamental differences between our party and our opponents." Mr. Bush then specifically juxtaposes his stands on such issues as taxes, industrial policy, foreign policy, drugs, the death penalty, crime, and the pledge of allegiance with

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15. This document actually refers to a "Republican Unity Dinner". Because the Vice President's schedule for this day included only one dinner, these remarks apparently were delivered at this event.

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those of Michael Dukakis, the likely Democratic nominee. Moreover, Mr. Bush also criticized the Massachusetts prison furlough program and proclaimed his desire to be the "education president". Thus, these remarks do not rebut the Regulations' presumption that this fundraiser is a campaign event. In fact, the election related content of these remarks actually buttress the Regulations' presumption that this event was for the purpose of influencing Mr. Bush's election.[16] Thus, the costs of these events, and travel to this stop, would be reportable campaign expenses.

ii. Dallas, Texas - July 6, 1988

Mr. Bush traveled to Dallas, Texas, on this date. The Bush Committee's Initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin Citizens.[17] That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was

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16. Because this event is said to have been paid for by the RNC violations by the state party committee are not implicated by this trip. As discussed at section 3.ii.,the Ohio state party may have made other expenditures on behalf of the Bush Committee during the Vice President's June 26, 1988 visit to Columbus.

17. The Bush Committee provided excerpts of these remarks that presumably were distributed at a press conference. Two such releases were apparently made; one on the letterhead of the Office of the Vice President and the other on the letterhead of the George Bush for President Committee.

a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

iii. Atlanta, Georgia - July 8, 1988

Mr. Bush's schedule for Atlanta, Georgia, included the following events: 1) a press conference, 2) a GOP-Victory '88 Southern Steering Committee Reception, 3) a Victory '88 Meeting with Southern Leadership, 4) a Victory through Unity in 1988 Rally, 5) a Victory '88 Fundraising Reception, and 6) a Victory '88 Fundraising Dinner. The Initial Response concedes that most of these activities were campaign related, but asserts that the Georgia Republican Party sponsored the "fundraising reception and dinner". The Georgia Republican Party also submitted a substantive response in this matter confirming that it paid for the following events: "(i) a Victory '88- Georgia 'Unity' reception... and (ii) a private Victory '88 - Georgia dinner and

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fundraiser."[18] The Georgia Republican Party indicates other events in that city were paid for by the Bush Committee.

The Bush Committee's Initial Response argues that "[t]hese events were private and closed to the press, and the Vice President's participation was not campaign-related but rather for the purpose of assisting the Georgia State Party." The Georgia State Party further asserts that the fundraiser was paid from its federal account and that neither event featured "any presidential type activities." The invitation to this event notes it is a "Victory '88 Georgia" event. As discussed below though, other information supports the regulatory presumption.

As an initial matter, the state party admits receiving assistance "from the Bush Campaign in Georgia" in staging its Victory '88 events. Thus, there is some evidence suggesting the involvement of the campaign in the event. Additionally, the Bush Committee's Second Response includes a press release entitled "Excerpts of Remarks for Vice President Bush Victory '88 Atlanta, Georgia, Friday, July 8, 1988".[19] It is unclear whether these remarks were delivered at the Southern Leadership Victory '88 rallies paid for by the Bush Committee as campaign events, or whether these remarks were delivered at the purported party building events. The remarks, however, do appear to be

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18. Although the responses name the events differently, it appears the state party paid for the events (5) and (6) above and that the Bush Committee paid for the events 1 through 4 above.

19. An identical press release on the letterhead of the Office of the Vice President was also provided.

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candidate related. For example, the Vice President contrasts his positions on taxes, foreign policy, the death penalty, and the pledge of allegiance with those of the obvious Democratic nominee. The Vice President notes that these two issues present "two fundamentally opposed views of what America is and what America should be." If these statements were made at the alleged party building event, they would buttress, and not rebut, the regulatory presumption that the event was for the purpose of influencing the candidate's election. In light of the outstanding question of fact and in view of evidence of the State Party's admitted coordination with the Bush Committee, it appears that these may have been campaign events.

Additionally, the responses do not identify the party entity paying for the news conference. As previously noted, the Bush Committee admits that certain excerpts of the Vice President's Victory '88 speech may have been distributed at this event. Moreover, news accounts attached to the complaint state Mr. Bush criticized Governor Dukakis' military policy, charging the Governor would "give away the store" to the Soviets. Complaint at Exhibit 11. The apparent candidate related contents of this statement at a party sponsored event is evidence that the news conference may have been a reportable election expenditure.

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iv. Albuquerque, New Mexico - July 24, 1988

On July 24, 1988, Mr. Bush addressed the National Convention of the National Federation of Business and Women's Clubs, held a meeting with Hispanic Leaders, and attended a political fundraiser.[20] According to the Bush Committee's Initial Response, while "the Committee is expecting to be billed for all non-governmental costs" associated with the address and the meeting, the Republican Party of New Mexico "will be responsible for whatever non-governmental costs are to be billed in connection with [Mr. Bush's] presence at a New Mexico State Party fundraising brunch."

The New Mexico Republican State Committee also submitted two substantive responses in this matter. Respondents assert that the Vice President appeared at a reception for 140 invited guests who paid $500 per person to attend. All disbursements for this event were from the state party's federal account and all proceeds from the event were deposited into this account.

Regarding the event in question, the New Mexico State Party asserts that the event was closed to the public and press and that "no aspect of the setting of the event was for the purpose of influencing the candidate's campaign." Noting that the complaint fails to allege that Mr. Bush engaged in express

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20. Two press releases of the Vice President's remarks at the first event were included with the Bush Committee's Second Response. One release is on the letterhead of the Office of the Vice President, the other is on the letterhead of the Bush Committee. A "Fact Sheet" discussing the Vice President's proposals was also apparently distributed on campaign letterhead.

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advocacy or solicitation of funds, the response asserts that the Vice President's "remarks and conduct at the event addressed only the general course of the Republican Party" and did not include any solicitation for campaign funds by Mr. Bush. This response further notes that the invitations for the event "make clear" that the event was paid for by the state party which was to receive the proceeds from the event.

Respondents have not produced any copies of the remarks made by the Vice President at this event. Other evidence produced by respondents, however, indicates that the event may have been related to the Candidate's election rather than party building activity. For example, the invitation indicates that the event is a "Reception for Vice President George Bush." Moreover, although noting that the event is paid for by the state party, the invitation on its face fails to mention any party building activity whatsoever. More importantly, the invitation specifically addresses the election of Mr. Bush by including a check off option that states: "We are unable to attend, enclosed is our contribution to ensure the election of George Bush as our new President". Thus, it appears these events may be campaign related.

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3. Travel Formerly Said To Be Paid for Entirely by the Campaign

The Bush Committee's Initial response response in this matter also asserted that "[A]ll the non-government costs of the [certain other] trips cited in the complaint... were paid for entirely by the campaign."[21] The previous General Counsel's report relied upon this representation, concluding that no violations of the Act appeared to have emanated from these trips. However, an analysis of the Bush Committee's most recent response undercuts this representation as to two of the trips in question. The Commission's conclusion regarding a July 4, 1988 trip to St. Louis, Missouri remains unchanged.

i. Louisville, Kentucky - June 22, 1988.

The Vice President's schedule indicates that while in this city Mr. Bush addressed the National Sheriff's Association, attended a Victory '88 Lunch, and granted a media interview. The Bush Committee previously stated that it would be billed for all non-governmental costs associated with this trip, indicating the trip was campaign related. Respondents further asserted that "[n]o political entity other than the campaign was responsible for any expenses during any of three trips". This statement, however, is inconsistent with respondents' representation in the Second Response that the state party committees or the RNC paid for all Victory '88 functions. Consequently, based upon the responses, it appears the Kentucky State Party or the RNC may have sponsored the

21. There are: Louisville, Kentucky, on June 22, 1988; Columbus, Ohio, on June 26, 1988, and St. Louis, Missouri, on July 4, 1988.

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Victory '88 event in question. Because of the Regulatory presumption, in the absence of a rebuttal, this event must be considered a campaign event on behalf of the Bush Committee.

ii. Columbus, Ohio - June 26, 1988

A similar situation is presented by the Vice President's trip to Columbus, Ohio on June 26, 1988. As indicated by the Vice President's schedule, Mr. Bush attended a Victory '88 fundraising brunch. As discussed above, although the Bush Committee initially stated it had made all payments towards this trip, this statement is inconsistent with its representation that all Victory '88 functions were paid for by the RNC or the state party committees. Consequently, Mr. Bush's appearance at a fundraising event in an election year, in the absence of a rebuttal, must be considered an event for the purpose of influencing his election. It follows that travel to this city must also be paid by the Bush Committee.

C. STATE PARTY COMMITTEES NAMED IN THE SUPPLEMENT

The supplement to the complaint indicates that other state party committees may have engaged in party building activity that were, in fact, for the purpose of influencing the presidential elections.[22] Rather than responding substantively, respondents submitted motions requesting that the Commission dismiss this matter as to them. Although the Commission denied these motions, respondents generally chose not to submit substantive responses. Consequently, the analyses of the possible violations of these respondents looks to the allegations and evidence contained in the

22. These are the Republican state parties of Illinois, Colorado, California, Texas, Maryland, and Pennsylvania.

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supplement, as well as evidence submitted by the Bush Committee. Six state party committees are implicated by the allegations in the supplement. Eight different trips are involved.[23] The Bush Committee divides these trips into three different categories; trips that are said not to be campaign related, trips that are said to be campaign related in part, and trips that are admitted to be campaign related. Each category is discussed separately below.

1. Travel Said to be Entirely Non-Campaign Related

i. Baltimore, Maryland - July 14, 1988

The supplement alleges that the Vice President's trip to Baltimore to address a GOP party fundraiser was in fact a campaign related event. According to the schedule provided by the Bush Committee, this was the only event attended by Mr. Bush in that city on that day. The Bush Committee asserts that this event was a fundraiser for the state party and not a campaign event.

In this instance it is clear that the Vice President attended a fundraiser in an election year. Consistent with the previously noted regulatory presumption, such an appearance is considered a campaign event unless the presumption is rebutted. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this

23. The supplement notes three trips made to California.

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event, including travel, would be considered reportable campaign expenses.

ii. Erie, Pittsburgh, and Philadelphia, Pennsylvania - August 9, 1988

The supplement alleges that the Vice President "made a variety of campaign appearances with a law enforcement group, at a Polish Cultural Center, and with Cardinal Krol, the former Catholic Archbishop of Philadelphia. Supplement at 4. According to the schedule provided by the Bush Committee, the Vice President also addressed the 30th Annual Convention of the Fraternal Order of Police in Erie, and attended Victory '88 functions in both Pittsburgh and Philadelphia. Regarding the two fundraising events, because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

2. Travel Said to Be Campaign Related In Part

i. Los Angeles, Ontario, and Compton, California, June 5, 6, and 7, 1988, and San Francisco, June 28 and 29, 1988

The supplement notes travel by the Vice President to California during this three day period and indicates that he conducted campaign activity between June 5 and 7. See Supplement at A, 1-2. The supplement further alleges that the Vice President attended a GOP fundraiser in this state on June 28 and June 29. Id. at 2. The Bush Committee's Second Response does not dispute

that some campaign activity was conducted on these trips. It asserts, however, that a Presidential Trust dinner and reception held in Los Angeles on June 5th, a San Bernardino Fundraising Dinner held on June 6th, and a Los Angeles and Compton "receptions" were all fundraisers for the California Republican State Party and thus not campaign related. Similarly, its response asserts that a Victory '88 reception and dinner held in San Francisco later that month was also a fundraising event and not for the purpose of influencing Mr. Bush's election. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting this presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[24]

ii. Houston, Texas - June 9, 1988

The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts

24. The response of the California Republican State Party includes a list of payments made by it to the Treasurer of the United States for costs incurred for the San Francisco leg of the latter trip.

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that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committees (i.e., the state party convention and possibly the address to the Hispanic group). Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.[25]

iii. Denver Colorado - June 10, 1988

The supplement alleges that Mr. Bush's appearance at a Republican Unity dinner was a reportable campaign event. See Supplement at A, 1. The Bush Committee's Second Response indicates that the Vice President attended a Victory '88 Dinner in Denver on June 10, 1990. (Att. 2, 99) The Bush Committee argues the event was party building and not campaign related.

This response also includes a press release entitled "Excerpts of Remarks of Vice President George Bush Victory '88 Unity Dinner Denver Colorado Friday, June 10, 1988." These remarks are on the letterhead of the Office of the Vice President. A review of these remarks indicate the speech was candidate

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25. Two months later, according to the Bush Committee's most recent response, a Victory '88 event was held in Corpus Christi on August 9, 1988. (Att. 2, 95) No further information is presented.

related. For example, discussing the upcoming general election campaign, the speech notes that two different versions of America are being offered by Mr. Bush and Governor Dukakis. Mr. Bush states that "let Governor Dukasis tell what is wrong, I will do the talking about what is right". The speech further criticizes Mr. Dukasis regarding alleged tax increases in Massachusetts, criticizes the Democratic nominee's foreign policy plans, and cites his opposition to the death penalty, and in each instance setting forth affirmatively Mr. Bush's opposite position on such issues. The speech ends with a call to action to those listening:

> You are my surrogates. Will you help me get the word out? If we work together hard, undaunted, and undiscouraged, then we will win.
>
> The choice could not be clearer, nor the outcome more important. I'm going to give this race everything that I've got. I'm a fighter and I look forward to the fray. I'm going to lay out these issues and define these differences and take our case to every corner of the country.
>
> If you can help me, get out there.... because if you do, our vision will prevail -- and our progress will continue.

This speech constitutes candidate related activity that is not rebutted by a showing that the press was excluded and the audience was composed of invited Republicans. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event,

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including travel, would be considered reportable campaign expenses.

3. Travel said to Be Entirely Campaign related
i. Springfield Illinois - June 18, 1988

The supplement also alleges that a trip to Springfield Illinois on June 18, 1988 was for the purpose of influencing Mr. Bush's election. The Bush Committee's Second Response does not dispute this characterization, asserting that the Committee has considered this to be campaign related. However, the Vice President's Schedule indicates Mr. Bush attended a GOP state convention and a Victory '88 reception. As previously noted, the Bush Committee maintains all Victory '88 functions were sponsored by state party entities. Thus, it appears that the Candidate may have appeared at events paid for by either the Illinois Republican State Party Committee or the Republican National Committee. Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

VI. VIOLATIONS OF THE ACT

As discussed above, for thirteen of the trips noted in the complaint, and eight trips noted in the supplement, it appears that costs of campaign activity may have been paid for by entities other than the Candidate's committee. In that event, a number of possible violations of the Act may have occurred.

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As discussed above, the state parties may have exceeded their limitation at 2 U.S.C. § 441a(a)(2)(A). Moreover, because these expenditures appear to be related to the primary election, the RNC would be without its section 441a(d) limitation for the general election. Thus, its spending would exceed the Act's $5,000 contribution limitation at 2 U.S.C. § 441a(a)(2)(A). Additionally, possible violations of 11 C.F.R. § 102.5 and 2 U.S.C. § 441b(a) by the noted state parties and the RNC are also implicated. Specifically, it appears these entities may have paid for campaign related activities from accounts containing impermissible funds.[26]

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26. Because North Carolina law prohibits corporate and union funds, reason to believe determinations are made only as to violations of 11 C.F.R. § 102.5 against the North Carolina Republican State Party. Additionally, because the state parties of Georgia and New Mexico assert that the Victory '88 events were paid for out of their federal accounts, and that the proceeds from the events were deposited into these accounts, reason to believe determinations are made regarding only 2 U.S.C. § 441a(a)(2)(A).

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WRITER'S DIRECT DIAL (615)

May 6, 1991

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Honorable John Warren McGarry
Chairman, Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667 - Tennessee Republican Party Federal Election Account Victory '88 and Robert C. Brannon, as Treasurer

Dear Chairman McGarry:

Receipt is acknowledged of your letter to me of April 25, 1991 and enclosures. Apparently, these were sent to me because I originally was the attorney for the respondents Tennessee Republican Party and Robert C. Brannon in this proceeding. However, in 1990 I withdrew and was replaced by William R. Baker, Esq. of Ashland City, Tennessee. Therefore, you should serve on Mr. Baker your letter, subpoena, order to answer questions and other papers.

Respectfully Yours,

Maclin P. Davis, Jr.

Maclin P. Davis, Jr.

MPD/mn
cc: William R. Baker, Esq.
Honorable Tommy Hopper
Mr. Robert C. Brannon
Benjamin L. Ginsberg, Esq.

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EGC 1117

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 13 PM 4:58

May 13, 1991

John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667
Republican National Committee
and William J. McManus, as
treasurer

Dear Mr. Chairman:

Attached please find a Motion to Quash the subpoena issued to the Respondent by the Commission in the above-captioned Matter, and a Memorandum in Support of Motion to Quash, which set forth our reasons for this petition.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Enclosures (2)

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Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

In the matter of

Republican National Committee	)	
and William J. McManus,	)	MUR 2667
as treasurer	)	

MOTION TO QUASH

The Republican National Committee and William J. McManus, as treasurer ("RNC"), hereby petitions the Federal Election Commission to quash the subpoena issued to the RNC by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Benjamin L. Ginsberg

May 13, 1991

Janice P. Lacy

9604313376

In the matter of

Republican National Committee	)	
and William J. McManus,	)	MUR 2667
as treasurer	)	

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

The Republican National Committee and William J. McManus, as treasurer ("RNC"), respectfully petition the Commission according to 11 C.F.R. § 111.15(a) to grant the RNC's Motion to Quash the subpoena issued to it by the Commission in the above-captioned Matter. The subpoena arises from an enforcement action which is proceeding in violation of 2 U.S.C. § 437g(a)(1) due to the Commission's failure to timely notify the RNC of the underlying complaint in this Matter. The Commission's violation of law in waiting 19 months before notifying the RNC of the complaint, compounded by the Commission's failure to issue this subpoena for nearly another year, have deprived the RNC of its due process rights, most notably, the opportunity to respond to the complaint and subpoena with timely information.

I. The Subpoena Arises from an Improper Enforcement Proceeding.

The Commission has forfeited its right to investigate the RNC because of its egregious delay in processing the underlying complaint. As the RNC previously stated to the Commission in its submission dated June 29, 1990, the Commission acted in direct violation of 2 U.S.C. § 437g(a)(1) of the Federal Election Campaign Act (Act), which mandates that the Commission notify respondents "within 5 days after receipt of a complaint," by notifying the RNC of the complaint not five days, but 19 months after reciept of the underlying complaint. By willfully ignoring this Congressionally-mandated procedure, the Commission has effectively waived its ability to act under its authorizing statute. This deviation from the plain requirements of the Act is such a harmful and irreversible error of due process that it necessarily bars any further administrative proceedings by the Commission in this Matter as to the RNC, including the issuance of this subpoena.

II. The Subpoena Violates the RNC's Due Process Rights.

Not only has the RNC suffered injury from the Commission's failure to notify the RNC of the complaint in a timely manner, but the RNC continues to be injured by the Commission's delay in administering this Matter. The Commission waited virtually another year to issue this subpoena to the RNC; its delay, when added to the failure of the Commission to notify the RNC of the complaint for 19 months, has resulted in the passage of nearly three years since the complaint was filed. Incredibly, the Commission waited three months following its reason to believe finding before this subpoena was served on the RNC.

This passage of time irreparably harms the RNC by depriving it of the opportunity to provide a fair and adequate response to the subpoena based on timely information. Because some personnel work at the RNC through only one or two election cycles, those people with knowledge of events from 1988 have in many cases long ago left. Even if the relevant people are still RNC personnel, their recollection of specific instances from 1988 will have faded. For these reasons, the subpoena is patently unfair because the events in question can never adequately be reconstructed nearly three years after the fact, especially with the specificity requested by the subpoena. For example, the subpoena asks for the 1988 thought processes of particular people (*e.g.*, "list the criteria used in making this determination", Questions 1, 7, 15, 21). As a practical matter, even if the RNC could identify these relevant people, it will likely be nearly impossible to reconstruct "the criteria" for a "determination" made three years ago.

The subpoena's questions also are impractical in their request for minutiae from 1988. It is naive to assume that a political committee like the RNC can identify each person who communicated with a fundraiser's sponsoring committee or with the Bush Committee in 1988, let alone "specify the content of each such communication." Questions 3, 9, 14, 17, 23, 28. Other questions are just as unreasonable: "identify each stop in which a press conference was held," Questions 4, 10, 18, 24; "[f]or each press conference, identify the person(s) advancing the press conference," id.; "[f]or each such press conference identify all persons making press statements or responding to press questions," Questions 5, 11, 19, 25; "[f]or each such press conference, state whether materials were distributed to the press," Questions 6, 12, 20, 26. This specific information is typically not retained by staff people who are working in the crush of a Presidential election year; the questions are even more inappropriate given that the Commission poses these questions nearly three years later, due to its own administrative error.

The records requested by the subpoena are, in many cases, no longer available, since these records are not required to be retained by the Act, and would most likely have been of no use to the RNC after 1988. The subpoena's document requests do not take into account the types of documents and materials political committees keep after the completion of a campaign. *See, e.g.*, requests for fundraiser invitations, Document Request 1; press releases, "materials distributed to the press" and "statements issed by the Vice President," Questions 6, 12, 20, 26, and Document Request 3; all speeches given by any person other than then-Vice President Bush at any fundraiser, Document Request 3; "[a]ll documents distributed at the press conferences . . ., indicating on each document the press conference where it was distributed," Document Request 2; "[c]opies of all itineraries, correspondence, memoranda, and other documents relating to the trips," Document Request 4. There is no requirement that the RNC, or any other entity, keep these kinds of materials. In any event, it is possible that three years ago such materials could have been located; however, as the 1988 election year ended and the RNC turned its attention to upcoming campaigns, it would have little need to keep these materials.

III. Conclusion

Compliance with the subpoena would require new RNC personnel to engage in a futile attempt to interpret aged data, reconstruct events in which they took no part or played only a minimal role, and spend valuable time searching through the RNC files and warehouse for materials which, in most cases, will never be found. These fruitless attempts would respond to an agency action which, from the start, has blatently violated the Federal Election Campaign Act. The Commission's flagrant disregard for acting promptly -- both in notifying the RNC of the complaint and issuing this subpoena -- has so prejudiced this proceeding that a fair hearing is unattainable. For these reasons, the RNC respectfully requests the Commission to grant the

accompanying Motion to Quash the subpoena issued by the Commission to the Republican National Committee, who makes this petition without waiving any procedural rights.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

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OGC 1118

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

91 MAY 13 PM 4:59

May 13, 1991

John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667
Republican Party of Kentucky and
Larry J. Steinberg, as treasurer

Dear Mr. Chairman:

Attached please find a Motion to Quash the subpoena issued to the Respondent by the Commission in the above-captioned Matter, and a Memorandum in Support of Motion to Quash, which set forth our reasons for this petition.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Enclosures (2)

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

In the matter of

Republican Party of Kentucky	)	
and Larry J. Steinberg,	)	MUR 2667
as treasurer	)	

MOTION TO QUASH

The Republican Party of Kentucky and Larry J. Steinberg, as treasurer (Committee), hereby petitions the Federal Election Commission to quash the subpoena issued to the Committee by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

In the matter of

Republican Party of Kentucky	)	
and Larry J. Steinberg,	)	MUR 2667
as treasurer	)	

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

The Republican Party of Kentucky and Larry J. Steinberg, as treasurer ("RPK"), respectfully petition the Commission according to 11 C.F.R. § 111.15(a) to grant the RPK's Motion to Quash the subpoena issued to it by the Commission in the above-captioned Matter. The Commission's failure to issue this subpoena for nearly three years after the events in question have deprived the RPK of its due process rights, most notably, the opportunity to respond to the complaint and subpoena with timely information. The Commission even waited three months following its reason to believe finding before this subpoena was served on the RPK.

This passage of time irreparably harms the RPK by depriving it of the opportunity to provide a fair and adequate response to the subpoena based on timely information. Like most state party committees, the RPK has experienced a large turnover of personnel in the last three years, so that personnel with knowledge of events from 1988 have left the RPK. Even if the relevant people are still RPK personnel, their recollection of specific instances from 1988, *see* Questions 1 and 2, will have faded. For these reasons, the subpoena is patently unfair because the events in question can never adequately be reconstructed nearly three years after the fact, especially with the specificity requested by the subpoena.

The subpoena's questions also are impractical in their request for minutiae from 1988. For example, it is naive to assume that a political committee like the RPK can identify each communication it had with the different political committees regarding fundraising events occurring nearly three years ago. *See* Questions 5 and 6. This is especially so concerning communications with the Republican National Committee, with which the RPK would have had ongoing contacts during any election cycle. The request for the contents of each speech given by the Vice President in 1988, Question 7, is unreasonable because the recollection of speeches from three years ago is likely to be faded. The requests for payments related to the fundraisers, Questions 3 and 4, reflect a basic lack of understanding by the Commission about how the RPK operates: payments are simply paid as incurred and are not categorized by event. It is grossly

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unfair for the Commission to now demand -- three years after the fact -- that the RPK reconstruct which vendor is connected to which fundraiser.

The records requested by the subpoena are, for the most part, no longer available, since these records are not required to be retained by the Act, and would most likely have been of no use to the RPK after 1988. The Commission's questions unrealisticly assume that a state party committee such as the RPK would keep materials generated in connection with a completed fundraiser. *See, e.g.*, requests for fundraiser invitations, Document Request 3; press releases, Document Request 4; all documents regarding events, Document Request 5; and communications and speech transcripts, Document Requests 6, 7. There is no requirement that the RPK, or any other entity, keep these kinds of materials, and there was no reason for the RPK to have known until the serving of this subpoena that such materials would be the subject of a complaint. Attempting to find the requested materials years after the events occurred, should the RPK even have such materials, will place a great burden on RPK staff and resources.

Conclusion

Compliance with the subpoena would require new RPK personnel to engage in a futile attempt to interpret aged data, reconstruct events in which they took no part or played only a minimal role, and spend valuable time searching through RPK files for materials which, in most cases, will never be found. The Commission's flagrant disregard for acting promptly in issuing this subpoena has so prejudiced this proceeding that a fair hearing is unattainable. For these reasons, the RPK respectfully requests the Commission to grant the accompanying Motion to Quash the subpoena issued by the Commission to the Republican Party of Kentucky, which makes this petition without waiving any procedural rights.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

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OGC 1119

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 MAY 13 PM 5:01

May 13, 1991

John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667
Republican Party of Wisconsin
and Robert R. Barrow, as treasurer

Dear Mr. Chairman:

Attached please find a Motion to Quash the subpoena issued to the Respondent by the Commission in the above-captioned Matter, and a Memorandum in Support of Motion to Quash, which set forth our reasons for this petition.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Enclosures (2)

9604371335

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

In the matter of

Republican Party of Wisconsin	)	
and Robert R. Barrow,	)	MUR 2667
as treasurer	)	

MOTION TO QUASH

The Republican Party of Wisconsin and Robert R. Barrow, as treasurer (Committee), hereby petitions the Federal Election Commission to quash the subpoena issued to the Committee by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

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In the matter of

Republican Party of Wisconsin	)	
and Robert R. Barrow,	)	MUR 2667
as treasurer	)	

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

The Republican Party of Wisconsin and Robert R. Barrow, as treasurer ("RPW"), respectfully petition the Commission according to 11 C.F.R. § 111.15(a) to grant the RPW's Motion to Quash the subpoena issued to it by the Commission in the above-captioned Matter. The subpoena arises from an enforcement action which is proceeding in violation of 2 U.S.C. § 437g(a)(1) due to the Commission's failure to timely notify the RPW of the underlying complaint in this Matter. The Commission's violation of law in waiting 19 months before notifying the RPW of the complaint, compounded by the Commission's failure to issue this subpoena for nearly another year, have deprived the RPW of its due process rights, most notably, the opportunity to respond to the complaint and subpoena with timely information.

I. The Subpoena Arises from an Improper Enforcement Proceeding.

The Commission has forfeited its right to investigate the RPW because of its egregious delay in processing the underlying complaint. As the RPW previously stated to the Commission in its submission dated June 29, 1990, the Commission acted in direct violation of 2 U.S.C. § 437g(a)(1) of the Federal Election Campaign Act (Act), which mandates that the Commission notify respondents "within 5 days after receipt of a complaint," by notifying the RPW of the complaint not five days, but 19 months after reciept of the underlying complaint. By willfully ignoring this Congressionally-mandated procedure, the Commission has effectively waived its ability to act under its authorizing statute. This deviation from the plain requirements of the Act is such a harmful and irreversible error of due process that it necessarily bars any further administrative proceedings by the Commission in this Matter as to the RPW, including the issuance of this subpoena.

II. The Subpoena Violates the RPW's Due Process Rights.

Not only has the RPW suffered injury from the Commission's failure to notify the RPW of the complaint in a timely manner, but the RPW continues to be injured by the Commission's delay in administering this Matter. The Commission waited virtually another year to issue this subpoena to the RPW; its delay, when added to the failure of the Commission to notify the RPW of the complaint for 19 months, has resulted in the passage of nearly three years since the complaint was filed. Incredibly, the Commission waited three months following its reason to believe finding before this subpoena was served on the RPW.

This passage of time irreparably harms the RPW by depriving it of the opportunity to provide a fair and adequate response to the subpoena based on timely information. The RPW has experienced a large turnover of personnel in the last three years, so that most people with knowledge of events from 1988 have left the committee. Even if the relevant people are still RPW personnel, their recollection of specific instances from 1988, *see* Questions 1 and 2, will have faded. For these reasons, the subpoena is patently unfair because the events in question can never be adequately reconstructed nearly three years after the fact, especially with the specificity requested by the subpoena.

The subpoena's questions also are impractical in their request for minutiae from 1988. For example, it is naive to assume that a political committee like the RPW can identify each communication it had with the different political committees regarding fundraising events occurring nearly three years ago. *See* Questions 5 and 6. This is especially so concerning communications with the Republican National Committee, with which the RPW would have had ongoing contacts throughout any election cycle. The request for the contents of each speech given by the Vice President in 1988, Question 7, is unreasonable because the recollection of speeches from three years ago is likely to be faded. The requests for payments related to the fundraisers, Questions 3 and 4, reflect a basic lack of understanding by the Commission about how state parties operate: the RPW did not keep its books by event, but simply paid vendors as expenses were incurred. It is grossly unfair for the Commission to now demand -- three years after the fact -- that the RPW reconstruct which vendor is connected to which fundraiser. These questions are especially inappropriate given that the Commission poses these questions nearly three years after the events occurred due to its own administrative error.

The records requested by the subpoena are, for the most part, no longer available, since these records are not required to be retained by the Act, and would

most likely have been of no use to the RPW after 1988. Accordingly, in early 1989, the RPW moved its headquarters, and in so doing, cleaned out extraneous papers and files because of space problems. In so doing, the RPW threw away many of the very materials requested by the Commission. Had the Commission acted in 1988, as required by 2 U.S.C. § 437g(a)(1), the RPW could have retained any materials relevant to the complaint. But now, solely because of the Commission's delay, the RPW will not be able to produce these materials, which include: requests for fundraiser invitations, Document Request 3; press releases, Document Request 4; all documents regarding events, Document Request 5; and communications and transcripts of speeches, Document Requests 6, 7. In any event, the Commission's questions unrealisticly assume that a state party committee such as the RPW would keep materials generated in connection with a completed fundraiser; there is, however, no requirement that the RPW, or any other entity, keep these kinds of materials, and there was no reason for the RPW to know until 1990 that these materials would be the subject of a complaint. Attempting at this late stage to find the requested materials, should the RPW even have them, will place a great burden on RPW staff and resources.

III. Conclusion

Compliance with the subpoena would require new RPW personnel to engage in a futile attempt to interpret aged data, reconstruct events in which they took no part or played only a minimal role, and spend valuable time searching through RPW files for materials which, in most cases, will never be found. These fruitless attempts would respond to an agency action which, from the start, has blatently violated the Federal Election Campaign Act. The Commission's flagrant disregard for acting promptly -- both in notifying the RPW of the complaint and issuing this subpoena -- has so prejudiced this proceeding that a fair hearing is unattainable. For these reasons, the

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RPW respectfully requests the Commission to grant the accompanying Motion to Quash the subpoena issued by the Commission to the Republican Party of Wisconsin, who makes this petition without waiving its procedural rights.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

BG-C1120

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 13 PM 5:02

May 13, 1991

John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667
North Carolina Republican
Executive Committee, and Carl
G. Ward, as treasurer

Dear Mr. Chairman:

Attached please find a Motion to Quash the subpoena issued to the Respondent by the Commission in the above-captioned Matter, and a Memorandum in Support of Motion to Quash, which set forth our reasons for this petition.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Enclosures (2)

9604371361

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

In the matter of

North Carolina Republican Executive	)	
Committee and Carl G. Ward,	)	MUR 2667
as treasurer	)	

MOTION TO QUASH

The North Carolina Republican Executive Committee and Carl G. Ward, as treasurer (Committee), hereby petitions the Federal Election Commission to quash the subpoena issued to the Committee by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

9604371342

In the matter of

North Carolina Republican Executive Committee and Carl G. Ward, as treasurer	)))	MUR 2667

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

The North Carolina Republican Executive Committee and Carl G. Ward, as treasurer (NCC), respectfully petition the Commission according to 11 C.F.R. § 111.15(a) to grant the NCC's Motion to Quash the subpoena issued to it by the Commission in the above-captioned Matter. The subpoena arises from an enforcement action which is proceeding in violation of 2 U.S.C. § 437g(a)(1) due to the Commission's failure to timely notify the NCC of the underlying complaint in this Matter. The Commission's violation of law in waiting 19 months before notifying the NCC of the complaint, compounded by the Commission's failure to issue this subpoena for nearly another year, have deprived the NCC of its due process rights, most notably, the opportunity to respond to the complaint and subpoena with timely information.

I. The Subpoena Arises from an Improper Enforcement Proceeding.

The Commission has forfeited its right to investigate the NCC because of its egregious delay in processing the underlying complaint. As the NCC previously stated to the Commission in its submission dated June 29, 1990, the Commission acted in direct violation of 2 U.S.C. § 437g(a)(1) of the Federal Election Campaign Act (Act), which mandates that the Commission notify respondents "within 5 days after receipt of a complaint," by notifying the NCC of the complaint not five days, but 19 months after reciept of the underlying complaint. By willfully ignoring this Congressionally-mandated procedure, the Commission has effectively waived its ability to act under its authorizing statute. This deviation from the plain requirements of the Act is such a harmful and irreversible error of due process that it necessarily bars any further administrative proceedings by the Commission in this Matter as to the NCC, including the issuance of this subpoena.

II. The Subpoena Violates the NCC's Due Process Rights.

Not only has the NCC suffered injury from the Commission's failure to notify the NCC of the complaint in a timely manner, but the NCC continues to be injured by the Commission's delay in administering this Matter. The Commission waited virtually another year to issue this subpoena to the the NCC; this delay, when added to the failure of the Commission to notify the NCC of the complaint for 19 months, has resulted in the passage of nearly three years since the complaint was filed. Incredibly, the Commission waited three months following its reason to believe finding before this subpoena was served on the NCC.

This passage of time irreparably harms the NCC by depriving it of the opportunity to provide a fair and adequate response to the subpoena based on timely information. Like most state party committees, the NCC has experienced almost a complete turnover of personnel in the last three years, so that nearly all personnel with knowledge of events from 1988 have left. Even if some relevant people are still NCC personnel, their recollection of specific instances from 1988, *see* Questions 1 and 2, will have faded. For these reasons, the subpoena is patently unfair because the events in question can never adequately be reconstructed nearly three years after the fact, especially with the specificity requested by the subpoena.

The subpoena's questions also are impractical in their request for minutiae from 1988. For example, it is naive to assume that a political committee like the NCC can identify each communication it had with the different political committees regarding fundraising events occurring nearly three years ago. *See* Questions 5 and 6. This is especially so concerning communications with the Republican National Committee, with which the NCC would have had ongoing contacts during any election cycle. The request for the contents of each speech given by the Vice President in 1988, Question 7, is unreasonable because the recollection of speeches from three years ago is likely to be faded. The requests for payments related to the fundraisers, Questions 3 and 4, reflect a basic lack of understanding by the Commission about how most state parties operate: typically they do not categorize payments by event, but simply pay vendors as expenses are incurred. It is grossly unfair for the Commission to now demand -- three years after the fact -- that the NCC reconstruct the vendors associated with a fundraiser. These questions are especially inappropriate given that the Commission poses these questions nearly three years after the events occurred due to its own administrative error.

The records requested by the subpoena are, for the most part, no longer available, since these records are not required to be retained by the Act, and would most likely have been of no use to the NCC after 1988. The Commission's questions unrealisticly assume that a state party committee such as the NCC would keep materials generated in connection with a completed fundraiser. *See, e.g.*, requests for fundraiser invitations, Document Request 3; press releases, Document Request 4; all documents regarding events, Document Request 5; and communications and transcripts of speeches, Document Requests 6, 7. There is no requirement that the NCC, or any other entity, keep these kinds of materials, and no reason for the NCC to have known, until 1990, that these kinds of materials would be the subject of a complaint. In any event, three years ago such materials may have been located; however, as the 1988 election year ended and the NCC turned its attention to upcoming campaigns, it would have little need to keep these materials.

III. Conclusion

Compliance with the subpoena would require new NCC personnel to engage in a futile attempt to interpret aged data, reconstruct events in which they took no part or played only a minimal role, and spend valuable time searching through NCC files for materials which, in most cases, will never be found. These fruitless attempts would respond to an agency action which, from the start, has blatently violated the Federal Election Campaign Act. The Commission's flagrant disregard for acting promptly -- both in notifying the NCC of the complaint and issuing this subpoena -- has so prejudiced this proceeding that a fair hearing is unattainable. For these reasons, the NCC respectfully requests the Commission to grant the accompanying Motion to Quash

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the subpoena issued by the Commission to North Carolina Republican Executive Committee, which makes this petition without waiving any procedural rights.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

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06-C 1121

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 13 PM 5:02

May 13, 1991

John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667
South Carolina Victory '88
and Tony Denny, as treasurer

Dear Mr. Chairman:

Attached please find a Motion to Quash the subpoena issued to the Respondent by the Commission in the above-captioned Matter, and a Memorandum in Support of Motion to Quash, which set forth our reasons for this petition.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Enclosures (2)

9604371337

9604371337

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

In the matter of

South Carolina Victory '88	)	
and Tony Denny,	)	MUR 2667
as treasurer	)	

MOTION TO QUASH

South Carolina Victory '88 and Tony Denny, as treasurer (Committee), hereby petitions the Federal Election Commission to quash the subpoena issued to the Committee by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

9604371338

In the matter of

South Carolina Victory '88)
and Tony Denny, as treasurer) MUR 2667

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

South Carolina Victory '88 and Tony Denny, as treasurer ("SCV"), respectfully petition the Commission according to 11 C.F.R. § 111.15(a) to grant SCV's Motion to Quash the subpoena issued to it by the Commission in the above-captioned Matter. The subpoena arises from an enforcement action which is proceeding in violation of 2 U.S.C. § 437g(a)(1) due to the Commission's failure to timely notify SCV of the underlying complaint in this Matter. The Commission's violation of law in waiting 19 months before notifying SCV of the complaint, compounded by the Commission's failure to issue this subpoena for nearly another year, have deprived SCV of its due process rights, most notably, the opportunity to respond to the complaint and subpoena with timely information.

I. The Subpoena Arises from an Improper Enforcement Proceeding.

The Commission has forfeited its right to investigate SCV because of its egregious delay in processing the underlying complaint. As SCV previously stated to the Commission in its submission dated June 29, 1990, the Commission acted in direct violation of 2 U.S.C. § 437g(a)(1) of the Federal Election Campaign Act (Act), which mandates that the Commission notify respondents "within 5 days after receipt of a complaint," by notifying SCV of the complaint not five days, but 19 months after reciept of the underlying complaint. By willfully ignoring this Congressionally-mandated procedure, the Commission has effectively waived its ability to act under its authorizing statute. This deviation from the plain requirements of the Act is such a harmful and irreversible error of due process that it necessarily bars any further administrative proceedings by the Commission in this Matter as to SCV, including the issuance of this subpoena.

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II. The Subpoena Violates SCV's Due Process Rights.

Not only has SCV suffered injury from the Commission's failure to notify SCV of the complaint in a timely manner, but SCV continues to be injured by the Commission's delay in administering this Matter. The Commission waited virtually another year to issue this subpoena to SCV; this delay, when added to the failure of the Commission to notify SCV of the complaint for 19 months, has resulted in the passage of nearly three years since the complaint was filed. Incredibly, the Commission waited three months following its reason to believe finding before this subpoena was served on SCV.

This passage of time irreparably harms SCV by depriving it of the opportunity to provide a fair and adequate response to the subpoena based on timely information. Like most state party committees, SCV has experienced a turnover of personnel in the last three years, so that nearly all personnel with knowledge of events from 1988 have left SCV. Even if the relevant people are still SCV personnel, their recollection of specific instances from 1988, *see* Questions 1 and 2, will have faded. For these reasons, the subpoena is patently unfair because the events in question can never adequately be reconstructed nearly three years after the fact, especially with the specificity requested by the subpoena.

The subpoena's questions also are impractical in their request for minutiae from 1988. For example, it is naive to assume that a political committee like SCV can identify each communication it had with the different political committees regarding fundraising events occurring nearly three years ago. *See* Questions 5 and 6. This is especially so concerning communications with the Republican National Committee, with which the SCV would have had ongoing contacts during any election cycle. The request for the contents of each speech given by the Vice President in 1988, Question 7, is unreasonable because the recollection of speeches from three years ago is likely to be faded. The requests for payments related to the fundraisers, Questions 3 and 4, reflect a basic lack of understanding by the Commission about how state parties operate: SCV did not keep its books by event, but simply paid vendors as expenses were incurred. It is grossly unfair for the Commission to now demand -- three years after the fact -- that SCV reconstruct which vendor is connectd to which fundraiser. These questions are especially inappropriate given that the Commission poses these questions nearly three years after the events occurred due to its own administrative error.

The records requested by the subpoena are, for the most part, no longer available, since these records are not required to be retained by the Act, and would

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most likely have been of no use to the SCV after 1988. The Commission's questions unrealisticly assume that a state party committee such as SCV would keep materials generated in connection with a completed fundraiser. *See, e.g.*, requests for fundraiser invitations, Document Request 3; press releases, Document Request 4; all documents regarding events, Document Request 5; and communications and transcripts of speeches, Document Requests 6, 7. There is no requirement that SCV, or any other entity, keep these kinds of materials, and no reason for SCV to have know, until 1990, that these kinds of materials would be the subject of a complaint. In any event, three years ago such materials may have been located; however, as the 1988 election year ended and SCV turned its attention to upcoming campaigns, it would have little need to keep these materials.

III. Conclusion

Compliance with the subpoena would require new SCV personnel to engage in a futile attempt to interpret aged data, reconstruct events in which they took no part or played only a minimal role, and spend valuable time searching through SCV files for materials which, in most cases, will never be found. These fruitless attempts would respond to an agency action which, from the start, has blatently violated the Federal Election Campaign Act. The Commission's flagrant disregard for acting promptly -- both in notifying SCV of the complaint and issuing this subpoena -- has so prejudiced this proceeding that a fair hearing is unattainable. For these reasons, the RNC respectfully requests the Commission to grant the accompanying Motion to Quash the

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subpoena issued by the Commission to South Carolina Victory '88, which makes this petition without waiving any procedural rights.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

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OGC 1122

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

91 MAY 13 PM 5:04

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

May 13, 1991

John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667
Colorado Republican Federal
Campaign Committee and Douglas
L. Jones, as treasurer

Dear Mr. Chairman:

Attached please find a Motion to Quash the subpoena issued to the Respondent by the Commission in the above-captioned Matter, and a Memorandum in Support of Motion to Quash, which set forth our reasons for this petition.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Enclosures (2)

2604371337 3

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

In the matter of

Colorado Republican Federal Campaign Committee and Douglas L. Jones, as treasurer	)))	MUR 2667

MOTION TO QUASH

The Colorado Republican Federal Campaign Committee and Douglas L. Jones, as treasurer (Committee), hereby petitions the Federal Election Commission to quash the subpoena issued to the Committee by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

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In the matter of

Colorado Republican Federal Campaign Committee, and Douglas L. Jones, as treasurer	)))	MUR 2667

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

The Colorado Republican Federal Campaign Committee and Douglas L. Jones, as treasurer ("CC"), respectfully petition the Commission according to 11 C.F.R. § 111.15(a) to grant the CC's Motion to Quash the subpoena issued to it by the Commission in the above-captioned Matter. The subpoena arises from an enforcement action which is proceeding in violation of 2 U.S.C. § 437g(a)(1) due to the Commission's failure to timely notify the CC of the underlying complaint in this Matter. The Commission's violation of law in waiting 21 months before notifying the CC of the complaint, compounded by the Commission's failure to issue this subpoena for nearly another year, have deprived the CC of its due process rights, most notably, the opportunity to respond to the complaint and subpoena with timely information.

I. The Subpoena Arises from an Improper Enforcement Proceeding.

The Commission has forfeited its right to investigate the CC because of its egregious delay in processing the underlying complaint. As the CC previously stated to the Commission in its submission dated July 31, 1990, the Commission acted in direct violation of 2 U.S.C. § 437g(a)(1) of the Federal Election Campaign Act (Act), which mandates that the Commission notify respondents "within 5 days after receipt of a complaint," by notifying the CC of the complaint not five days, but 21 months after reciept of the underlying complaint. By willfully ignoring this Congressionally-mandated procedure, the Commission has effectively waived its ability to act under its authorizing statute. This deviation from the plain requirements of the Act is such a harmful and irreversible error of due process that it necessarily bars any further administrative proceedings by the Commission in this Matter as to the CC, including the issuance of this subpoena.

II. The Subpoena Violates the CC's Due Process Rights.

Not only has the CC suffered injury from the Commission's failure to notify the CC of the complaint in a timely manner, but the CC continues to be injured by the Commission's delay in administering this Matter. The Commission waited virtually another year to issue this subpoena to the CC; this delay, when added to the failure of the Commission to notify the CC of the complaint for 21 months, has resulted in the passage of nearly three years since the complaint was filed. Incredibly, the Commission waited three months following its reason to believe finding before this subpoena was served on the CC.

This passage of time irreparably harms the CC by depriving it of the opportunity to provide a fair and adequate response to the subpoena based on timely information. Like most state party committees, the CC has experienced a large turnover of personnel in the last three years, so that personnel with knowledge of events from 1988 have left the CC. Even if the relevant people are still CC personnel, their recollection of specific instances from 1988, *see* Questions 1 and 2, will have faded. For these reasons, the subpoena is patently unfair because the events in question can never adequately be reconstructed nearly three years after the fact, especially with the specificity requested by the subpoena.

The subpoena's questions also are impractical in their request for minutiae from 1988. For example, it is naive to assume that a political committee like the CC can identify each communication it had with the different political committees regarding fundraising events occurring nearly three years ago. *See* Questions 5 and 6. This is especially so concerning communications with the Republican National Committee, with which the CC would have had ongoing contacts during any election cycle. The request for the "contents of each speech" given by the Vice President in 1988, Question 7, is unreasonable because the recollection of speeches from three years ago is likely to be faded. The requests for payments related to the fundraisers, Questions 3 and 4, reflect a basic lack of understanding by the Commission about how many state parties operate: payments are simply paid as incurred and are not categorized by event. It is grossly unfair for the Commission to now demand -- three years after the fact -- that the CC reconstruct which vendor is connected to which fundraiser. These questions are especially inappropriate given that the Commission poses these questions nearly three years after the events occurred, due to its own administrative error.

The records requested by the subpoena are, for the most part, no longer available, since these records are not required to be retained by the Act, and would most likely have been of no use to the CC after 1988. The Commission's questions unrealisticly assume that a state party committee such as the CC would keep materials generated in connection with a completed fundraiser. *See, e.g.*, requests for fundraiser invitations, Document Request 3; press releases, Document Request 4; all documents regarding events, Document Request 5; and communications and speech transcripts, Document Requests 6, 7. There is no requirement that the CC, or any other entity, keep these kinds of materials. Furthermore, certain CC personnel left in 1989, cleaning out files with these types of materials. Had the Commission given proper notification of the complaint in 1988, such materials may have been located; absent such notification, there was no reason for the CC to have known, until 1990, that these kinds of materials would be the subject of a complaint. Accordingly, as the 1988 election year ended and the CC turned its attention to upcoming campaigns, it would have little need to keep these materials.

III. Conclusion

Compliance with the subpoena would require new CC personnel to engage in a futile attempt to interpret aged data, reconstruct events in which they took no part or played only a minimal role, and spend valuable time searching through CC files for materials which, in most cases, will never be found. These fruitless attempts would respond to an agency action which, from the start, has blatently violated the Federal Election Campaign Act. The Commission's flagrant disregard for acting promptly -- both in notifying the CC of the complaint and issuing this subpoena -- has so prejudiced this proceeding that a fair hearing is unattainable. For these reasons, the CC respectfully requests the Commission to grant the accompanying Motion to

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Quash the subpoena issued by the Commission to the Colorado Republican Federal Campaign Committee, which makes this petition without waiving any procedural rights.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

06C1123

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

RECEIVED
FEDERAL ELECTION COMMISSION
SECRETARIAT

91 MAY 13 PM 5:04

May 13, 1991

John Warren McGarry
Chairman
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667
Republican State Central Committee
of Maryland and Susan K. Saum,
as treasurer

Dear Mr. Chairman:

Attached please find a Motion to Quash the subpoena issued to the Respondent by the Commission in the above-captioned Matter, and a Memorandum in Support of Motion to Quash, which set forth our reasons for this petition.

Thank you for your consideration.

Sincerely,

Benjamin L. Ginsberg

Enclosures (2)

9604371379

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

In the matter of

Republican State Central Committee of Maryland and Susan K. Saum, as treasurer	)))	MUR 2667

MOTION TO QUASH

The Republican State Central Committee of Maryland and Susan K. Saum, as treasurer (Committee), hereby petitions the Federal Election Commission to quash the subpoena issued to the Committee by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Benjamin L. Ginsberg

Janice P. Lacy

May 13, 1991

In the matter of

Republican State Central Committee	)	
of Maryland and Susan K. Saum,	)	MUR 2667
as treasurer	)	

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

The Republican State Central Committee of Maryland and Susan K. Saum, as treasurer (RCM), respectfully petition the Commission according to 11 C.F.R. § 111.15(a) to grant the RCM's Motion to Quash the subpoena issued to it by the Commission in the above-captioned Matter. The subpoena arises from an enforcement action which is proceeding in violation of 2 U.S.C. § 437g(a)(1) due to the Commission's failure to timely notify the RCM of the underlying complaint in this Matter. The Commission's violation of law in waiting 21 months before notifying the RCM of the complaint, compounded by the Commission's failure to issue this subpoena for nearly another year, have deprived the RCM of its due process rights, most notably, the opportunity to respond to the complaint and subpoena with timely information.

I. The Subpoena Arises from an Improper Enforcement Proceeding.

The Commission has forfeited its right to investigate the RCM because of its egregious delay in processing the underlying complaint. As the RCM previously stated to the Commission in its submission dated July 31, 1990, the Commission acted in direct violation of 2 U.S.C. § 437g(a)(1) of the Federal Election Campaign Act (Act), which mandates that the Commission notify respondents "within 5 days after receipt of a complaint," by notifying the RCM of the complaint not five days, but 21 months after reciept of the underlying complaint. By willfully ignoring this Congressionally-mandated procedure, the Commission has effectively waived its ability to act under its authorizing statute. This deviation from the plain requirements of the Act is such a harmful and irreversible error of due process that it necessarily bars any further administrative proceedings by the Commission in this Matter as to the RCM, including the issuance of this subpoena.

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II. The Subpoena Violates the RCM's Due Process Rights.

Not only has the RCM suffered injury from the Commission's failure to notify the RCM of the complaint in a timely manner, but the RCM continues to be injured by the Commission's delay in administering this Matter. The Commission waited virtually another year to issue this subpoena to the RCM; this delay, when added to the failure of the Commission to notify the RCM of the complaint for 21 months, has resulted in the passage of nearly three years since the complaint was filed. Incredibly, the Commission waited three months following its reason to believe finding before this subpoena was served on the RCM.

This passage of time irreparably harms the RCM by depriving it of the opportunity to provide a fair and adequate response to the subpoena based on timely information. Like most state party committees, the RCM has experienced a turnover of personnel in the last three years, so that personnel with knowledge of events from 1988 have left the RCM. Even if the relevant people are still RCM personnel, their recollection of specific instances from 1988, *see* Questions 1 and 2, will have faded. For these reasons, the subpoena is patently unfair because the events in question can never adequately be reconstructed nearly three years after the fact, especially with the specificity requested by the subpoena.

The subpoena's questions also are impractical in their request for minutiae from 1988. For example, it is naive to assume that a political committee like the RCM can identify each communication it had with the different political committees regarding fundraising events occurring nearly three years ago. *See* Questions 5 and 6. This is especially so concerning communications with the Republican National Committee, with which the RCM would have had ongoing contacts during any election cycle. The request for the contents of each speech given by the Vice President in 1988, Question 7, is unreasonable because the recollection of speeches from three years ago is likely to be faded. The requests for payments related to the fundraisers, Questions 3 and 4, reflect a basic lack of understanding by the Commission about how many state parties operate: payments are simply paid as incurred and are not categorized by event. It is grossly unfair for the Commission to now demand -- three years after the fact -- that the RCM reconstruct which vendor is connected to which fundraiser. These questions are especially inappropriate given that the Commission poses these questions nearly three years after the events occurred, due to its own administrative error.

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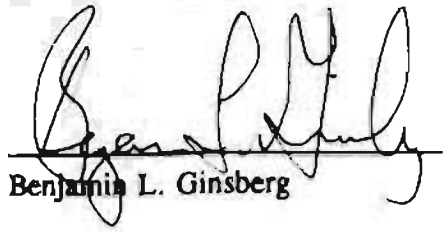
The records requested by the subpoena are, for the most part, no longer available, since these records are not required to be retained by the Act, and would most likely have been of no use to the RCM after 1988. The Commission's questions unrealisticly assume that a state party committee such as the RCM would keep materials generated in connection with a completed fundraiser. *See, e.g.*, requests for fundraiser invitations, Document Request 3; press releases, Document Request 4; all documents regarding events, Document Request 5; and communications and speech transcripts, Document Requests 6, 7. There is, however, no requirement that the RCM, or any other entity, keep these kinds of materials, and no reason for the RCM to have known, until 1990, that these kinds of materials would be the subject of a complaint. In any event, three years ago such materials may have been located; however, as the 1988 election year ended and the RCM turned its attention to upcoming campaigns, it would have little need to keep these materials.

III. Conclusion

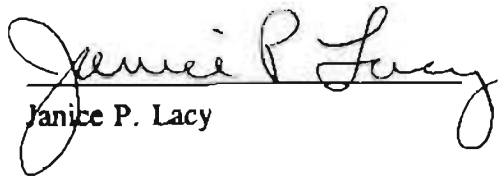
Compliance with the subpoena would require new RCM personnel to engage in a futile attempt to interpret aged data, reconstruct events in which they took no part or played only a minimal role, and spend valuable time searching through RCM files for materials which, in most cases, will never be found. These fruitless attempts would respond to an agency action which, from the start, has blatently violated the Federal Election Campaign Act. The Commission's flagrant disregard for acting promptly -- both in notifying the RCM of the complaint and issuing this subpoena -- has so prejudiced this proceeding that a fair hearing is unattainable. For these reasons, the RCM respectfully requests the Commission to grant the accompanying Motion to

9 2 0 4 3 7 1 3 3 2 2

Quash the subpoena issued by the Commission to the Republican State Central Committee of Maryland, which makes this petition without waiving any procedural rights.



Benjamin L. Ginsberg



Janice P. Lacy

May 13, 1991

OGC 1102

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 13 PM 12:06

The Republican Party of Kentucky

Capitol Avenue at Third Street ★ P.O. Box 1068 ★ Frankfort, Kentucky 40602
Phone (502) 875-5130 FAX (502) 223-5625

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 MAY 13 PM 2:32

May 8, 1991

Ms. Patricia Reilly
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 2667

Dear Ms. Reilly:

Enclosed please find a Statement of Designation of Counsel in connection with the above-styled matter.

Very truly yours,

Larry J. Steinberg

Larry J. Steinberg
Treasurer

STATEMENT OF DESIGNATION OF COUNSEL

MUR 2667

NAME OF COUNSEL: Benjamin L. Ginsberg
Janice P. Lacy

ADDRESS: Republican National Committee
310 First St., SE
Washington, DC 20003

TELEPHONE: (202) 863-8638

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

5-8-91
Date

Larry J. Steinberg
Signature

RESPONDENT'S NAME: Larry J. Steinberg
Republican Party of Kentucky

ADDRESS: P.O. Box 1068
Frankfort, KY 40602

HOME PHONE:

BUSINESS PHONE: (502) 584-2337
or 587-0201

9604371336

OGC 1106

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 13 PM 12:27

SMITH, DUGGAN & JOHNSON
ATTORNEYS AT LAW
260 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110

SCOTT A. SMITH
CHRISTOPHER A. DUGGAN
PAUL W. JOHNSON
GARRICK F. COLE
MARK B. REES

TELEPHONE (617) 261-0500
TELECOPIER (617) 951-0080

May 10, 1991

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 13 PM 2:37

General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: In the Matter of Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer, MUR 2667

Dear Sir/Ms.:

I am enclosing the original and three copies of each of the following documents for filing in this matter: Motion of Respondent Massachusetts Republican State Committee to Quash Subpoena and to Vacate Order; and Memorandum of Respondent Massachusetts Republican State Committee in Support of its Motion to Quash Subpoena and to Vacate Order.

Very truly yours,

Paul W. Johnson

Paul W. Johnson

Enclosures

lah

BY COURIER

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RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 13 PM 12:27

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer	)	MUR 2667

MOTION OF RESPONDENT MASSACHUSETTS
REPUBLICAN STATE COMMITTEE TO
QUASH SUBPOENA AND TO VACATE ORDER

The Massachusetts Republican State Committee petitions the Federal Election Commission to quash the Subpoena to Produce Documents and to vacate the Order to Submit Written Answers dated April 23, 1991, that have been issued to the Massachusetts Republican State Committee in this matter for the reasons set forth in the Memorandum of Respondent Massachusetts Republican State Committee in Support of its Motion to Quash Subpoena and to Vacate Order.

Paul W. Johnson

Paul W. Johnson
Smith, Duggan & Johnson
260 Franklin Street
Boston, Massachusetts 02110
(617) 261-0500

Attorney for Respondent
Massachusetts Republican
State Committee

May 10, 1991

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer	)	MUR 2667

MEMORANDUM OF RESPONDENT MASSACHUSETTS REPUBLICAN STATE COMMITTEE IN SUPPORT OF ITS MOTION TO QUASH SUBPOENA AND TO VACATE ORDER

Introduction

Respondent Massachusetts Republican State Committee ("Massachusetts Committee") has applied to the Federal Election Commission ("Commission") to quash the Subpoena to Produce Documents and to vacate the Order to Submit Written Answers that have been served upon the Massachusetts Committee. Such relief is appropriate for two reasons. The underlying complaint should be dismissed because the Commission failed to notify the Massachusetts Committee in timely fashion of the receipt of the complaint. Given the passage of time since the events that constitute the subject matter of this proceeding, the subpoena and order are, moreover, oppressive because they seek information that the Massachusetts Committee cannot fairly be expected to assemble at this late date.

Argument

In its Motion to Rescind Reason to Believe Finding, to Dismiss Complaint, and to Terminate Compliance Proceedings and its Response and Memorandum in Support of Motion to Rescind Reason to Believe Finding, to Dismiss Complaint, and to Terminate Compliance Proceedings, the Massachusetts Committee set forth various arguments in support of its position that the Commission failed to comply with the notice requirements of 2 U.S.C. § 437g(a)(1) and that the complaint should accordingly be dismissed. When the Commission allowed respondent's motion to rescind the reason to believe determination, the Massachusetts Committee requested by the letter dated June 13, 1990, from its counsel to the Commission's General Counsel that the Commission act upon its motion to dismiss and to terminate compliance proceedings. The Massachusetts Committee will not repeat the arguments set forth in its motion, memorandum, and subsequent letter, but rather incorporates them by reference herein. By its initial delay in providing notice of the complaint to the Massachusetts Committee and its further delay in the prosecution of this matter, the Commission has waived any right to proceed against the Massachusetts Committee.

By its delay in the conduct of this proceeding, the Commission has prejudiced the ability of the Massachusetts Committee to respond to the subpoena and order. The events that are the subject matter of this proceeding occurred almost three years ago, i.e., on or about July 7, 1988. Given the passage of time, it is difficult for the Massachusetts Committee to locate documents other than those that it is required to maintain by law and to submit answers under oath. As time passes on, documents become more difficult to locate and memories fade. For instance, the questions asking for detailed descriptions of all communications that the Massachusetts Committee had with the Bush Campaign and the Republican National Committee or any other party committee regarding the events are inherently difficult to answer under oath after the passage of so much time. Given the Commission's delay in the prosecution of this matter, it is unfair to require the Massachusetts Committee to assemble the requested documents and to submit written answers at this late date.

Conclusion

For the reasons set forth above, the Commission should allow the Motion of Respondent Massachusetts Republican State Committee to Quash Subpoena and to Vacate Order.

Paul W. Johnson
Smith, Duggan & Johnson
260 Franklin Street
Boston, Massachusetts 02110
(617) 261-0500

Attorney for Respondent
Massachusetts Republican
State Committee

May 10, 1991

OBC 1154

FOSTER, SWIFT,
COLLINS & SMITH, P.C.
ATTORNEYS AT LAW
313 South Washington Square
Lansing, MI 48933-2193
(517) 371-8100
FAX (517) 371-8200

ERIC E. DOSTER
(517) 371-8241

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 MAY 15 AM 10:47

91 MAY 15 AM 11:40

May 13, 1991

VIA CERTIFIED MAIL

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Noble:

RE: MUR 2667; Motion to Quash Subpoena

We received notification dated April 25, 1991 from the Federal Election Commission ("Commission"), in the above-referenced matter, which indicated that the Commission renewed its reason to believe determination regarding the Michigan Republican State Committee ("MRSC"). In addition, we also received a Subpoena to Produce Documents and Order to Submit Written Answers.

Nonetheless, as evidenced by the documentation previously supplied to the Commission in this matter, the MRSC's due process rights were violated as a result of the failure to timely notify the MRSC of the Complaint and to provide it with the opportunity to respond as required by 2 U.S.C. § 437g(a)(1). Accordingly, we are submitting to the Commission a Motion to Quash Subpoena and an accompanying Memorandum.

Moreover, we once again respectfully request that the Commission dismiss the complaint and to terminate compliance proceedings. In submitting this request, the MRSC specifically reserves its rights to respond to the Complaint on the merits, if its Motion is eventually denied by the Commission.

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FOSTER, SWIFT,
COLLINS & SMITH, P.C.
ATTORNEYS AT LAW

In addition, the MRSC respectfully requests that the time to file a response to the Commission's January 17, 1991 reason to believe finding be postponed to await the result of the Commission's ruling on this matter. The basis for this request is that since the subpoena should be quashed and MUR 2667 should be dismissed as it pertains to the MRSC, it is unnecessary for the MRSC to even begin preparing a response to the Commission's January 17, 1991 reason to believe finding until this issue is resolved.

Thank you for your consideration in this matter.

Sincerely yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Eric Doster

Eric E. Doster

EED/kem

cc: David J. Doyle
Sue E. Wadel
David W. McKeague

RETURN RECEIPT REQUESTED

P 497 513 016

2 5 0 4 3 7 1 3 3 2

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Michigan Republican State Committee	)	**MUR 2667**
and Ronald D. Dahlke, as Treasurer	)	

MOTION TO QUASH SUBPOENA

The Michigan Republican State Committee ("MRSC") and its Treasurer, Ronald D. Dahlke, respectfully move the Federal Election Commission (the "Commission") to quash the subpoena issued to the MRSC by the Commission, on the following grounds: (1) the present compliance proceedings are inappropriate; (2) the Commission has not complied with the Federal Election Campaign Act (the "Act") and relevant Commission regulations; and (3) the Commission's subpoena to the MRSC is unreasonably broad and burdensome. The MRSC and its Treasurer further move the Commission to dismiss the complaint in this matter, to the extent it alleges violations of the Act and regulations by the MRSC and to terminate compliance proceedings against the MRSC and its Treasurer in this matter.

In support of this Motion, the MRSC and its Treasurer submit the accompanying Memorandum in Support of the Motion to Quash Subpoena.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for the Michigan
Republican State Committee

Dated: May 13, 1991

By: Eric Doster

David W. McKeague (P17459)
Eric E. Doster (P41782)

313 South Washington Square
Lansing, Michigan 48933
Telephone: (517) 371-8100

MRSC/91/MOTION
239;EED/DOCS

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Michigan Republican State Committee	)	**MUR 2667**
and Ronald D. Dahlke, as Treasurer	)	

MEMORANDUM IN SUPPORT OF THE MOTION TO QUASH SUBPOENA

INTRODUCTION

The Michigan Republican State Committee ("MRSC") and its Treasurer, Ronald D. Dahlke, file this Motion to Quash Subpoena pursuant to 11 C.F.R. § 111.15, for the reasons set forth in this Memorandum. The facts that led to the Federal Election Commission's ("Commission") subpoena to the MRSC dated April 23, 1991 illustrate the propriety of this Motion to Quash Subpoena.

On February 6, 1990, the Commission found that there is reason to believe that the MRSC and its Treasurer violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) of the Federal Election Campaign Act (the "Act"), as well as 11 C.F.R § 102.5(a). This finding was based on a complaint filed with the Commission on August 8, 1988, and a supplement filed on September 12, 1988.

On May 7, 1990, because the MRSC and its Treasurer were not afforded the procedural guarantees provided for by 2 U.S.C. § 437g(a)(1) and 11 C.F.R. §§ 111.5 and 111.6, the MRSC and its Treasurer respectfully moved the Commission to rescind its finding that there is reason to believe that the MRSC and its Treasurer violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), as well as 11 C.F.R. § 102.5(a). Since the Commission's finding was not made in

accordance with the Act and relevant Commission regulations, the MRSC and its Treasurer further moved the Commission to dismiss the complaint in this matter, to the extent it alleges violations of the Act and regulations by the MRSC and to vote to take no further action against the MRSC and its Treasurer in this matter.

On May 22, 1990, the Commission determined to rescind the reason to believe finding concerning the MRSC and its Treasurer; however, the Commission did not grant the MRSC's request to dismiss the complaint and to terminate compliance proceedings.

On January 17, 1991, the Commission repeated its earlier determination and found that there is reason to believe that the MRSC and its Treasurer violated 2 U.S.C. §§ 441a(a)(2)(A) and 441b(a), as well as 11 C.F.R. § 102.5. In addition, the Commission issued a Subpoena to Produce Documents and Order to Submit Written Answers dated April 23, 1991.

Accordingly, the MRSC and its Treasurer request the Commission to quash the subpoena in this MUR 2667 as it pertains to the MRSC and its Treasurer. Such action is appropriate because of the Commission's failure to comply with the Act and relevant Commission regulations. As previously argued by the MRSC in these compliance proceedings, the extraordinary posture of this matter makes it impossible for the Commission to take any lawful action other than dismissal. Moreover, the Commission's subpoena to the MRSC dated April 23, 1991 should be quashed for the reasons set forth below.

I. **THE COMMISSION'S SUBPOENA TO THE MRSC AND ITS TREASURER DATED APRIL 23, 1991 SHOULD BE QUASHED SINCE IT ARISES FROM AN IMPROPER COMPLIANCE PROCEEDING.**

If a compliance proceeding is inappropriate, a subpoena issued by the Commission is invalid. Federal Election Commission v Florida for Kennedy Committee, 681 F.2d 1281 (11th Cir. 1982); Federal Election Commission v Machinists Non-Partisan Political League, 655 F.2d 380 (D.C. Cir.), cert denied 454 U.S. 897 (1981); Federal Election Commission v Citizens for Democratic Alternatives in 1980, 655 F.2d 397 (D.C. Cir.) cert denied 454 U.S. 897 (1981). In the present compliance proceeding, the MRSC has filed sufficient documentation to demonstrate that MUR 2667, as it pertains to the MRSC, is inappropriate. See, the MRSC's previous submissions to the Commission dated May 7, 1990, (attached as Exhibit A); June 12, 1990, (attached as Exhibit B); and July 9, 1990, (attached as Exhibit C). The arguments set forth in the MRSC's previous submissions to the Commission will not be repeated here; however, the arguments set forth therein are hereby adopted and incorporated by reference. Consequently, since the present compliance proceeding is inappropriate, the Commission's April 23, 1991 subpoena to the MRSC and its Treasurer should be quashed pursuant to 11 C.F.R. § 111.15.

II. **THE COMMISSION'S APRIL 23, 1991 SUBPOENA TO THE MRSC AND ITS TREASURER IS UNENFORCEABLE.**

Even if the Commission deems the present compliance proceeding appropriate, in order to enforce an administrative subpoena, an agency must demonstrate, among other things, that the agency followed "all internal administrative procedures." United

States v Wilson, 864 F.2d 1219, 1222 (5th Cir.), cert denied ____ U.S. ____ (1989) (following United States v Powell, 379 U.S. 48, 57-58). As previously demonstrated by the MRSC, the Commission did not adhere to all administrative steps as required by the Act and the Commission's regulations. See Exhibits A-C. Thus, the following Commission opinion is irrelevant:

> "[T]he Commission remains convinced that its provision of the complaint, supplement, and factual and legal analysis satisfies the notice provisions of the Act. The Commission's actions were merely an attempt to expedite the investigation in this matter." Letter of notification of renewed reason to believe finding from John Warren McGarry, Chairman, to Eric E. Doster, dated April 25, 1991.

Despite the Commission's above-cited justification, the fact remains that the Act and the Commission's regulations have not been followed in the present case. Therefore, the Commission's April 23, 1991 subpoena to the MRSC and its Treasurer is unenforceable.

III. THE COMMISSION'S APRIL 23, 1991 SUBPOENA TO THE MRSC AND ITS TREASURER IS UNREASONABLY BROAD AND BURDENSOME.

Even if the Commission deems the present compliance proceedings appropriate and the Commission continues to ignore administrative procedures, the subpoena in question remains unenforceable. Specifically, an administrative subpoena that is unreasonably broad or burdensome is unenforceable. United States v Westinghouse Electric Corporation, 788 F.2d 164, 166 (3rd Cir. 1986). As the MRSC has indicated in previous submissions to the Commission, the Commission's failure to serve the MRSC in a timely fashion, (18 months after the filing of the complaint) has deprived

the MRSC of a fair opportunity to prepare and present arguments rebutting the complaint with timely information. Similarly, the passage of time has harmed the MRSC's ability to provide a fair response to the April 23, 1991 subpoena. In this regard, during the 18 months that the Commission failed to provide notice to the MRSC, there has been a change in the election cycle with a corresponding change in MRSC personnel. People who were with the MRSC in 1988 have left, moved, or are unavailable. The recollection of events in question are naturally faded. New personnel would be required to interpret unfamiliar, aged data. Moreover, the subpoena in question seeks records that are not required to be retained by the Act and are no longer available (e.g., communications between party committees).

Perhaps the most unreasonably broad and burdensome aspect of the April 23, 1991 subpoena is the "fishing expedition" nature of some of its requests. The Commission's subpoena requests information concerning all of the then Vice President Bush's trips in Michigan from June 1, 1988 to August 31, 1988, when in fact the complaint itself only alleges violations concerning two trips in Michigan--one on July 4, 1988 and one on July 20, 1988. See Complaint, pp. 11, 12. In this regard, agency subpoenas must demand information that is reasonably relevant to the inquiry. United States v Morton Salt Co, 338 US 632, 652 (1950). Thus, in the present case, any requests by the Commission for information should be limited to the two trips that are identified in the complaint.

The April 23, 1991 subpoena also asks the MRSC for information regarding the then Vice President Bush, such as speech transcripts, tapes, video tapes, and news accounts. Not only is this information not required to be retained under the Act, but the Commission should seek this information from the Bush Committee, not the MRSC. Thus, under the present circumstances, the Commission's April 23, 1991 subpoena to the MRSC and its Treasurer is unreasonably broad and burdensome.

RELIEF REQUESTED

For the above reasons, pursuant to 11 C.F.R. § 111.15, the MRSC respectfully moves the Commission to quash the April 23, 1991 subpoena issued to the MRSC by the Commission. The MRSC further moves the Commission to dismiss the complaint, to the extent it alleges violations of the Act and Commission regulations by the MRSC, and to terminate any further compliance proceedings against the MRSC and its Treasurer in this matter.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for the Michigan
Republican State Committee

Dated: May 13, 1991

By: David W. McKeague
David W. McKeague (P17459)
Eric E. Doster (P41782)

313 South Washington Square
Lansing, Michigan 48933
Telephone: (517) 371-8100

MRSC/MEMO/SUPP/MOTION
249;MISC

file

May 7, 1990

Ms. Lee Ann Elliott, Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Chairman Elliott:

RE: MUR 2667; Michigan Republican State Committee and Ronald D. Dahlke, as Treasurer

Enclosed is a motion and supporting response and memorandum requesting the Commission to rescind its reason to believe finding in this matter, to dismiss the complaint to the extent it alleges violations by the Michigan Republican State Committee (MRSC), and to terminate compliance proceedings against the MRSC and its Treasurer.

The MRSC recognizes the unusual nature of this motion, but believes such action is appropriate because of the Commission's failure to comply with the Federal Election Campaign Act and its regulations in this matter. This failure puts both the Commission and the MRSC in an extraordinary procedural posture, making it impossible for the Commission to take any lawful action other than dismissal.

Thank you for your consideration in this matter.

Sincerely,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Eric E. Doster

EED:skp
Enclosures
CERTIFIED MAIL--
RETURN RECEIPT REQUESTED
cc/enc: E. Spencer Abraham
David J. Doyle
Sue E. Wadel

EXHIBIT A

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Michigan Republican State Committee and Ronald D. Dahlke, as Treasurer	)))	MUR 2667

MOTION TO RESCIND REASON TO BELIEVE FINDING, TO DISMISS COMPLAINT, AND TO TERMINATE COMPLIANCE PROCEEDINGS

The Michigan Republican State Committee ("MRSC") and its Treasurer, Ronald D. Dahlke, respectfully move the Federal Election Commission (the "Commission") to rescind its finding that there is reason to believe the MRSC and its Treasurer violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), as well as 11 C.F.R. § 102.5(a), on the grounds that the finding was not made in accordance with the Federal Election Campaign Act (the "Act") and relevant regulations. The MRSC and its Treasurer further move the Commission to dismiss the complaint in this matter, to the extent it alleges violations of the Act and regulations by the MRSC and to terminate compliance proceedings against the MRSC and its Treasurer in this matter.

In support of this motion, the MRSC and its Treasurer submit the accompanying memorandum of points and authorities.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for the Michigan
Republican State Committee

Dated: May 7, 1990

By: Eric Doster

David W. McKeague (P17459)
Eric E. Doster (P41782)

313 South Washington Square
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Telephone: (517) 372-8050

MRSC/88/MOTION
239;EED/DOCS

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
Michigan Republican State Committee	)	**MUR 2667**
and Ronald D. Dahlke, as Treasurer	)	

RESPONSE AND MEMORANDUM IN SUPPORT OF MOTION TO RESCIND REASON TO BELIEVE FINDING, TO DISMISS COMPLAINT, AND TO TERMINATE COMPLIANCE PROCEEDINGS

On February 6, 1990, the Federal Election Commission (the "Commission") found that there is reason to believe that the Michigan Republican State Committee ("MRSC") and its Treasurer, Ronald D. Dahlke, violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A) of the Federal Election Campaign Act (the "Act"), as well as 11 C.F.R § 102.5(a). This finding was based on a complaint filed with the Commission on August 8, 1988, and a supplement filed on September 12, 1988. Because the MRSC and its Treasurer were not afforded the procedural guarantees provided for by 2 U.S.C. § 437g(a)(1) and 11 C.F.R. §§ 111.5 and 111.6, the MRSC and its Treasurer respectfully move the Commission to rescind its finding that there is reason to believe that the MRSC and its Treasurer violated 2 U.S.C. §§ 441b(a) and 441a(a)(2)(A), as well as 11 C.F.R. § 102.5(a). Since the Commission's finding was not made in accordance with the Act and relevant regulations, the MRSC and its Treasurer further move the Commission to dismiss the complaint in this matter, to the extent it alleges violations of the Act and regulations by the MRSC and to vote to take no further action against the MRSC and its Treasurer in this matter. Such action is

appropriate because of the Commission's failure to comply with the Act and relevant regulations. The extraordinary posture of this matter makes it impossible for the Commission to take any lawful action other than dismissal.

I. A REASON TO BELIEVE FINDING BASED ON THE COMPLAINT IS INAPPROPRIATE SINCE THE MRSC NEVER RECEIVED THE NOTICE REQUIRED BY THE COMMISSION'S REGULATIONS.

The Commission's compliance regulations, 11 C.F.R. §§ 111.1-111.23, set out the procedures that must be followed before the Commission can make a reason to believe finding. Section 111.4(d)(1) requires that a complaint alleging a violation of the Act "should clearly identify as a respondent each person or entity who is alleged to have committed a violation."

Any reasonable reading of the complaint filed on August 8, 1988, and the supplement filed on September 12, 1988, in this matter demonstrates that the MRSC, the Republican National Committee ("RNC"), and other Republican committees are clearly charged with violating the Act:

* Page 11 of the complaint discusses a July 4, 1988 speech by Vice President Bush in Detroit, Michigan. Page 12 of the complaint discusses a July 20, 1988 news conference held by the Vice President in Warren, Michigan, along with his speech at a Captive Nations banquet. Exhibit 12 to the complaint includes a July 21, 1988 Washington Post article describing the event. This appears to be a basis for finding reason to believe that the MRSC violated the Act.

* Page 4 of the complaint alleges "an apparent attempt to shift campaign expenses from the Bush for President Committee to the Republican National Committee and state party committees." It further alleges that "there is a clear probability that a large amount of these expenses have been improperly shifted to other committees."

* Page 7 of the complaint states: "Any payments by the Republican National Committee or State party committees for Bush campaign travel expenses amount to contributions to the campaign under 2 U.S.C. § 441a."

* Page 8 of the complaint further states that "expenditures made by the national party committees in connection with the general election campaign of the party's Presidential nominee are chargeable to the party's spending limit under 2 U.S.C. § 441a(d)." It continues: "State parties are not permitted to make expenditures in connection with the general election campaign of the presidential nominee unless the state party is designated specifically by the national party to make such expenditures. 11 C.F.R. § 110.7(a)(4). Therefore, unless a state party has received such a designation, it is prohibited from paying travel expenses of a candidate to his general election campaign."

* Pages 15 and 16 of the complaint allege various violations of the Act by the RNC and the state party committees, including:

  "1(f). Acceptance of prohibited contributions in violation of 2 U.S.C. § 441b by accepting payments of campaign travel costs from state party committees whose accounts contain funds that are illegal under § 441b."

  "2(d). Acceptance of prohibited contributions in violation of 2 U.S.C. § 441b by accepting payment of campaign travel costs from state party committees when accounts contain funds that are illegal under § 441b."

  "2(e). Acceptance of a contribution from state party committees other than contributions to a compliance fund in violation of 11 C.F.R. §§ 9003.3 and 9003.2."

* The prayer for relief at page 17 of the complaint requests that the Commission "Require the Bush for President Committee and any other Republican committees the Commission deems appropriate to produce immediately [relevant records]."

* The September 12, 1988 supplement to the complaint restates on page 1 the allegation "that in an apparent attempt to avoid reporting such excess expenditures to the FEC the Bush Committee appeared inter alia to have shifted travel expenses for which it was liable to other political committees...."

* Page 2 of the supplement explains Attachment A as identifying "several sources (other than the Bush for President Committee) for funding Mr. Bush's political travel, including the Republican National Committee, state Republican Committees, and the United States Government."

Accordingly, the complaint filed on August 8, 1988, and the supplement filed on September 12, 1988, allege that the MRSC violated the Act. The Act is clear on the safeguards that must be afforded any party alleged in a complaint to have violated the Act:

> "Within 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation. Before the Commission conducts any vote on the complaint, other than a vote to dismiss, any person so notified shall have the opportunity to demonstrate, in writing, to the Commission within 15 days after notification that no action should be taken against such person on the basis of the complaint." 2 U.S.C. § 437g(a)(1).

In addition, 11 C.F.R. § 111.5 of the Commission's compliance regulations requires that:

> "Upon receipt of a complaint, the General Counsel shall review the complaint for substantial compliance with the technical requirements of 11 CFR 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of the Commission compliance procedures, and enclose a copy of the complaint."

Section 111.6 of the Commission's compliance regulations requires that any respondent be given an opportunity to demonstrate that no action should be taken on matters generated by a complaint, and prohibits the Commission from taking "any action, or [making]

any finding, against a respondent other than action dismissing the complaint, unless it has considered" the response permitted by the regulations. 11 C.F.R. § 111.6(b).

The MRSC was clearly identified as a respondent in the August 1988 complaint and September 1988 supplement, and should have been notified within five (5) days of the filing of the complaint, as required by 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.5. The MRSC received no notice of this enforcement matter against it until the MRSC received the Commission's letter dated February 21, 1990, and then only after a reason to believe finding had already been made. Since no timely notice was provided to the MRSC, the MRSC was not provided its statutorily required opportunity to respond to the complaint. The Commission therefore lacks the authority to take any action against the MRSC in this matter, "other than action dismissing the complaint." 2 U.S.C. § 437g(a)(1); 11 C.F.R § 111.6(b).

II. THE SUBSEQUENT PROVISION OF THE COMPLAINT AND SUPPLEMENT TO THE MRSC DEMONSTRATES THAT THE MRSC WAS A RESPONDENT WHICH SHOULD HAVE RECEIVED TIMELY NOTICE OF THE FILING OF THE COMPLAINT.

By letter dated February 21, 1990, the MRSC received notice of the Commission's reason to believe finding in MUR 2667, together with a Factual and Legal Analysis which referred repeatedly to a complaint and supplement, "Respondent's Brief," and "Holiday Affidavit," which formed the basis for the Commission's finding in this enforcement matter. On March 6, 1990, the MRSC requested the documents referred to in the Factual and Legal

Analysis in order to respond in this matter. Pursuant to this request, the Office of the General Counsel provided the MRSC with copies of the complaint and supplement in MUR 2667. A review of the complaint and supplement led to this response and the accompanying motion.[1]

Section 437g(a)(12) of the Act and the Commission's regulations at 11 C.F.R. § 111.21(a) prohibit the Commission or any person from making public any information, including any complaint filed with the Commission, derived in connection with any enforcement proceeding, without the written consent of the respondent against whom the complaint was filed.

Accordingly, the complaint and supplement in this matter could only legally be provided by the Commission to respondents in this matter. By providing the MRSC with a copy of the complaint and settlement in this ongoing enforcement proceeding, the Office of the General Counsel has admitted through its actions that the

---

[1]/The General Counsel rejected the MRSC's request for the other documents referred to in the Commission's Factual and Legal Analysis, citing the Act's confidentiality provisions. On or about March 20, 1990, the MRSC objected to the Commission's refusal to provide these documents, specifically with reference to the response of the George Bush for President Committee and the affidavit of Edith E. Holiday, both of which were cited extensively in the Commission's Factual and Legal Analysis. The MRSC protested in letters dated March 28, 1990, and April 20, 1990, that without these documents, which appear to be essential to an effective factual, legal, or procedural response by the MRSC, the MRSC needed additional time--until May 14, 1990--to respond to the issues presented or to raise procedural objections in this matter. In submitting this response, the MRSC specifically reserves its procedural rights to argue that it should have all documents referred to in the Factual and Legal Analysis and to be able to respond on the merits, if the accompanying motion is denied.

August 8, 1988 complaint and the September 12, 1988 supplement made the MRSC a respondent in this matter. If the MRSC is a respondent now in this complaint-generated matter, the MRSC should have been provided with a notice and a copy of the complaint in the timely manner required by the Act and the Commission's regulations. In addition, the MRSC should have been given an opportunity to respond to the complaint before any action was taken or finding made by the Commission. Through this admission that the MRSC is a respondent that should have been notified of this matter in the first instance, the General Counsel has precluded the Commission from taking further action against the MRSC, other than action dismissing the complaint.

III. THE FACT THAT THE COMMISSION HAS USED THE SAME MUR NUMBER IN ITS FINDING AGAINST THE MRSC THAT IT USED IN ITS ENFORCEMENT PROCEEDING AGAINST THE BUSH FOR PRESIDENT COMMITTEE IS FURTHER EVIDENCE THAT THIS MATTER WAS GENERATED BY THE COMPLAINT.

When the complaint in this matter was filed in August 1988, it was assigned MUR number 2667. The Commission's reason to believe finding and the Factual and Legal Analysis supporting that finding also carried MUR number 2667. The additional documents provided to the MRSC carry MUR number 2667, thereby demonstrating that the Commission's action against the MRSC was, in fact, generated by the August 1988 complaint and the September 1988 supplement.

If the matter was not generated by the complaint, but was generated internally, the Commission's procedures would have given it a different matter under review number, with different

respondents. See 11 C.F.R. §§ 111.3 and 111.8. The only possible inference from this designation is that the matter was generated by the complaint, and that the MRSC was a respondent from the filing of the August 1988 complaint and September 1988 supplement.

IV. THE COMMISSION'S FACTUAL AND LEGAL ANALYSIS CLEARLY INDICATES THAT THIS MATTER WAS GENERATED BY THE COMPLAINT AND SUPPLEMENT, AND NOT INTERNALLY GENERATED.

The Commission's Factual and Legal Analysis--and, as a result, the finding based upon it--rests, in large part, on allegations contained in the original August 1988 complaint. The complaint cites 16 trips by Vice President Bush that are alleged to have been or included campaign activity. The Factual and Legal Analysis reviews each of these trips and the complaint's allegations about them. The principal source of information on the allegations is the August 1988 complaint and September 1988 supplement, and any action taken on the basis of the complaint and supplement can only be designated as complaint-generated and is therefore subject to the statutory and regulatory procedures set forth above.

V. RELIEF REQUESTED

For these reasons, the MRSC moves the Commission to dismiss the complaint, to the extent it alleges violations of the

Act and regulations by the MRSC, and to terminate any further compliance proceedings against the MRSC and its Treasurer in this matter.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for the Michigan
Republican State Committee

Dated: May 7, 1990

By: Eric Doster

David W. McKeague (P17459)
Eric E. Doster (P41782)

313 South Washington Square
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MRSC/RESPONSE/88
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FOSTER, SWIFT, COLLINS & SMITH, P.C.
ATTORNEYS AT LAW
SOUTH WASHINGTON SQUARE
LANSING, MICHIGAN 48933-2193
TELEPHONE
FAX

FILE COPY

June 12, 1990

Mr. Lawrence E. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Dear Mr. Noble:

RE: MUR 2667; Motion to Rescind Reason to Believe Finding, to Dismiss Complaint, and to Terminate Compliance Proceedings

We received your letter dated May 29, 1990, in the above-referenced matter, where you indicated that the Commission rescinded its February 6, 1990 reason to believe determination regarding the Michigan Republican State Committee (MRSC). It appears from your letter, however, that the Commission has failed to take action on the MRSC's Motion to Dismiss the Complaint and to Terminate Compliance Proceedings. As evidenced by the documentation supplied to the Commission in this matter, the MRSC's due process rights were violated as a result of the failure to timely notify the MRSC of the Complaint and to provide it with the opportunity to respond as required by 2 U.S.C. § 437g(a)(1).

Accordingly, we once again respectfully request that the Commission consider and grant the MRSC's Motion to Dismiss the Complaint and to Terminate Compliance Proceedings. In submitting this request, the MRSC specifically reserves its rights to respond to the Complaint on the merits, if its Motion is eventually denied by the Commission.

EXHIBIT B

In addition, the MRSC respectfully requests that the time to file a response to the Complaint be postponed to await the result of the Commission's ruling on this matter. The basis for this request is that since MUR 2667 should be dismissed as it pertains to the MRSC, it is unnecessary for the MRSC to even begin preparing a response to the Complaint until this issue is resolved by the Commission.

Thank you for your consideration in this matter.

Sincerely yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Eric E. Doster

EED:skp

cc: David J. Doyle
Sue E. Wadel
David W. McKeague

bcc: Benjamin L. Ginsberg
Janice P. Lacy
Gordon M. Strauss

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MICHIGAN REPUBLICANS

E. SPENCER ABRAHAM
Chairman

RANDOLPH J. AGLEY
Finance Chairman

RONNA ROMNEY
National Committeewoman

CHARLES YOB
National Committeeman

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First Vice Chair

L. JAMES HALL
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SUZANNE K. MILLER
Third Vice Chair

ANDREW ANUZIS
Fourth Vice Chair

C. W. MAC McCLELLAN
Fifth Vice Chair

LAURA REYES KOPACK
Sixth Vice Chair

HANK FUHS, JR.
Secretary

RONALD D. DAHLKE
Treasurer

DAVID W. McKEAGUE
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2121 East Grand River
Lansing, MI 48912
517-487-5413
517-487-0090 FAX

Marquette Building
243 W. Congress
Suite 200
Detroit, MI 48226
313-963-9414

July 9, 1990

COPY

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Ms. Patty Reilly

Dear Mr. Noble:

RE: MUR 2667; Michigan Republican State Committee

This is in response to your letter dated June 20, 1990 which we received on June 25, 1990. For the reasons set forth in the letter to you from Benjamin L. Ginsberg of the Republican National Committee dated June 29, 1990 (the arguments set forth in that letter are hereby adopted and incorporated by reference), the Michigan Republican State Committee takes the position that it has no duty to reply as a respondent in this matter, because to do so would be to waive the Committee's continued objection to the Commission's unsupported and improper claim to be able to waive and rewrite its statutory provisions at will.

Sincerely yours,

MICHIGAN REPUBLICAN STATE COMMITTEE

Eric E. Doster
Assistant General Counsel

EED:skp

cc: David J. Doyle
Sue E. Wadel
David W. McKeague

EXHIBIT C

Paid for by the Michigan Republican State Committee, 2121 East Grand River, Lansing, Michigan 48912

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
90 JUN 29 PM 6:17

June 29, 1990

Mr. Lawrence M. Noble, General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

ATTN: Patty Reilly

RE: MUR 2667
Republican National Committee and
William J. McManus, as treasurer

Dear Mr. Noble:

This is in response to your letter dated June 20, 1990 which we received on June 22, 1990. In that letter, you informed us that the Federal Election Commission ("Commission") has denied the Republican National Committee's ("RNC") motion to dismiss. This motion was based on the Commission's failure to comply with the notice provision of the Federal Election Campaign Act ("Act"), the statute under which the Commission is authorized. See 2 U.S.C. §437g(a)(1).

The motion cited that the underlying complaint from Democratic state chairmen was filed on August 8, 1988 and a supplement was filed on September 12, 1988. However, the Commission failed to serve Respondents until March 14, 1990. 2 U.S.C. §437g(a)(1) states: "Within 5 days after receipt of the complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed [a violation of the Act]" (emphasis added). Accordingly, Respondent's motion and accompanying memorandum maintained that since the Commission had violated the plain wording of the statute's notice provision by 19 months, the only appropriate action was dismissal of this matter as to the RNC and its treasurer. The Commission has, as we will discuss below, declined to present us with authority for the position that it may choose to ignore the Congressionally-mandated procedures of its own enabling statute. Further, the Commission has evidently failed to consider the injury done to Respondents by the Commission's failure to notify Respondents of the Complaint. in a timely manner.

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The history of this matter is replete with procedural errors by the Commission. In addition to its failure to provide statutory notice, the Commission also issued a reason to believe finding against the RNC and its treasurer without affording them any opportunity to respond. This reason to believe finding violated the provisions of 2 U.S.C. §437g. In its notification of that finding, the Commission relied entirely on a factual and legal analysis which cited pleadings unknown to Respondents and which the Commission failed to provide Respondents. In an attempt to recover from its procedural errors, the Commission now seeks by unsupported administrative flat to grant itself the authority to rewrite its own statute, rescind its reason to believe finding and start over -- almost two years after the original complaint was filed. However, the Commission's procedural errors have caused substantial harm to the RNC's ability to respond fairly to the complaint as detailed below. Given these results, the Commission's actions are not harmless administrative errors, and the Commission's complaint as to the RNC and its treasurer must be dismissed.

Respondents object as a matter of principle to the Commission's arbitrary and capricious decision to exempt itself from the provisions of its statute. The 5-day notice requirement of 2 U.S.C. §437g(a)(1) is mandatory, not discretionary. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 411-12 (1971); Federal Election Commission v. Rose, 806 F.2d 1081, 1082 n.1 (D.C. Cir. 1986) ("the Commission must notify the alleged violator ... within 5 days"). The legislative history of the 5-day notice provision states that these provisions were intended to provide "additional protection by requiring that [a Respondent] be given a more detailed notice of any charges, as well as an opportunity to formally respond to charges prior to any determination by the Commission that he or she has violated the Act." Legislative History of Federal Election Campaign Act Amendments of 1979, at 549.

The Commission's gambit of ignoring the 5-day rule and starting over relates only to the opportunity to respond. Even if this is curable (which Respondents believe it is not), the Commission's failure to serve Respondents for 19 months has irretrievably failed to provide a legally sufficient notice to enable the RNC to address adequately the charges contained in the complaint. This failure further deprives the RNC of a fair opportunity to prepare and present arguments rebutting the complaint with timely information. During the 19 months that the Commission failed to provide notice, there has been a change in the election cycle with the corresponding change in RNC personnel. People who were with the RNC 19 months ago have left, moved, or are unavailable. The recollection of events in question is faded. New personnel would be required to interpret unfamiliar, aged data. At bottom, the Commission's stale notice does not cure the passage of time, which precludes a fair and consistent response to the allegations in the complaint. See, e.g., Gratehouse v. United States, 512 F.2d 1104, 1109-10 (Cl. Ct. 1975) (agency's time to remedy procedural error is "measured in

weeks, not years"). While there may be instances where complaints are properly filed 19 months after an alleged violation, this is not one of those instances. This is a case in which the Commission simply failed to follow the procedural protections required by its enabling statute, and now wants to pretend it does not have to follow its own rules.

Moreover, as a unique agency regulating politics, the Commission needs to be especially careful in following its statutory procedures in order to ensure that all parties are treated in an objective and non-partisan manner. Congress has repeatedly recognized the unique political nature of the Commission. See, e.g., Legislative History of the Federal Election Campaign Act Amendments of 1974, at 904, 911, 914. The current Commission is politically balanced. But the action it seeks to take in this case would set a precedent. And such precedent as waiving the Act's notice requirements at will would give an improperly partisan Commission great power to affect the outcome of elections by unleashing complaints according to a politically motivated timetable. While we are not asserting that the Commission has acted in a partisan manner in this instance, this attempt to ignore its statute could set a dangerous precedent for the future.

An initial review of the case law and legislative history made the Commission's actions in this matter difficult to understand, especially given the Commission's unique role of regulating politics. In an attempt to avoid litigation, I telephoned Commission General Counsel Lawrence Noble on June 27, 1990 to ask for the legal authority supporting the Commission's position. The General Counsel called back several hours later and responded that while he did not feel it the Commission's responsibility to do Respondent's research, he urged Respondent to review Aascon Auto Transport, Inc., v. I.C.C., 792 F.2d 1156 (D.C. Cir. 1986) and other unspecified cases of administrative law. Respondents have reviewed this case law, and fail to see how the General Counsel could rely upon it in the present circumstances. Aascon did not involve a failure to follow an authorizing statute by a federal agency. Rather, it involved a 3-year statutory deadline which was imposed by Congress after an administrative proceeding had begun. Thus, the issue there was the retroactivity of the new requirement. To our knowledge, no one disputes that the Commission's statutorily-mandated 5-day notification provision has been in effect since 1980, and thus, was in place for some eight years before this matter first reached the Commission. Accordingly, Respondents feel even more compelled to object to the Commission's arbitrary, capricious and unsupportable decision to "waive" its own statute as it applies to itself.

The Commission's omissions and failure to act in this matter are not technicalities. Given the harm already generated by the Commission's failure to follow its statute, the RNC again respectfully requests that the Commission dismiss the complaint as to the RNC and its treasurer. So that there is no misunderstanding, let me clearly state

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Respondent's position: we are prepared and willing to provide information to the Commission by following the standard evidentiary practices of an ongoing MUR. Should the Commission require information from us in these proceedings, we will respond to the Commission as witnesses in this matter. However, we are not willing to reply as a Respondent in this matter, because to do so would be to accept the Commission's unsupported and improper claim to be able to waive and rewrite its statutory provisions at will. It is important to ensure Commission adherence to the fundamental procedural rights crucial to the regulation of politics in the United States.

Sincerely,

Benjamin L. Ginsberg

BLG:ljd

9604371 3-470

OOC 1153

FEDERAL ELECTION COMMISSION

91 MAY 15 AM 10:48

Andrew D. Leipold
2000 One Logan Square
Philadelphia, PA 19103

May 13, 1991

91 MAY 15 AM 11:40

BY FAX AND REGISTERED MAIL, RETURN RECEIPT REQUESTED

Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 2667; Republican Federal Committee of Pennsylvania and Jacob D. Yaros, as Treasurer

Dear Mr. Noble:

Enclosed please find a Motion To Quash the subpoena issued in the above-referenced matter, along with a supporting Memorandum.

Sincerely,

Andrew D. Leipold

Counsel for the Republican Federal Committee of Pennsylvania and Jacob D. Yaros, as Treasurer

ADL/cs
Enclosure

9604371342 1

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	MUR 2667
Republican Federal Committee	)	
of Pennsylvania and	)	
Jacob D. Yaros, as Treasurer	)	

MOTION TO QUASH

The Republican Federal Committee of Pennsylvania and Jacob D. Yaros, as Treasurer, (the "Pennsylvania Respondents") request that the Federal Election Commission quash the subpoena and withdraw the order to submit written answers issued to the Pennsylvania Respondents in the above-referenced Matter Under Review. In support of this Motion, the Pennsylvania Respondents submit the attached Memorandum In Support Of The Motion To Quash.

Respectfully submitted,

Andrew D. Leipold

Counsel for the Republican Federal Committee of Pennsylvania and Jacob D. Yaros, as Treasurer

Date: May 13, 1991

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	MUR 2667
Republican Federal Committee	)	
of Pennsylvania and	)	
Jacob D. Yaros, as Treasurer	)	

MEMORANDUM IN SUPPORT OF THE MOTION TO QUASH

On May 3, 1991, the Republican Federal Committee of Pennsylvania and Jacob D. Yaros, as Treasurer, (the "Pennsylvania Respondents") received from the Federal Election Commission ("Commission") a Subpoena to Produce Documents and Order To Submit Written Answers (the "subpoena") in the above-referenced Matter Under Review. The Pennsylvania Respondents now move to have the subpoena quashed for two independent reasons. First, the subpoena was issued as part of an improper enforcement proceeding; the Commission's failure to comply with the mandatory notification requirements of its governing statute and regulations precludes it from proceeding with the investigation against these respondents. Second, the Commission's failure to issue a timely demand for information has severely prejudiced the Pennsylvania Respondents' ability to respond to and defend against the allegations that have been raised. It would be inappropriate to continue the investigation under these circumstances.

I. BACKGROUND

The factual background to this Motion has been fully set forth in the Pennsylvania Respondents' Motion to Dismiss (the relevant parts of which are incorporated in this Memorandum by

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reference), which was filed with the Commission on June 30, 1990, and denied on July 17, 1990. Only a summary of the facts are required here.

Back in August 1988, a complaint was filed against George Bush for President, Inc., alleging violations of the federal election laws. The Pennsylvania Respondents were not mentioned in the complaint. One month later, a supplement to the complaint was filed; on the basis of the supplement, the Commission concluded that the Pennsylvania Respondents were to be parties to this action. Pursuant to 2 U.S.C. §437g(a)(1), the Commission was obligated to notify the Pennsylvania Respondents of the filing of the complaint and supplement within 5 days.

The Commission failed to comply with the statute, and did not notify the Pennsylvania Respondents until the end of May 1990, nearly 21 months after the supplement was filed. Because the statute makes the Commission's duty to notify within 5 days mandatory, the Pennsylvania Respondents promptly filed a Motion to Dismiss the Complaint. Although the motion was subsequently denied, the Commission took no further action for another 10 months, when the subpoena in question was issued.

II. ARGUMENT

A. The Commission's Failure to Comply With An Explicit Congressional Directive Precludes The Issuance of the Subpoena.

The Commission has unquestionably failed to comply with 2 U.S.C. §437g(a)(1), which states that the Commission "shall" notify a party within 5 days of the filing of the complaint. See

also 11 C.F.R. §111.5(a). The Commission has never denied that it has violated the statute by waiting 21 months to notify the respondents, never explained its failure to do so, and never provided a legal theory that would excuse the violation or otherwise permit this action to continue.

The Commission does not have the discretion to ignore an explicit congressional directive; its continuation of the action in violation of this directive, without justification or explanation, is a classic example of impermissible agency conduct. See 5 U.S.C. §706 (agency actions or findings shall be set aside if they are "not in accordance with law"). If the Commission were free to commence enforcement proceedings against parties without timely notice, even when the lack of notice has prejudiced those parties (see Part B, infra), it would raise serious due process concerns. Ignoring such directives also would permit an agency to abuse its enforcement powers by complying with the rules for some parties but not for others. Particularly when the agency is charged with maintaining the public trust in a non-partisan election process, the rules that limit the agency's authority must be evenhandedly and rigorously obeyed.

In short, the Commission has waived its right to commence an investigation against the Pennsylvania Respondents in this case, because the delay in notifying respondents divests the Commission of jurisdiction to proceed. The Motion To Quash should therefore be granted.

B. **Alternatively, The Motion Should Be Granted Because The Commission's Unjustified Delay Has Severely Prejudiced The Pennsylvania Respondents Ability To Provide The Necessary Information.**

In its June 1990 motion to dismiss the complaint, the Pennsylvania Respondents described the prejudice caused by the Commission's failure to proceed in a reasonably expeditious fashion. That prejudice not only continues, it has been exacerbated by the additional 10 month delay that has occurred since the motion was denied. The Commission's continuing inability to investigate this action in a timely manner provides an independent basis to quash the subpoena.

Nearly 32 months elapsed between the filing of the supplement and the issuance of the subpoena. This passage of time has caused irreparable prejudice, because it has undercut any chance the Pennsylvania Respondents may have had to make a contemporaneous investigation of the facts. Cf. Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 14 (1977) (purpose of notice requirement under due process clause is, inter alia, to "permit adequate preparation" for subsequent hearing). The people who had knowledge of the events in question must now rely on distant memories to respond to the allegations, rather than on immediate past knowledge. Thus, for example, it may be impossible today to satisfy the Commission's request to "[d]escribe in detail all communications" between the Pennsylvania Respondents and the Bush Campaign or the Republican National Committee regarding the alleged events in 1988; any reconstruction of those communications is likely to be incomplete

at best. Nor is it reasonable to think that the Pennsylvania Respondents would be able to identify each person associated with the Bush campaign or other committees with whom they spoke in August 1988.[1] See Commission Request for Information Nos. 5, 6.

The Commission also is seeking documents that could have been gathered at the time of the alleged violation, but that will be difficult or impossible to obtain now. Items such as press releases, internal notes regarding the details of the events in question, and transcripts of press conferences may not exist any longer, simply because the Commission has unjustifiably delayed its investigation.[2] Because the Commission obviously intends to rely on such information in its investigation (see, e.g., Commission Request for Documents Nos. 4-6), the delay creates an intolerable risk of erroneous and misinformed decision-making by the Commission. The subpoena should be quashed on this ground alone.

1/ The Commission's requests for information also have become increasingly burdensome with the passage of time. For example, it is unrealistic to think that the Pennsylvania Respondents can now provide "the most recent business and residential addresses and telephone numbers, [and] the present occupation" of each person with whom it communicated 2½ years ago.

2/ Indeed, given the passage of time, it is now difficult to determine whether these items ever existed.

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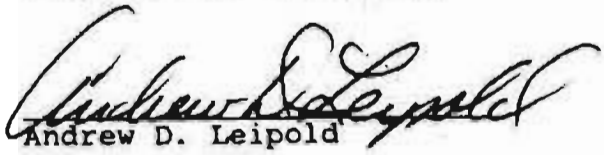
CONCLUSION

For the reasons set forth above, the subpoena issued to the Pennsylvania Respondents in this matter should be quashed.

Respectfully submitted,



Andrew D. Leipold

Counsel for the Republican Federal Committee of Pennsylvania and Jacob D. Yaros, as Treasurer

Date: May 13, 1991

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91 MAY 16 AM 11:55

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Van B. Poole
Chairman

Sherry Plymale
Vice Chairman

Ida Jackson
Secretary

Shirlee Bowne'
Treasurer

Ginny Dinkins
Assistant Secretary

John Laurent
Assistant Treasurer

Chester Clem
National Committeeman

Maryanne Morse
National Committeewoman

May 13, 1991

CERTIFIED MAIL P832 527 056
RETURN RECEIPT REQUESTED

Patty Reilly, Esquire
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D. C. 20463

Re: MUR 2667
Republican Party of Florida
(Federal Account/Non-Federal Account) and Shirlee Bowne, as Treasurer

Dear Ms. Reilly:

Pursuant to your letter of April 25, 1991, which was received by the Republican Party of Florida via certified mail on May 2, 1991, regarding the above referenced matter, enclosed please find the following documents:

Motion to Quash
Memorandum in Support of Motion to Quash

If you need further information, please so advise. Also, please note that Kenneth L. Connor is no longer legal counsel for the party. Please send future correspondence to the undersigned at the current party address. Thank you.

Very truly yours,

Roger D. Austin III

Roger Austin
Deputy General Counsel

719 North Calhoun Street ★ Post Office Box 311 ★ Tallahassee, Florida 32302 ★ Bus: (904) 222-7920 ★ Fax: (904) 681-0184
Paid for by the Republican Party of Florida. ★ Contributions are not tax deductible.

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican Party of Florida	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Shirlee Bowne, as Treasurer	)	

MOTION TO QUASH

The Republican Party of Florida hereby petitions the Federal Elections Commission to quash the subpoena issued to the Republican Party of Florida by the Commission in the above-referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

Roger D. Austin III

Roger Austin
Deputy General Counsel

May 13, 1991

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Republican Party of Florida	)	MUR 2667
(Federal Account/Non-Federal Account)	)	
and Shirlee Bowne, as Treasurer	)	

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

The Republican Party of Florida is filing this Motion to Quash according to 11 C.F.R., Section 111.15, because the subpoena arises from an improper enforcement proceeding. As we previously stated to the Commission in our submission dated June 29, 1990, the Commission has failed to comply with the notice provision of 2 U.S.C., Section 437g(a)(1).

This section requires notice within five (5) days after the receipt of a complaint, and is a mandatory requirement, as is also outlined in our previous submission. The Commission, however, did not send the complaint to the state committee until March 9, 1990, which is 19 months after the Commission received the complaint.

Because the Commission has wilfully ignored this Congressionally mandated procedure, the Commission has effectively waived its right to act under its authorizing statute. Accordingly, this error of due process bars any further administrative proceedings by the Commission in this matter as to the state committee, including the issuance of this subpoena.

Additionally, the state committee files this motion to quash because the subpoena is prejudicial to the state committee in that the passage of time deprives the state committee of the opportunity to respond to the subpoena with timely information.

As a previous submission has stated, the state committee has suffered injury from the Commission's failure to notify the state committee of the complaint in a timely manner. The state committee continues to be injured by the Commission's failure to act. The Commission has waited nearly a year

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before issuing this subpoena, and it is now nearly three years (32 months) since the complaint was first filed. This passage of time irreparably harms the state committee by depriving it of the opportunity to provide a fair response to the subpoena, based on timely information.

For example, personnel with knowledge from the prior election cycle have left the employ of the state committee and the Treasurer of the state committee in 1988 is now deceased. Even if personnel still at the state committee have knowledge of the events in question, recollection of specific information has faded, as well as memories of the events themselves. This would make it difficult to answer specific questions in the subpoena. We do not believe that we still have copies of invitations, press releases or transcripts of speeches, since this material is not required to be retained by the Federal Election Campaign Act and the state committee typically would have no use of such materials after the fact.

Finally, the subpoena would require new personnel to interpret aged records, and reconstruct events in which they took no part, or played only a minimal role.

Therefore, for all of the above stated reasons, the Republican Party of Florida respectfully requests that the Commission grant the motion to quash the subpoena, according to 11 C.F.R. ,Section 111.15. We waive no procedural rights with this petition.

Roger D. Austin III

Roger Austin
Deputy General Counsel

May 13, 1991

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Doc 1176

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MARY M. BIRKINGTON
L. LOU ALLEN
ANNE W. LEWIS
SAMUEL T. BRANNAN

OF COUNSEL
JOHN C. PENNINGTON
ROBERT G. WELLONS
ROBERT J. WOOSTING
DANIEL L. MACINTYRE
EDWARD N. SUNDERS

FEDERAL ELECTION COMMISSION
91 MAY 16 AM 11:59
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MAY 16 PM 3:18
FEDERAL ELECTION COMMISSION

May 13, 1991

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Georgia Republican Party and Marvin H. Smith, as Treasurer; MUR2667

Dear Ms. Reilly:

I am enclosing the Motion and Response to Subpoena to Produce Documents and Order to Submit Written Answers, filed herewith by the Georgia Republican Party and Marvin H. Smith, as Treasurer.

Please let me know if you have any questions.

Sincerely,

Frank B. Strickland
Co-Counsel for Respondents

FBS/lha

cc: Oscar N. Persons, Esq.

Enclosures

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of:	)	
	)	MUR 2667
GEORGIA REPUBLICAN PARTY and	)	
MARVIN H. SMITH, Treasurer	)	

MOTION AND RESPONSE TO SUBPOENA TO PRODUCE DOCUMENTS AND ORDER TO SUBMIT WRITTEN ANSWERS

The Georgia Republican Party and Marvin H. Smith, Treasurer ("Respondents"), move the Commission to dismiss the Complaint, to quash the Subpoena and to terminate compliance proceedings as to Respondents, based on the grounds and authorities set out in the motions filed by the Republican National Committee, et al., on May 1, 1990, and for the reasons set forth herein. Without prejudice to this Motion, Respondents respond to the Subpoena to Produce Documents and Order to Submit Written Answers as follows:

Respondents note that in the Factual and Legal Analysis furnished to Respondents in connection with this matter, the relevant date regarding Georgia was a July 8, 1988 visit. Respondents will limit their response to facts pertaining to that visit.

1.

Respondents renew their Motion to Dismiss the Complaint and to terminate compliance proceedings as to them based on the grounds and authorities set forth in the motions of the same name filed by the Republican National Committee, et al., on May 1, 1990.

2.

Respondents move to quash the Subpoena to Produce Documents issued to the Georgia Republican Party and Marvin H. Smith, as Treasurer, by the Federal Election Commission in the above-referenced matter under review for the reasons set forth herein.

3.

The Subpoena to Produce Documents and Order to Submit Written Answers served by mail on May 2, 1991, ask questions and seek documents in a form which is almost without exception verbatim to information previously sought from Respondents. In their Motion and Response dated May 30, 1990, Respondents produced all documents in their possession, custody or control, which are now

being sought by the Commission in the Subpoena served on May 2, 1991. See, Affidavit of Pamla H. Prochnow, attached as an Exhibit to the Motion and Response of Respondents, dated May 30, 1990. Other than the attached affidavit of John M. Stuckey, Jr., which shows that the functions in question were party building activities, Respondents have no further documents.

4.

As previously stated to the Commission in the submission filed by the Republican National Committee, et al. on May 1, 1990, the Commission has failed to comply with the notice provision of 2 U.S.C. Section 437g(a)(1). This section requires notice within five (5) days after receipt of a Complaint and is a mandatory requirement. The Commission did not send its initial complaint to Respondents until February 21, 1990, which was six (6) months, rather than five (5) days, after the Commission received the Complaint. The Commission cannot ignore a Congressionally mandated procedure at the will of the Commission. Such action by the Commission raises concerns as to procedural due process and abuse of process. The Commission has forfeited its right to investigate these Respondents because of its egregious delay. The passage of time outlined herein constitutes a waiver of the Commission's rights.

5.

Respondents file this Motion to Quash because the Subpoena is prejudicial to Respondents in that the passage of time deprives Respondents of the opportunity to respond to the Subpoena with timely information. As stated previously, Respondents have suffered injury from the Commission's failure to notify Respondents of the Complaint in a timely manner. Respondents continue to be injured by the Commission's failure to act. The Commission waited at least twelve (12) months before issuing this Subpoena. The Complaint was originally filed on August 8, 1988. More than thirty-three (33) months have now passed since the Complaint was filed.

6.

This passage of time irrevocably harms Respondents by depriving them of the opportunity to provide a fair response to the Subpoena based on timely information. For example, personnel with knowledge from the 1988 election cycle are no longer employed by the Georgia Republican Party or cannot be located. Other than the information previously provided to the Commission by Respondents on May 30, 1990, there is no reasonable basis on which the Subpoena itself can be answered, because the

events in question cannot be fairly reconstructed nearly three years after their occurrence, however "reasonable" any questions may be. Except for the information included as attachments to the Prochnow affidavit dated May 25, 1990, most, if not all, records which are not required to be retained by the Federal Election Campaign Act are no longer available. Finally, the Subpoena requires the current staff of the Georgia Republican Party to interpret old records and attempt to reconstruct events in which they took no part.

7.

For the foregoing reasons, the Commission should grant the Motion of Respondents to quash the Subpoena in accordance with 11 CFR Section 111.15. Without prejudice to this Motion, Respondents deem the enclosed Affidavit of John M. Stuckey, Jr. and the Response to Interrogatories and Requests for Production of Documents filed May 30, 1990 to be fully responsive to the Order to Produce Documents and Order to Submit Written Answers dated April 23, 1991.

Frank B. Strickland
Oscar N. Persons

COUNSEL FOR RESPONDENTS

Oscar N. Persons
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Frank B. Strickland
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1360 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 870-1800

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CERTIFICATE OF SERVICE

The undersigned counsel for Respondents has mailed a copy of the enclosed Motion and Response, with accompanying Stuckey Affidavit and Documents by United States Mail, first class postage prepaid, to:

Patty Reilly, Esq.
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

This 13th day of May, 1991.

Frank B. Strickland

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STATE OF GEORGIA

COUNTY OF FULTON

AFFIDAVIT

Personally appeared before me, the undersigned officer, John M. Stuckey, Jr., who, being duly sworn according to law, deposes and says on oath as follows:

1. That, he served in the capacity of Chairman of the Republican Party of Georgia during the years 1987 and 88;

2. That, in such capacity, he is familiar with the Victory '88-Georgia fund raising events and activities, including facilities and program arrangements;

3. That, in such capacity, he assisted with the planning and coordination of the Victory '88-Georgia events (described below) held in Atlanta, Georgia on Friday, July 8, 1988;

4. That, the subject events consisted of (i) a Bush/Quayle Southern Steering Committee meeting held at the Hartsfield Atlanta International Airport on the late morning/early afternoon of July 8 (the "Steering Committee Meeting"), and, (ii) a Victory '88 Unity Rally held in mid afternoon of July 8 at the Hyatt Regency Hotel in downtown

Atlanta (the "Unity Rally"), and, (iii) a Victory '88-Georgia Unity Reception and Fundraiser held in the ballroom of the Ritz Carlton, Buckhead hotel on the late afternoon of July 8 (the "Reception"), and, (iv) a private Victory '88-Georgia Dinner and Fundraiser held in the home of Mr. and Mrs. Tom Cousins on the evening of July 8 (the "Dinner");

5. That, to the best of deponent's knowledge and belief, both the Steering Committee Meeting and the Unity Rally were events planned, coordinated and financed by, respectively, the Bush Campaign and Republican National Committee, and, that no funds were expended on or collected as a result of, either event by the Republican Party of Georgia;

6. That, both the Reception and the Dinner were invitation only (by mail or by hand delivery), ticketed events, planned and carried out as Victory '88-Georgia fundraisers by the Georgia Republican Party staff and Victory '88-Georgia volunteers and staff for "party building" purposes only and not as a part of any presidential campaign efforts;

7. That, all costs associated with both the Reception and the Dinner were paid for from Victory '88-Georgia funds;

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8. That, both events were conceived, planned and carried out as Victory '88-Georgia fundraisers and for the purpose of encouraging participation in, and financial support for, the Republican Party of Georgia and were coordinated by Pam Prochnow and Margaret Strassner for the State GOP and by Margaret Alexander and Sandy Baxter for the Republican National Committee and by Chip Felkel of the Bush Campaign in Georgia;

9. That, the site (Ritz Carlton, Buckhead) of the Reception and the Dinner (Cousins' home) were chosen specifically to "divorce" these Victory '88-Georgia events from other events held in Atlanta on July 8 sponsored by the Bush Campaign (the "Campaign") and the Republican National Committee (the "RNC");

10. That, he was personally present at the Reception and the Dinner, and, can attest that he, together with the immediately past Georgia Republican Party Chairman, Paul Coverdell, presided at the Reception, and, that both the Reception and the Dinner were closed to the press, and, that to the best of his recollection neither event featured any presidential campaign type activities but only State Party oriented activities;

11. That, this Affidavit is made and given in conjunction with the Federal Election Commission MUR 2667 Georgia Republicans and Marvin H. Smith, as Treasurer; and the affiant declares that he has examined this Affidavit and that to the best of Affiant's knowledge and belief it is true and correct and complete.

JOHN M. STUCKEY, JR.

Sworn to and subscribed before me this 10th day of May, 1991 in the presence of:

Melanie O. Sanfrosi
Witness

Carmen Tallarita
Notary Public

Date Notarized: 5/10/91

My Commission expires:

[NOTARIAL SEAL]

NOTARY PUBLIC COBB COUNTY, GA

My Commission Expires April 30, 1995.

0453e

OGC 1177

HINKLE, COX, EATON, COFFIELD & HENSLEY

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LEWIS C. COX
PAUL W. EATON
CONRAD E. COFFIELD
HAROLD L. HENSLEY, JR.
STUART D. SHANOR
ERIK D. LANPHERE
C. D. MARTIN
PAUL J. KELLY, JR.
MARSHALL G. MARTIN
OREN M. LOPEZ
DOUGLAS L. LUNSFORD
JOHN J. KELLY
T. CALDER EZZELL, JR.
WILLIAM B. BURFORD*
RICHARD E. OLSON
RICHARD R. WILFONG*
THOMAS J. McBRIDE
STEVEN D. ARNOLD
JAMES J. WECHSLER
NANCY S. CUSACK
JEFFREY L. FORNACIARI
JEFFREY D. HEWETT
JAMES BRUCE
JERRY F. SHACKELFORD*
JEFFREY W. HELLBERG*
ALBERT L. PITTS
THOMAS M. HNASKO
JOHN C. CHAMBERS*
GARY D. COMPTON*
MICHAEL A. GROSS
THOMAS D. HAINES, JR.
FRANKLIN H. McCALLUM*
GREGORY J. NIBERT
DAVID T. MARNETTE*
MARK C. DOW
KAREN M. RICHARDSON*
FRED W. SCHWENDIMANN
JAMES M. HUDSON
JEFFREY B. BAIRD*
PATRICIA A. MORRIS
MACDONNELL GORDON
REBECCA NICHOLS JOHNSON
WILLIAM P. JOHNSON
STANLEY K. ROTOVSKY, JR.
BETTY H. LITTLE*
RUTH S. MUSGRAVE
HOWARD W. THOMAS
ELLEN S. CASEY
S. BARRY PAISNER
MARGARET CARTER LUDEWIG
MARTIN MEYERS
GREGORY S. WHEELER
ANDREW J. CLOUTIER
JAMES A. GILLESPIE
GARY W. LARSON
STEPHANIE LANDRY
JOHN R. KULSETH, JR.
LISA K. SMITH*
JAMES K. SCHUSTER*

*NOT LICENSED IN NEW MEXICO

OF COUNSEL
O. M. CALHOUN*
MACK EASLEY
JOE W. WOOD
RICHARD S. MORRIS

CLARENCE E. HINKLE (1901-1989)
W. E. BONDURANT, JR. (1913-1973)
ROY C. SNODGRASS, JR. (1914-1987)

May 13, 1991

Certified Mail
Return Receipt Requested

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 16 PM 3:18

Federal Election Commission
Washington, D.C. 20463

Re: Republican Campaign Committee of New Mexico (Federal Account/Non-Federal Account) and Barbara Baltz, as Treasurer
MUR 2667 - Motion to Quash

Gentlemen:

Enclosed please find the original and one copy each of a Motion to Quash and Memorandum in Support in the above cause. Please file the originals and return to me conformed copies in the enclosed self-addressed envelope. Thank you.

Very truly yours,

HINKLE, COX, EATON,
COFFIELD & HENSLEY

Paul Kelly, Jr. /mh

Paul Kelly, Jr.

PJK/mh

Enclosures

cc: Patty Riley, Esq., w/enc.
Marge Teague, w/enc.

91 MAY 16 AM 11:59

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF REPUBLICAN CAMPAIGN COMMITTEE OF NEW MEXICO (FEDERAL ACCOUNT/NON-FEDERAL ACCOUNT) AND BARBARA BALTZ, as Treasurer.

MUR-2667

MOTION TO QUASH

COMES NOW the Republican Campaign Committee of New Mexico (hereinafter "the Republican Party of New Mexico") and moves the Federal Election Commission for an Order quashing the subpoena issued to it by the Commission in the above-referenced matter under review, for the reasons set forth in the attached Memorandum in support of its Motion to Quash.

Respectfully submitted,

HINKLE, COX, EATON,
COFFIELD & HENSLEY

By Paul Kelly Jr.

Paul Kelly, Jr.
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for The Republican Campaign Committee of New Mexico

Certificate of Service

We hereby certify that we have mailed a true and correct copy of the foregoing pleading to all opposing counsel of record this 13th day of May, 1991.

M. Hansen

Hinkle, Cox, Eaton, Coffield & Hensley
P.O. Box 2068
Santa Fe, NM 87504-2068

BEFORE THE FEDERAL ELECTION COMMISSION

IN THE MATTER OF REPUBLICAN CAMPAIGN COMMITTEE OF NEW MEXICO (FEDERAL ACCOUNT/NON-FEDERAL ACCOUNT) AND BARBARA BALTZ, as Treasurer.

MUR-2667

MEMORANDUM SUPPORTING
MOTION TO QUASH

I.

Introduction

Pursuant to 11 C.F.R. § 111.15, the Republican Party of New Mexico files its Motion to Quash for the reason that the Subpoena in question issues from a patently improper enforcement proceeding.

On June 14, 1990, the Republican Party of New Mexico filed a Motion to Terminate Proceedings And Alternatively To Find No Reason To Believe And To Dismiss Complaint. That motion was accompanied by a Memorandum in Support. That Motion and Memorandum pointed out that the first notice to the Republican Campaign Committee of New Mexico of the subject Complaint was not until March of 1990. As previously noted, the Commission failed to comply with the notice provisions of 2 U.S.C. § 437g(a)(1). That section requires notice within five days after receipt of a complaint and is a mandatory requirement, all as previously argued. No response to the Republican Party of New Mexico's motion and memorandum was ever received nor has counsel ever received any indication that the Commission has acted on the unopposed motion.

II.

As Argued Earlier, The Commission Cannot Ignore its Statutory Mandate.

As noted above, the first notice that the Republican Party of New Mexico had of the captioned Complaint was not until March of 1990. The Complaint in this proceeding was filed on August 8, 1988, and a supplement was filed on September 12, 1988. The act is clear and its terms unequivocal that within five days after receipt of a complaint the Commission shall notify any person alleged to have committed a violation and they then shall have fifteen days to demonstrate in writing that no action should be taken upon the basis of the Complaint. Additionally, the Commission's own regulations provide that the general counsel shall review the Complaint and shall within five days after receipt notify each respondent. The Commission's own correspondence recites that the Complaint was filed on August 8, 1988 and that New Mexico was not advised of any Complaint until February of 1990. While the Chairman's letter of April 25, 1991 reflects a February 16, 1990 notification date, the record should reflect that the notification was not dated until February 21, 1990, and not received until March 5, 1990. Additionally, the records should reflect that a copy of the Holiday affidavit which is referenced in the materials sent under date of February 21, 1990, despite several requests, has still not been received.

The Republican Party of New Mexico respectfully suggests that the Commission forfeited its right to investigate the State Committee by a delay of almost two years and that the further delay

of almost another year between the submittal of the motion and the receipt of this most recent inquiry is unreasonable, has resulted in lost information and has prejudiced the Party's ability to structure its defense.

III.

Most of the Information Sought Has Previously Been Furnished and to the Extent the Request is Duplicative, the Subpoena should Be Quashed.

On or about March 7, 1990, Interrogatories and Requests for Production of Documents directed to Barbara Baltz, Treasurer of Republican Campaign Committee of New Mexico were received. On April 24, 1990, Responses were forwarded to the Commission. A comparison of the questions now being asked with the questions posed in March of 1990 reflects that essentially identical questions are being asked. The Requests for Production are identical in all respects. Although Question 3 has been expanded, the answer would not change because the other events do not involve the New Mexico Republican Party. A new question 7 appears requesting a description of the contents of any speech given by the Vice-President. No speech was given, however, if remarks were made by the Vice-President. The inordinate delay has resulted in the loss of any notes that might have existed and as of this date, no one has been identified who can recall the substance of what occurred.

Conclusion.

Based upon the foregoing, it is respectfully requested that the Commission quash the subpoena and dismiss this proceeding.

Respectfully submitted,

HINKLE, COX, EATON,
COFFIELD & HENSLEY

By Paul Kelly Jr.

Paul Kelly, Jr.
Post Office Box 2068
Santa Fe, New Mexico 87504-2068
(505) 982-4554

Attorneys for The Republican
Campaign Committee of New Mexico

Certificate of Service

We hereby certify that we have mailed a true and correct copy of the foregoing pleading to all opposing counsel of record this 13th day of May, 1991.

M. Henslee

Hinkle, Cox, Eaton, Coffield & Hensley
P.O. Box 2068
Santa Fe, NM 87504-2068

06CH73

GROSS & NOVAK, P.A.

ATTORNEYS AT LAW

EDWARD GROSS
IRA S. NOVAK
DENISE L. SANDERS[1]
CHARLES H. NEWMAN[1]
BARBARA F. BUCHTA

ALSO ADMITTED IN
[1] NEW YORK
[2] PENNSYLVANIA

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EAST BRUNSWICK, N. J. 08816
(908) 254-4200
TELECOPIER
(908) 254-4256

May 13, 1991

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

John Warren McGarry, Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 16 AM 10:07

RE: MUR 2667
NEW JERSEY REPUBLICAN STATE COMMITTEE AND
KATHLEEN A. DONOVAN, ITS TREASURER

Dear Chairman McGarry:

On behalf of the New Jersey Republican State Committee and Kathleen A. Donovan, its Treasurer, we are filing a Motion to Quash the subpoena served upon my client, pursuant to 11 C.F.R. § 111.15. In support of this Motion we are filing and we enclose our Memorandum.

Very truly yours,

EDWARD GROSS

EG/cb
encl.
cc: Hon. Robert D. Franks
cc: Hon. Kathleen A. Donovan
cc: Janice P. Lacy, Esq.

2604371334

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES

IN THE MATTER OF	)	
	)	
NEW JERSEY REPUBLICAN STATE COMMITTEE	)	MUR 2667
and KATHLEEN A. DONOVAN, as Treasurer	)	
	)	

MOTION TO QUASH

The New Jersey Republican State Committee hereby petitions the Federal Election Commission to quash the subpoena issued and served by Certified Mail on May 3, 1991 upon the New Jersey Republican State Committee and its Treasurer by the Commission in the above referenced Matter Under Review, for the reasons set forth in the attached Memorandum in Support of Motion to Quash.

EDWARD GROSS, ESQ.
Attorney for New Jersey
Republican State Committee
and Kathleen A. Donovan,
its Treasurer

May 13, 1991

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BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES

IN THE MATTER OF	)	
	)	
NEW JERSEY REPUBLICAN STATE COMMITTEE	)	MUR 2667
and KATHLEEN A. DONOVAN, as Treasurer	)	
	)	

MEMORANDUM SUPPORTING
MOTION TO QUASH

1. **The New Jersey Republican State Committee and its Treasurer, Kathleen A. Donovan, are filing this motion to quash according to 11 C.F.R. § 111.15 because the subpoena arises from an improper enforcement proceeding.**

As we previously stated to the Commission in our numerous submissions beginning with a motion dated May 1,1990, the Commission has failed to comply with the notice provisions of 2 U.S.C. § 437g(a)(1). This section requires notice within five (5) days after receipt of a complaint and is a mandatory requirement as outlined in our previous submissions to the Commission.

The underlying complaint from the various Democratic State Committees was filed on August 8, 1988. A supplement was filed on September 12, 1988. The Commission failed to serve the New Jersey Republican State Committee and its Treasurer until March 1, 1990, some nineteen (19) months after the original filing of the complaint. As we earlier noted in our various memoranda, the Commission cannot ignore Congressionally-mandated procedure at the

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Commission's will. The Commission rescinded the original reason to believe finding but failed and refused to dismiss the complaint. See the Commission's opinion dated May 22, 1990. By letter dated June 12, 1990, the New Jersey Republican State Committee requested that the Commission re-examine its decision not to dismiss the complaint. The Commission, on June 20, 1990, through its general counsel, effectively denied reconsideration. On July 2, 1990, the New Jersey Republican State Committee filed a lengthy letter memorandum in support of its continued request that the complaint be dismissed against it and that compliance proceedings be terminated. The Commission has not formally responded to the motion to dismiss in that it has failed to provide the New Jersey Republican State Committee with the basis for continuing the prosecution of a complaint which was not served upon the New Jersey Republican State Committee for nineteen (19) months after filing. Instead, the Commission has issued a new reason to believe finding on January 17, 1991 and first notified the New Jersey Republican State Committee of such second reason to believe finding by its letter dated April 25, 1991 served upon the New Jersey Republican State Committee on May 3, 1991.

The decision of the Commission to ignore its own statutorily mandated rules for notice raises significant issues of due process and generates legitimate concerns of abuse of process. The Commission, through its own failure to comply with its statutorily

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mandated notice provisions of 2 U.S.C. §437g(a)(1) forfeited its right to investigate the New Jersey Republican State Committee and its Treasurer because of its egregious delay. Incorporated by reference and made a part hereof is the New Jersey Republican State Committee's letter memorandum of July 2,1990 which sets forth in significant detail the precise basis for dismissal of the complaint and is submitted in furtherance of this motion to quash. For convenience it is attached hereto and made a part hereof and designated as Exhibit "A".

2. **With the passage of time the New Jersey Republican State Committee is deprived of an opportunity to respond to the subpoena with timely information.**

The New Jersey Republican State Committee has suffered injury from the Commission's failure to notify the State Committee of the filing of the complaint in a timely manner. The New Jersey Republican State Committee continues to be injured by the Commission's failure to act. This subpoena has been issued some thirty-three (33) months after the filing of the complaint by the various Democratic State Committees. Various personnel with knowledge from the 1988 election cycle have left the New Jersey Republican State Committee. Assuming that all of the personnel can be located, their recollection of specific information has faded; memories of events that took place almost three (3) years ago have faded and therefore the events which are the subject matter of the

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complaint and supplement to the complaint can never be fairly reconstructed irrespective of the reasonable questions propounded in the subpoena to elicit details and specifics of the events in question. Furthermore, certain records which are requested in the subpoena are not required to be retained under the Federal Election Campaign Act, such as invitations, press releases, communications between political committees, transcripts of speeches, all of which records would be extraordinarily difficult to locate after the passage of some thirty-three (33) months. In essence, the subpoena requires new personnel of the New Jersey Republican State Committee to interpret aged records and reconstruct events in which they took no part, or played only a minimal role.

For all of these reasons, the Commission should grant the New Jersey Republican State Commission's motion to quash the subpoena, according to 11 C.F.R. § 111.15.

EDWARD GROSS, ESQ.
Attorney for New Jersey
Republican State Committee
and Kathleen A. Donovan,
its Treasurer

Dated: May 13, 1991.

9404371343

Exhibit

GROSS & NOVAK, P.A.
ATTORNEYS AT LAW

EDWARD GROSS
IRA S. NOVAK
JAY SAMUELS
NOLA R. BENCZER
DENISE L. SANDERS[1]
TIMOTHY O'NEILL[2]

[1]ALSO ADMITTED IN NEW YORK
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TELECOPIERS
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(201) 238-0667

July 2, 1990

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Attn: Patty Reilly, Esq.

Re: MUR 2667
New Jersey Republican State Committee and
Kathleen A. Donovan, as Treasurer

Dear Ms. Reilly:

This is in response to your letter dated June 20, 1990, which we received on June 25, 1990. In that letter, you informed us that the Federal Election Commission ("Commission") has denied the New Jersey Republican State Committee's ("NJRSC") and its Treasurer's motion to dismiss. That motion was based on the Commission's failure to comply with the notice provision of the Federal Election Campaign Act ("Act"), the statute under which the Commission is authorized to act. See 2 U.S.C. § 437g(a)(1).

The Respondents' Motion cited that the underlying complaint from various Democratic state committees was filed on August 8, 1988, a supplement was filed on September 12, 1988, but the Commission failed to serve Respondents until March 1, 1990. 2 U.S.C. § 437g(a)(1) states: "Within 5 days after receipt of the complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed [a violation of the Act]" (emphasis added). Accordingly, Respondents' motion and accompanying memorandum maintained that, since the Commission had violated the plain wording of the statute's notice provision by 19 months, the only appropriate action was dismissal of this matter as to the NJRSC and its Treasurer.

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The Commission has, as we will discuss below, declined to present us with authority for the position that it may choose to ignore the Congressionally-mandated procedures of its own enabling statute. Further, the Commission has evidently failed to consider the injury done to Respondents by its failure to notify Respondents of the Complaint in a timely manner.

The history of this matter is replete with procedural errors by the Commission. In addition to its failure to provide statutory notice, the Commission also issued a reason to believe finding against the NJRSC and its Treasurer without affording them any opportunity to respond. This reason to believe finding violated the provisions of 2 U.S.C. §437g. In its notification of that finding, the Commission relied entirely on a factual and legal analysis which cited pleadings unknown to Respondents and which the Commission failed to provide to Respondents. In an attempt to recover from its procedural error, the Commission now seeks by unsupported administrative fiat to grant itself the authority to rewrite its own statute, rescind its reason to believe finding and start over--almost two years after the original complaint was filed. However, the Commission's procedural errors have caused substantial harm to the NJRSC's ability to respond fairly to the complaint as detailed below. Given these results, the Commission's actions are not harmless administrative errors, and the Commission's complaint as to the NJRSC and its Treasurer must be dismissed.

Respondents object as a matter of principle to the Commission's arbitrary and capricious decision to exempt itself from the provisions of its statute. The 5-day notice requirement of 2 U.S.C. §437g(a)(1) is mandatory, not discretionary. See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 411-12 (1971); Federal Election Commission v. Rose, 806 F.2d 1081,1082 n.1 (D.C. Cir. 1986) ("the Commission must notify the alleged violator ... within 5 days"). The legislative history of the 5-day notice provision states that these provisions were intended to provide "additional protection by requiring that [a Respondent] be given a more detailed notice of any charges, as well as an opportunity to formally respond to charges prior to any determination by the Commission that he or she has violated the Act." Legislative History of Federal Election Campaign Act Amendments of 1979, at 549.

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Furthermore, the Commission's decision to ignore the 5-day rule and start over does not provide the necessary relief to Respondents so that they can properly defend themselves in this matter. The Commission's failure to serve Respondents for 19 months has irretrievably failed to provide a legally sufficient notice to enable the NJRSC to address adequately the charges contained in the complaint. This failure further deprives the NJRSC of a fair opportunity to prepare and present arguments rebutting the complaint with timely information. During the 19 months that the Commission failed to provide notice, there has been a change in the election cycle with the corresponding change in NJRSC personnel. Some people who were familiar with the events 19 months ago are unavailable. The recollection of events in question is faded. New personnel would be required to interpret unfamiliar, aged data. At bottom, the Commission's stale notice does not cure the passage of time, which precludes a fair and consistent response to the allegations in the complaint. See, e.g., Gratehouse v. United States, 512 F.2d 1104, 1109-10 (Cl. Ct. 1975) (agency's time to remedy procedural error is "measured in weeks, not years"). While there may be instances where complaints are properly filed 19 months after an alleged violation, this is not one of those instances. This is a case in which the Commission simply failed to follow the procedural protections required by its enabling statute, and now wants to pretend it does not have to follow its own rules.

Moreover, as a unique agency regulating politics, the Commission needs to be especially careful in following its statutory procedures to ensure that all parties are treated in an objective and non-partisan manner. Congress has repeatedly recognized the unique political nature of the Commission. See, e.g., Legislative History of the Federal Election Campaign Act Amendments of 1974, at 904,911,914. The current Commission is politically balanced. But the action it seeks to take in this case would set a precedent. And such precedent as waiving the Act's notice requirements at will would give an improperly partisan Commission great power to affect the outcome of elections by unleashing complaints according to a politically motivated timetable. While we are not asserting that the Commission has acted in a partisan manner in this instance, this attempt to ignore its statute could set a dangerous precedent for the future.

The Commission's omissions and failure to act in this matter are not technicalities. Given the harm already generated by the Commission's failure to follow its statute, the NJRSC again respectfully requests that the Commission dismiss the complaint as to the NJRSC and its Treasurer.

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So that there is no misunderstanding, let me clearly state Respondent's position: we are prepared and willing to provide information to the Commission by following the standard evidentiary practices of an on-going MUR. Should the Commission require information from us in these proceedings, we will respond to the Commission as witnesses in this matter. However, we are not willing to reply as a Respondent in this matter, because to do so would be to accept the Commission's unsupported and improper claim that it may waive and rewrite its statutory provisions at will. It is important to ensure Commission adherence to fundamental procedural rights crucial to the regulation of politics in the United States.

Very truly yours,

EDWARD GROSS

EG/cb
cc: Hon. Robert D. Franks
cc: Benjamin Ginsberg, Esq.

9 6 0 4 3 7 1 3 4 5 7

OGC 1179

THOMPSON, HINE AND FLORY

ATTORNEYS AT LAW
SUITE 1800
100 EAST BROAD STREET
COLUMBUS, OHIO 43215-3673

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WRITER'S DIRECT DIAL NUMBER
469-7271

91 MAY 16 AM 11:54

91 MAY 16 PM 3:18

May 13, 1991

Patty Reilly, Esq.
Assistant General Counsel
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

In the Matter of: Ohio Republican State Central and Executive Committee and Robert K. Wilson, Treasurer, Respondents
MUR 2667

Dear Ms. Reilly:

I am enclosing for filing an original plus four copies of Respondent's Motion to Quash Subpoena and Memorandum in Support. Please cause the original to be filed with the Federal Election Commission and return a time stamped copy to me in the enclosed, self-addressed envelope.

Thank you for your assistance.

Very truly yours,

Julie D. Vannatta

Julie D. Vannatta

JDV/jbi

Enc.

BEFORE THE
FEDERAL ELECTION COMMISSION
999 E. Street, N.W.
Washington, D.C. 20463

In the Matter of:	:	
OHIO REPUBLICAN STATE CENTRAL AND EXECUTIVE COMMITTEE 172 East State Street Columbus, Ohio 43215	:	MUR 2667
and	:	
ROBERT K. WILSON, Treasurer	:	
Respondents	:	

RESPONDENT'S MOTION
TO QUASH SUBPOENA

The Ohio Republican State Central and Executive Committee (hereinafter "Ohio Republican Party") hereby petitions the Federal Election Commission to quash the subpoena issued to the Ohio Republican Party by the Commission in the above-referenced Matter Under Review for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

Gordon M. Strauss by John T. Lindsay
Gordon M. Strauss
THOMPSON, HINE AND FLORY
14th Floor
312 Walnut Street
Cincinnati, Ohio 45202-4029
(513) 352-6635

Counsel to the
Ohio Republican Party

OF COUNSEL:

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312 Walnut Street
Cincinnati, Ohio 45202-4029

John T. Sunderland
THOMPSON, HINE AND FLORY
Suite 1800
100 East Broad Street
Columbus, Ohio 43215
(614) 469-7207

THOMPSON, HINE AND FLORY
1920 N Street, N.W.
Washington, D.C. 20036

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Memorandum in Support were served by ~~overnight delivery~~ certified mail service to Patty Reilly, Esq., Assistant General Counsel, Federal Election Commission, on this 13th day of May, 1991.

BEFORE THE
FEDERAL ELECTION COMMISSION
999 E. Street, N.W.
Washington, D.C. 20463

In the Matter of:	:	
OHIO REPUBLICAN STATE CENTRAL AND EXECUTIVE COMMITTEE 172 East State Street Columbus, Ohio 43215	:	MUR 2667
and	:	
ROBERT K. WILSON, Treasurer	:	
Respondents	:	

MEMORANDUM IN SUPPORT OF
RESPONDENT'S MOTION TO QUASH SUBPOENA

This Commission should quash the subpoena issued on April 25, 1991 because it arises from an improper enforcement proceeding and because it is prejudicial to the Ohio Republican Party to require it to respond to the subpoena.

As previously stated in Respondent's Motion to Rescind and Motion to Dismiss, this entire enforcement proceeding is improper because the Commission failed to comply with the notice requirements of 2 U.S.C. §437g(a)(1). That section requires the Commission to provide written notice, within **FIVE** days after the Commission receives the Complaint, to any person alleged in the Complaint to have violated the Federal Election Campaign Act ("FECA" or "the Act"). This notice requirement is mandatory and

simply cannot be ignored at the Commission's whim without raising serious concerns about abuse of process and procedural due process violations. Walther v. Baucus, 467 F. Supp. 93 (D. Mont. 1979); Rose v. Federal Election Comm'n., 608 F. Supp. 1 (D. D.C. 1984).

In this case, the Commission received the Complaint on August 8, 1988, yet did not send it to the Ohio Republican Party until March 14, 1990 -- over 19 months after the Commission received the Complaint! Because the Commission waited 1 1/2 years to send the Complaint to the Ohio Republican Party, when the statute required it to send the Complaint within five days, the Commission has absolutely no right to investigate the Ohio Republican Party's actions in this matter. Its egregious delay constitutes a waiver of the Commission's right. Accordingly, the Ohio Republican Party should not have to respond to a subpoena arising from this improper enforcement action.

In addition to an unreasonable delay in serving the Complaint upon the Ohio Republican Party, the Commission waited over 13 months from the date it finally sent the Complaint to serve this subpoena upon the Ohio Republican Party. As a result of these excessive delays it is now prejudicial to require the Ohio Republican Party to respond to the subpoena.

This unreasonably long passage of time irreparably harms the Ohio Republican Party by depriving it of the opportunity to respond accurately and fairly to the subpoena.

For example, certain knowledgeable personnel from the prior election cycle cannot be located. Therefore, new personnel are required by the subpoena to interpret old records and reconstruct events in which they took no part or played only a minimal role. In addition, records the FECA does not require the Ohio Republican Party to retain are no longer available. Needless to say, after nearly three years, recollection of specific details surrounding these events has faded beyond revival. The Ohio Republican Party simply cannot respond to the subpoena with accurate information due to the Commission's failure to timely notify the Ohio Republican Party.

It is obviously unfair for the Commission to wait until key personnel have left, records have been thrown away, and memories of the events have faded before notifying the Ohio Republican Party that it has allegedly violated the Act. It is also unfair to expect the Ohio Republican Party to meaningfully defend the allegations so long after the events occurred, especially when the reason records have been thrown away and memories have faded is that the Commission failed to comply with statutory notice requirements. Accordingly, it is prejudicial to require the Ohio Republican Party to respond to the subpoena.

For these reasons, the Commission should grant the Ohio Republican Party's Motion to Quash Subpoena.

Respectfully submitted,

Gordon M. Strauss by John T. Sunderland

Gordon M. Strauss
THOMPSON, HINE AND FLORY
14th Floor
312 Walnut Street
Cincinnati, Ohio 45202-4029
(513) 352-6635

Counsel to the
Ohio Republican Party

OF COUNSEL:

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THOMPSON, HINE AND FLORY
1920 N Street, N.W.
Washington, D.C. 20036

06-C 1197

W. R. BAKER
ATTORNEY AT LAW
[illegible] NORTH MAIN STREET
ASHLAND CITY, TENNESSEE 37015-0845

ASHLAND CITY: (615) 792-5194
NASHVILLE: (615) 256-[illegible]

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

92 JUN 20 PM 12: 23

May 13th, 1991

Federal Election Commission
Washington, D. C. 20003

Re: In the matter of
TENNESSEE REPUBLICAN PARTY
and ROBERT C. BRANNON,
TREASURER, MUR 2,667

91 MAY 21 AM 9: 21
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Gentlemen:

Enclosed is a motion to quash, and a memorandum in support of this motion, in this matter. Please have them filed, and keep me informed about the Commission's consideration of them.

Very truly yours,

W. R. Baker

W. R. Baker

wrb.../wbs

encl...: motion
memorandum

cc: Tommy Hopper
Tennessee Republican Party
2817 West End
Nashville, Tennessee 37203

9 2 0 4 3 7 1 3 4 3 5

FEDERAL ELECTION COMMISSION
92 JUN 20 PM 12:23

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES

In the matter of TENNESSEE REPUBLICAN PARTY and ROBERT C. BRANNON, TREASURER	§ § § §	MUR 2,667: MOTION TO QUASH

The Republican State Executive Committee of Tennessee ("Tennessee Republican Party") hereby moves the Federal Election Commission to quash the subpoena issued to "Robert C. Brannon, Treasurer, Tennessee Republican Party" by the Commission in this Matter Under Review for the reasons set out in the attached memorandum in support of this motion.

May 13th, 1991.

W. R. Baker, #003078
Counsel for The
Republican State Executive
Committee of Tennessee ("Tennessee
Republican Party") and
Robert C. Brannon, treasurer

205 North Main Street
Ashland City, Tennessee 37015-0245
(615) 792-5194

26043713446

BEFORE THE FEDERAL ELECTION COMMISSION
OF THE UNITED STATES

In the matter of TENNESSEE REPUBLICAN PARTY and ROBERT C. BRANNON, TREASURER	§ § § §	MUR 2,667: MEMORANDUM SUPPORTING MOTION TO QUASH

The Republican State Executive Committee of Tennessee files this motion to quash according to 11 C. F. R. §111.15 because the subpoena in question arises from an improper enforcement proceeding.

1. As previously stated to the Commission in a motion and memorandum filed April 30th, 1990, (by previous counsel), the Commission failed to comply with the notice provisions of 2 U. S. C. §437g(a)(1). This section requires notice within five days after receipt of the complaint, and is a mandatory requirement as outlined in the said previous motion and memorandum. The Commission did not send a copy of the complaint until February 1990 which is approximately 18 months after the Commission received the complaint. As stated in the said previous memorandum, the Commission cannot ignore a Congressionally-mandated procedure at the Commission's will: such action by the Commission violates procedural due processes and constitutes abuse of process. The Commission has forfieted its right to investigate The Republican State Executive Committee of Tennessee because of its absurd delay: laches constitutes a waiver of rights.

2. The subpoena in question is prejudicial to The Republican State Executive Committee of Tennessee bacause the passage of time deprives the State committee of the opportunity

to answer the subpoena with timely information. As stated in the said previous memorandum, The Republican State Executive Committee of Tennessee has suffered injury from the Commission's failure to notify the State committee of the complaint in a timely manner. The Republican State Executive Committee of Tennessee continues to be injured by the Commission's failure to act: approximately 33 months have now passed since the complaint was filed, and the Commission has waited a year even after its tardy serving up a copy of the complaint before issuing the subpoena. It is obvious that the passage of time irreparably harms The Republican State Executive Committee of Tennessee by depriving it of the opportunity to provide a fair response, based on timely information, to the subpoena. The passage of years makes it difficult to identify, and obviously even more difficult to locate, people who participated in the 1988 election; recollections of specific information have faded, memories of the event in question have faded, and the event itself can never be fairly reconstructed after nearly three years, however, "reasonable" questions may be. Most particular items, except those required to be retained by the Federal Election Campaign Act, will no longer be available, such as invitations, press releases, transcripts of speeches, or the like: the effect of the subpoena in question is to require people to interpret old records and to reconstruct events in which they took no part or played only a minimal role.

3. For these reasons the Commission should grant the motion of The Republican State Executive Committee of Tennessee to quash the subpoena in question according to 11 C. F. R. §111.15.

May 13th, 1991.

W. R. Baker, #003078
Counsel for The
Republican State Executive
Committee ofTennessee ("Tennessee
Republican Party") and
Robert C. Brannon, treasurer

205 North Main Street
Ashland City, Tennessee 37015-0245
(615) 792-5194

2604371349

06C 1225

STATEMENT OF DESIGNATION OF COUNSEL

MUR: 2667

NAME OF COUNSEL: **William Robert Baker, Esq.**

ADDRESS: 209 N. Main Street
P.O. Box 245
Ashland City, Tennessee 37015-0245

TELEPHONE: (615)792-5194

The above-named individual is hereby designated as counsel for me and The Tennessee Republican Party and he is authorized to receive any notifications and other communications from the Commission and to act on our behalf before the Commission.

6-30-90
Date

Signature

RESPONDENTS' NAMES: Robert C. Brannon
Tennessee Republican Party

ADDRESS: 2817 West End Avenue
Nashville, Tennessee 37203

HOME PHONE: _____

BUSINESS PHONE: (615)321-4521

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 MAY 21 PM 12:43

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 21 AM 9:49

9904371347 0

OGC 1196

Charles H. Northrup
Philip E. Hanna
Thomas L. Cochran
Patrick V. Reilly
William S. Hanley
R. Gerald Barris
Stephen A. Tagge
Michael A. Myers
C. Clark Germann
T. Kent Cochran
Gary A. Brown
Stephen R. Kaufmann
Frederick B. Hoffmann
William R. Baker
Craig S. Burkhardt
Michael C. Connally
Scott C. Helmholz

John A. Kauerauf
David A. Ralf
Della S. Nelson
Lisel G. Smith
Peggy J. Ryan

Sorling, Northrup, Hanna, Cullen and Cochran, Ltd.
Attorneys at Law
Suite Eight Hundred
Illinois Building
607 East Adams Street
Post Office Box 5131
Springfield, Illinois 62705
Area Code 217
Telephone 544-1144

Carl A. Sorling
of Counsel
Sorling, Catron and Hardin
(1943-1978)
B. Leroy Catron, Jr.
(1944-1969)
John H. Hardin
(1948-1978)
George W. Cullen
(1950-1986)

Fax No. 1-217-522-3173

May 13, 1991

VIA CERTIFIED MAIL
Return Receipt Requested
Article No. P 331 523 646

Mr. John Warren McGarry
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
91 MAY 21 AM 9:19

RE: MUR 2667
Illinois Republican State Central Committee (Federal account/non-federal account and Thomas W. Ewing, as treasurer

Dear Mr. McGarry:

Enclosed is a Motion to Quash the subpoena we received by certified mail on May 3, 1991. Also enclosed is a Memorandum in support of my client's Motion to Quash.

Very truly yours,

Craig S. Burkhardt

Craig S. Burkhardt

CSB:dc
Enclosures
cc: Ms. Patty Reilly, FEC
Mr. Albert M. Jourdan, Chairman
Mr. Thomas Ewing, Treasurer
Mr. Eugene S. Reineke, Executive Director
Mr. Aaron S. Quick, Assistant Treasurer

Via certified mail, Article No. P 331 523 647:
Lawrence Noble, General Counsel, FEC

CSB.DC.051091.8290.A.1

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BEFORE THE FEDERAL ELECTION COMMISSION

WASHINGTON, D.C.

IN THE MATTER OF:	)	
	)	
Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as Treasurer	)	MUR 2667

MOTION TO QUASH

COME NOW the Illinois Republican State Central Committee and Thomas W. Ewing, as Treasurer, by and through its attorneys, Sorling, Northrup, Hanna, Cullen and Cochran, Ltd., Craig S. Burkhardt, of counsel, and respectfully petition the Federal Election Commission to quash the subpoena issued to the Illinois Republican State Central Committee ("federal account/non-federal account) and Thomas W. Ewing, as Treasurer, by the Commission in this Matter Under Review, for the reasons set forth in the attached Memorandum in Support. By the filing of this Motion to Quash, Respondents are not expressly waiving any procedural rights they may have.

Respectfully submitted,

ILLINOIS REPUBLICAN STATE CENTRAL COMMITTEE (Federal Account/Non-Federal Account) and THOMAS W. EWING, as Treasurer

BY: Craig S. Burkhardt
One of its Attorneys

May 13, 1991

Sorling, Northrup, Hanna,
Cullen and Cochran, Ltd.
Craig S. Burkhardt, of counsel
IL #06187901; Washington, D.C. #421298
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705
Telephone: 217/544-1144

BEFORE THE FEDERAL ELECTION COMMISSION

WASHINGTON, D.C.

IN THE MATTER OF:	)	
	)	
Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as Treasurer	)	MUR 2667

MEMORANDUM IN SUPPORT OF MOTION TO QUASH

COME NOW the Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as Treasurer, by and through their attorneys, Sorling, Northrup, Hanna, Cullen and Cochran, Ltd., Craig S. Burkhardt, of counsel, and for their Memorandum in Support of Motion to Quash, state as follows:

1. The Motion to Quash is brought pursuant to 11 C.F.R. 111.15. The Illinois Republican State Central Committee ("Illinois Committee") believes the subpoena to be improper in that it arises from an enforcement procedure which was brought in violation of the United States Code and the Rules of the Federal Election Commission ("Commission").

2. The Commission has failed to properly comply with the notice provisions of 2 U.S.C. §437(g)(a)(1). As detailed in the Illinois Committee's Response and Memorandum in Support of Motion to Dismiss Complaint and to Terminate Compliance Proceedings, the Commission committed fundamental errors in failing to comply with the statutory notice requirements.

3. The Commission failed to give the Illinois Committee notice of receipt of a complaint within five days

after it received the Complaint. The Complaint was received by the Commission on September 12, 1988, yet the Illinois Committee was not notified by the Commission until June 4, 1990.

4. The Commission must comply with statutory notice requirements. Federal Election Commission v. Franklin, 718 F.Supp. 1272, 1276 (E.D. Va., 1989).

5. The Commission has no statutory or common law authority to investigate the Illinois Committee in this proceeding. The delay discussed supra effectively constituted a waiver of the Commission's investigative and subpoena authority in this matter.

6. The Illinois Committee moves to quash because the subpoena prejudices the Illinois Committee due to the unconscionable passage of time between the filing of the Complaint and the service of the Complaint upon the Illinois Committee.

7. The Illinois Committee moves to quash for the additional reason that the Commission has unconscionably delayed the issuance of this subpoena for 32 months since the Complaint was filed. The Illinois Committee has been irreparably harmed in that it has been deprived of the opportunity to respond to the subpoena with timely information.

8. The passage of 32 months makes it unlikely, if not impossible, for the Illinois Committee to respond to the voluminous and detailed subpoena requests. Since the 1988

election cycle, the staff of the Illinois Committee has substantially changed. The Executive Director, Finance Director, Special Projects Coordinator and Office Manager have all departed. The subpoena would effectively require new personnel to interpret records and reconstruct events almost three years old. Recollection of information requested in the subpoena has faded to the point of unreasonableness. For example, the subpoena requests the Illinois Committee to "describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question 1" [presumably the Illinois Committee's 1988 State Republican Convention]. Current Illinois Committee staff have no knowledge of such communications, which presumably would include telephone conversations. Further, the question is vague in that the "Bush Campaign" is undefined. Does it include vice-presidential staff, precinct level supporters, volunteers and paid staff? Even if such question were reasonable and the responsible staff were still available, the subpoena still could not fairly be answered. It is not reasonable to accurately reconstruct a volunteer political event which occurred almost three years ago. The notice requirements at 2 U.S.C. §437(g)(a)(1) are specifically designed to prevent such unreasonable demands.

9. The Illinois Committee's records regarding the questioned Bush visits to Illinois are incomplete or nonexistent. Had notice been properly given, the Illinois

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Committee would have been able to respond in a manner to best protect its rights. Many requests are made for records not required to be retained by the Federal Election Campaign Act, and which are no longer available. Examples include (a) the names and number of persons who attended events; (b) invitations to events; (c) communications with the "Bush Campaign"; (d) communications with "other party committees"; (e) descriptions of speech contents; (f) speech transcripts; (g) press releases; (h) audio tapes; (i) video tapes, and (j) news accounts.

WHEREFORE, the Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as Treasurer, respectfully request this Commission to grant its Motion to Quash the subpoena pursuant to 11 C.F.R. §111.15.

Respectfully submitted,

ILLINOIS REPUBLICAN STATE CENTRAL COMMITTEE (FEDERAL ACCOUNT/NON-FEDERAL ACCOUNT) and THOMAS W. EWING, AS TREASURER

BY: Craig S. Burkhardt
One of its Attorneys

Sorling, Northrup, Hanna,
Cullen and Cochran, Ltd.
Craig S. Burkhardt, of counsel
Illinois ARDC No. 6187901
Dist. of Columbia #421298
Suite 800 Illinois Building
P.O. Box 5131
Springfield, IL 62705
Telephone: 217/544-1144

9 3 0 4 3 7 1 3 4 7 7

06C1322

LAW OFFICES OF
NIELSEN, MERKSAMER,
HODGSON, PARRINELLO & MUELLER
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

MARIN COUNTY
591 REDWOOD HIGHWAY, #6000
MILL VALLEY, CALIFORNIA 94941
TELEPHONE (415) 389-6800

770 L STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752

SAN FRANCISCO
650 CALIFORNIA STREET, SUITE 2650
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 989-6800

May 23, 1991

FEDERAL EXPRESS

Lawrence M. Noble, General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Patty Reilly

Re: MUR 2667
California Republican Party and
Paul Hancock, Treasurer

Dear Ms. Reilly:

Please find enclosed the Response of the above-referenced Respondents to the Subpoena to Produce Documents and Order to Submit Written Answers dated April 25, 1991 and served May 3, 1991 on counsel.

Also note that we are continuing to investigate the questions raised and do anticipate submitting supplemental responses. I also intend to submit a legal brief relative to the issues raised, and will discuss this with you by telephone next week.

Very truly yours,

CHARLES H. BELL, JR., Counsel
for Respondents

CHB:kab
5363.01

91 MAY 27 PM 1:33
91 MAY 28 PM 3:00
RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

OF THE UNITED STATES

In the Matter of California Republican Party Victory '88 (Federal and Non-Federal Accounts) and Paul Hancock, Treasurer	))))	MUR 2667

RESPONSE OF RESPONDENTS
CALIFORNIA REPUBLICAN PARTY and PAUL HANCOCK
TO SUBPOENA TO PRODUCE DOCUMENTS
AND ORDER TO SUBMIT WRITTEN ANSWERS

Respondents submit the following in response to the subpoena to Produce Documents and the Order to Submit Written Answers to Paul D. Hancock on behalf of California Republican Party Victory '88 Federal Account and Paul D. Hancock, Treasurer.

Response to Order to Submit Written Answers

Question: 1. State the date(s) the Vice President Bush appeared in your state for events in which the State Party was involved. List all events in which the Vice President participated during this time period.

Response: June 28, 1998 State Party Victory '88 Fundraising Event at the Christian de Guigne Residence Hillsborough, California.

The FEC has alleged that the California Republican Party may have held events at which Vice President Bush appeared in the time period June 5 through June 7, 1988 in the Los Angeles area. Respondents are unaware of any such events and deny that they incurred any costs or made any reimbursements to the Bush for President Committee or the Treasurer of the United States for any such events. It should be noted that (1) the FEC itself does not allege that Respondents made any reimbursements for travel or other expenses of Vice President Bush for any such events, and (2) as Respondents understood the FEC's statement, neither the Bush Committee's nor the U.S. Treasurer's records indicate any such reimbursements for the alleged June 5-7, 1988 events.

Respondents are continuing to investigate and review the recollections of persons who may have knowledge of events of three years ago. If supplemental or

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clarifying information is obtained, Respondents will supplement or correct the response hereto.

Question: 2. For each such event noted in your answer to question one, describe each event in detail, including but not limited to; the date and time of the event, the identification of the entity sponsoring the event, the identification of the entities who paid for costs associated with the event, the number of persons who attended the event, whether the event was open to the public and, if not open to the public, describe how persons were invited to the event.

Response: June 28, 1988 Afternoon, Hillsborough, California

Entity Sponsoring Event:	California Republican Party
Entities Paying for Costs:	California Republican Party Federal Account and California Republican Party Non-Federal Account.
Number of Persons:	Approximately 50 persons attended the event
Nature of the Event:	Private event--invitation by telephone of event host and Mrs. Kathryn Boyd and Mr. David Packard.

Question: 3. For each fundraising event noted in your answer to question one, list all payments made by you associated with candidate expenses, including but not limited to travel, subsistence, and other like expenses. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account. For each of the other events noted in your answer to question one, list all payments made by you for this event. Identify each entity receiving such payment. State the source of funds used to make each such payment and specify whether these funds came from your federal account or non-federal account.

Response: Payments: Previously noted in July 30, 1990 response to FEC, incorporated by reference herein.

Sources of funds: California Republican Party Federal Account and Non-Federal Account

9604371340

Entity Receiving Payment: Treasurer of the United States, Office of the Vice President, Washington D.C.

California Republican Party Non-Federal Account made payment by its checks numbered 06746 (9/16/88) in the amount of $1,639.00; 06975 (9/27/88) in the amount of $2,531.00; and 06976 (9/27/88) in the amount of $5,647.34. Per FEC Regulations 102.5 and 106.1, the CRP Federal Account was allocated a share of the payments, and made reimbursement of $2,945.20 as part of a lump-sum reimbursement of a number of allocable expenses.

Question: 4. For each payment noted in your response to question 3, state whether you reported such payment to either the Federal Election Commission or any other agency. For each payment so reported, state the entity to whom the payment was reported, the document on which the payment was reported, and the location (page number and line) on which such information appears. If any payment is reported as a combined entry, list any other amounts composing that entry.

Response: California Republican Party reported the payment to the Federal Election Commission as a lump-sum portion of its reimbursement of the CRP Non-Federal Account.

California Republican Party Federal Account, FEC 3X for the 10/01/88 to 10/17/88 period, Schedule D. Also see pages 132 and 166, Schedule E, California Republican Party Non-Federal (California) Recipient Committee Campaign Statement for the period 07/01/86 to 09/30/88 (documents submitted attached hereto).

Question: 5. Describe in detail all communications you had with the Bush Campaign and the Republican National Committee regarding the events noted in your answer to question one. Identify the person(s) associated with the campaign with whom you communicated.

Response: Respondents have been unable to determine precisely who communicated with whom regarding the June 28, 1988 event. However, Respondents will supplement this answer with additional information obtained from their ongoing research and investigation.

Question: 6. Described in detail all communications you had with any other party committee regarding the events noted in your answer to question one. State the identification of the entity and the person(s) associated with this entity with whom you communicated.

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Response: Respondents have been unable to determine precisely who communicated with whom regarding the June 28, 1988 event. Respondents believe that they or their predecessors and their agents communicated with Republican National Committee regarding the transmittal of the billing from the Office of the Vice President for travel expenses. However, Respondents will supplement this answer with additional information obtained from their ongoing research and investigation.

Question: 7. For each speech given by the Vice President, describe the contents of the speech.

Response: Respondents are informed that the Vice President's remarks were informal, thanking donors for their support for the State Party's election year fundraising program. Respondents are also informed that the Vice President discussed only the State Party fund-raising effort and not his own candidacy. Respondents are informed that there was no text or transcription of the Vice President's remarks made at the event. However, Respondent are engaged in ongoing research and investigation of this question, and will supplement this answer if necessary upon completion of their ongoing investigations.

Response to Subpoena to Produce Documents

Attached are (1) copies of Respondent California Republican Party's Schedule E, Non-Federal account (California) recipient committee campaign report for the period 1/1/88 to 9/30/88, pages 132 and 166; and, (2) invoices from Office of the Vice President for reimbursement.

Affidavit (Declaration) of Charles H. Bell, Jr.

The foregoing is true and correct to the best of my knowledge or belief. Executed under penalty of perjury under the laws of the State of California at Sacramento, California this 23rd day of May, 1991.

CHARLES H. BELL, JR.
Counsel for Respondents

Attachment 1

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CALIFORNIA REPUBLICAN PARTY

SCHEDULE E
PAYMENTS NOT TO INDIVIDUALS PAGE DATE PREPARED 9/28/88

STATEMENT COVERING PERIOD FROM 7/1/88 THRU 9/30/88

PAYEE NAME & ADDRESS	CODE	PURPOSE OF DISBURSEMENT	CHECK #/DATE	DIST AMOUNT	CHECK AMOUNT
DIRECT COMMUNICATIONS 715 F IVY SAN DIEGO CA 92101		1988 YEAR VOTER CONTACT GENERIC TELEPHONE PROGRAM	006972 9/27/88	63,314.39	
					63,314.39
NATIONAL CAPITAL SAN FRANCISCO CA 9400		REIMBURSEMENT OF FUNDRAISING EXPENSES	006973 9/27/88	943.50	
					943.50
TREASURER OF THE U.S. OFFICE OF THE VICE PRES. WASHINGTON DC 9999		REIMBURSEMENT OF FUNDRAISING EXPENSES	006975 9/27/88	2,531.00	
					2,531.00
TREASURER OF THE U.S. OFFICE OF THE VICE PRES. WASHINGTON DC 9999		REIMBURSEMENT OF FUNDRAISING EXPENSES	006975 9/27/88	5,647.34	
					5,647.34
JOANN F PIRLO 11300 DONA TERESA STUDIO CITY CA 91604		FIELD OPERATIONS CONSULTANTS FEE	006977 9/27/88	150.00	
					150.00
SUBTOTAL THIS PAGE				72,585.23	

CALIFORNIA REPUBLICAN PARTY

SCHEDULE E
PAYMENTS AND CONTRIBUTIONS MADE

I.D. NO. 818163 DATE PREPARED 9/28/88

STATEMENT COVERS PERIOD FROM 7/01/88 THRU 9/30/88

PAYEE NAME - ADDRESS	CONTRIB	PURPOSE OF DISBURSEMENT	CHECK #/DATE	DIST AMOUNT	CHECK AMOUNT
FRIENDS OF TIM LESLIE PO BOX 7042 ID #040653 CITRUS HEIGHTS CA 95621		BOUNTY REGISTRATION-PAID	006743 9/16/88	145.00	145.00
TREASURER OF THE U.S. OFFICE OF THE VICE PRES. WASHINGTON DC 0000		Reimbursement of Travel for Fund - DIDION WORLD TRAVEL Reser WASHINGTON DC 0000	006746 9/16/88	1,639.00	1,639.00
ROSEMARY RAMBEY 20063 THERALD HEARTH WALNUT CA 91789		VICTORY BURAD OTHER EXPENDTR UNDER $100 Travel + Expenses	006748 9/16/88	193.36	193.36
JEAN M SCHWAFEL PO BOX 920 NORTH FORK CA 93643		FIELD OPERATIONS PONDEROSA TELEPHONE CO O'NEALS CA 0000	006749 9/16/88	121.39	
		FIELD OPERATIONS OTHER EXPENDTR UNDER $100		36.73	158.12
JAMES A ST JOHN 1905 OCTAVIA ST NEW ORLEANS LA 70115		FIELD OPERATIONS OTHER EXPENDTR UNDER $100 Travel + Expenses	006753 9/16/88	543.50	543.50

** TOTAL PAGE 03 **

Attachment 2

OFFICE OF THE VICE PRESIDENT

WASHINGTON

August 5, 1988

MEMORANDUM FOR THE RECORD

FROM: GARY ENGELSTAD

SUBJECT: AIR FORCE II COSTS
VICE PRESIDENTIAL TRIP TO CALIFORNIA AND WISCONSIN
JUNE 28-29, 1988

The following passengers (non-GBFP) flew on all legs of this trip:

1. The Vice President
2. Craig Fuller
3. John Keller

The total airfare for each is $1,902.00 (see following page). $1,902.00 times the above three equals $5,706.00. Added to that total is the airfare for Bruce Zanca which totals $1,181.00 for a grand total of $6,887.00. This amount is broken down among the cities as follows:

San Francisco, CA - Victory 88 - 82% = $5,647.34
Marion/Appleton, WI - RNC - 18% = $1,239.66

The following adjustment is made to the Wisconsin totals for guests:

Name	Amount
Gov. Tommy Thompson	$ 421.00
LaVerne Ausman	421.00
James Frider	421.00
	$1263.00

Revised Wisconsin total = $2,502.66

Payment will be made payable to Treasurer of the United States and forwarded to this office.

OFFICE OF THE VICE PRESIDENT

WASHINGTON

August 5, 1988

MEMORANDUM FOR THE RECORD

FROM: GARY ENGELSTAD GE

SUBJECT: WHITE HOUSE COMMUNICATIONS COSTS
VICE PRESIDENTIAL TRIP TO CALIFORNIA AND WISCONSIN
JUNE 28-29, 1988

Following is the breakdown of WHCA costs for this trip:

VP Trip Location	Date	% Political	Amount
San Francisco, CA billed to: Victory 88	6/28-29	100%	$2,531.00
Marion/Appleton, WI billed to: Republican National Committee	6/29	100%	1,758.00

Payment will be made payable to Treasurer of the United States and forwarded to this office.

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OFFICE OF THE VICE PRESIDENT

WASHINGTON

August 4, 1988

MEMORANDUM TO CARLA PHILLIPS
VICTORY '88

FROM: GARY ENGELSTAD

SUBJECT: VICTORY '88 BILLING
VICE PRESIDENTIAL TRIP TO SAN FRANCISCO, CA
JUNE 28-29, 1988

Attached is the following billing for payment:

Didion World Travel $1,639.00

This is the airfare billing for the advance team.

Please have the check forwarded to me. Thank you.

- V '88 fundraising events
CA GOP - V '88 acct

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State Executive Committee

REPUBLICAN PARTY OF TEXAS

RECEIVED
FEDERAL ELECTION COMMISSION
MAY

May 14, 1991

91 MAY 27 PM 1:40

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Attn: Patty Reilly

91 MAY 28 PM 3:00

RECEIVED
FEDERAL ELECTION COMMISSION

Re: MUR 2667 Texas Republican Congressional Committee and Martha Weisend, as Treasurer

Dear Mr. Noble:

I am in receipt of Chairman McGarry's letter of April 25, 1991 informing me that the Federal Election Commission ("Commission") found reason to believe that the Texas Republican Congressional Committee ("State party") and myself, as Treasurer, violated 2 U.S.C. 441a(a) (2) (A) and 441b(a) of the Federal Election Campaign Act of 1971, as amended ("Act"), as well as 11 C.F.R. 102.5 of the Commission's regulations and enclosing the Factual and Legal Analysis which formed the basis of the Commission's finding, in addition to enclosing an Order to Answer Questions and Subpoena to Produce Documents in Matter Under Review 2667.

Apparently the Commission made this finding on January 17, 1991, but is only now informing the State Party and me of this determination. The State Party wishes to reiterate its objections to the Commission's procedural deficiencies in this Matter and preserves its rights to raise those objections at any time in the future.

The Commission's 1990 notification letter to the State Party stated that the Commission had failed to send the Complaint and supplement to me earlier "due to an administrative oversight." However, if indeed the State Party was named in the complaint and supplement, the Commission's failure to send the Complaint to the State Party for nearly twenty-one months constitutes more than an administrative oversight, Rather, this failure constitutes a violation of the Commission's statutory and regulatory obligations order 2 U.S.C. 437g(a) (1) and 11 C.F.R. 111.5. The statute requires that "(w)ithin 5 days after receipt of a complaint, the Commission shall notify, in writing, any person alleged in the complaint to have committed such a violation." (emphasis added). Further, the Commission's own regulations reiterate that "(u)pon receipt of a complaint, the General Counsel ... shall within five (5) days after receipt notify each

211 East 7th Street, Suite 620 • Austin, Texas 78701 • (512) 477-9821

Prepared and paid for by State Executive Committee, Republican Party of Texas

respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint." 11 C.F.R. 111.5.

The Act and regulations are very clear. They leave no room for ambiguity - they require notification of the party about whom a complaint is made within five days of receipt of the complaint. This is not a discretionary provision, but a mandatory requirement which protects the respondents's due process rights. Since the Commission took nearly twenty-one months to notify the State Party of the complaint against it, the Commission has no jurisdiction in this matter and cannot proceed against the State Party.

This position is supported by the Administrative Procedure Act which states that a reviewing court shall

> (2) hold unlawful and set aside agency action, findings, and conclusions found to be --
>
> . . .
>
> (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
>
> (D) without observance of procedure required by law.

5 U.S.C. 706.

The Commission's failure to provide the State Party with a complaint filed against it falls squarely within this provision and thus must be set aside. See Citizens to Preserve Overton Park. Inc. v. Volpe, 401 U.S. 402, 413-414 (1971) ("In all cases agency action must be set aside . . . if the action failed to meet statutory, procedural, or constitutional requirements.") See also Way of Life Television Network, Inc. v. FCC, 593 F.2d 1356, 1359 (D.C. civ. 1979) ("It is a well-settled rule that an agency's failure to follow its own regulation is fatal to the deviant action.")

Further, the State Party's rights to Due Process under the Fifth and Fourteenth Amendments to the United States Constitution have been irreparably damaged. By ignoring the congressionally imposed five-day notice time limit, the FEC has negated Congress' intent to provide a respondent "with a greater opportunity to demonstrate that no action should be taken on a complaint." 125 Cong. Rec. 23,815 (1979). Thus, due process has been statutorily provided for. "The fundamental requirement of due process is the

opportunity to be heard at a meaningful time and in a meaning manner." Matthews v. Eldridge, 424 U.S. 319 (1976) quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965). Being provided an opportunity to respond to a complaint twenty-one months after it has been filed, combined with the fact that the Commission must have been considering the matter during this time, cannot be considered an opportunity to respond at a meaningful time, especially when the State Party should have been sent this complaint by August 13, 1988 pursuant to the statutory requirements of law. Indeed, even when the Commission did finally send this complaint, as mentioned above, there was nothing in it to suggest any wrongdoing by the State Party, thus a Response was clearly not required.

Accordingly, due to the Commission's violation of the statutory requirement of providing the State party notice of a complaint against it within 5 days, as well as the resulting deprivation of due process of law, the State Party reserves it rights to renew these objections at a future date.

The Commission's reason to believe finding is surprising, to say the least. As an initial matter, the Complaint is devoid of any suggestion that the State party participated in any event attended by Vice President Bush. I have thoroughly reviewed the Complaint dated August 8, 1988 and a supplement to that Complaint dated September 12, 1988 in addition to the portions of the Factual and Legal analysis which are relevant to the State of Texas. I can find no reference to any alleged expenditure by the Sate party. Rather, page 11 of the Complaint reads as follows:

6. Dallas, Texas - July 6, 1988

> In a speech to the League of United Latin American Citizens, Mr. Bush made specific representations about what he would do as President, indicating, among other things, that he would name a Hispanic to his Cabinet, if elected. This address plainly amounted to an appeal for Hispanic support in the election.

The Commission's discussion of this event in its Factual and Legal Analysis is also devoid of any mention of the State Party. It states at page 30:

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ii. Dallas, Texas - July 6, 1988

> Mr Bush traveled to Dallas, Texas, on this date. The Bush Committee's initial response states the Bush Committee would be billed for all costs related to a speech made by the candidate to the League of United Latin American Citizens. That response further avers that the RNC would pay for any costs in connection with Mr. Bush's appearance "for one-half hour at a Republican National Committee fundraising reception on that date in Dallas." The Bush Committee's Second Response further indicates that Mr. Bush's appearance at a Presidential Trust Reception was a fundraiser for the RNC. The Schedule of events provided by the Bush Committee indicates the Vice President also attended an editorial board meeting with a local newspaper, spoke to the 59th Convention of League of United Latin American Citizens, and attended a press conference and photo sessions on this day. Regarding the fundraising dinner, respondents have not provided any specific information to rebut the Regulations' presumption that this was a campaign event. Consequently, this event must be considered a campaign event required to be paid for by the Bush Committee. It follows that travel to this stop would also be required to be reported as a campaign expense.

On the basis of the Complaint and the Commission's analysis, we submit that it is virtually impossible for the Commission to have found reason to believe that the State Party violated the Act with regard to this event - there was never even the suggestion that the State Party was involved in any event in Dallas, Texas on July 6, 1988. Indeed, to the extent that the Commission's finding is based only on the facts contained in the Factual and Legal Analysis, the reason to believe finding clearly is an abuse of the Commission's powers. At the very least, any questions with regard to this matter are clearly beyond the scope of an appropriate inquiry.

The supplement to the Complaint is even less substantive. Its text never suggest that the State Party paid for any campaign event attended by President Bush. Rather, based on press reports, the complainant provided a chart which identified theoretical funding sources for Vice President Bush's travel. That chart suggests that Vice President Bush "Spoke to Texas State Republican Convention and to Republican National Hispanic Assembly."

The Commission's analysis of this "allegation" appears under the heading of "Travel Said to Be Campaign Related In Part." Specifically, the Factual and Legal Analysis states:

> ii. Houston, Texas - June 9, 1988
>
> The Vice President traveled to Houston, Texas on June 9, 1988. According to his official schedule, his activities included a press conference, a private meeting, an Hispanic Assembly Caucus, an address to the Texas Republican state convention and an unveiling of a statue. Unlike the other noted trips, this stop did not include a fundraising event. Other information, however, indicates that the Vice President may have attended events that were candidate related. For example, the Bush Committee asserts that the press conference held at this stop was neither advanced by nor paid for by the Bush Committee, thus raising the inference that it was paid for by another political entity. Moreover, the supplement apparently alleges that the events attended by the Candidate were paid for by the state party committee (i.e., the state party convention and possibly the address to the Hispanic group.) Because neither the Bush Committee nor the respondent state party has presented any specific information rebutting the presumption, the Regulations require this event to be considered a candidate related event. Therefore, the candidate expenses associated with this event, including travel, would be considered reportable campaign expenses.

Even the Commission's own analysis recognizes that the supplement to the Complaint does not allege that the State Party paid for any campaign related events. Rather, the commission itself could not determine whether such an allegation was made, stating that the supplement "apparently alleges" that the State Party paid for certain events. Again, the Commission clearly has not used its discretion in finding reason to believe that the State Party violated the law, when it is not even clear that the State Party has been accused of any wrongdoing. Moreover, this analysis underscores the general nature of the Commission's fishing expedition as to the Vice President's activities in Houston, stating only that the Vice President may have engaged in campaign activity in Houston, not that he did so engage. It is equally as possible that the Vice President may not have engaged in campaign activity on that date. Finally, under the best of circumstances, there has been no allegation that the State Party violated 2

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U.S.C. 441b(a) or 11 C.F.R. 102.5, nor does the Commission's Factual and Legal analysis go to this point. Under the best of all possible circumstances the allegation can only be that the State Party paid in excess of $5,000 of campaign related expenditures and made an in-kind contribution to President Bush's primary election. Thus, there is no rational basis for the Commission to have found reason to believe that the State Party violated the Act. The Commission's finding of reason to believe should therefore be rescinded and such recision is requested by this letter.

However, because the State Party has neither the interest, time, nor resources to further object to the Commission's deficient procedures at this point, and without waiving any objections previously raised, and reiterated herein, the State Party has examined its records regarding the Dallas and Houston trips referenced in the Complaint and the Commission's Factual and Legal Analysis and has determined that neither the State Party nor the Republican Party of Texas paid any expenses associated with these trips. This responds completely to the Commission's Subpoena to Produce Documents and Order to Submit Written Answers.

Sincerely,

Martha B. Weisend

Martha Weisend
Treasurer

2604371342 05

OGC 1373

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FEDERAL ELECTION COMMISSION
91 MAY 31 AM 10:32

May 29, 1991

General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
91 MAY 31 PM 12:07

Re: In the Matter of Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer, MUR 2667

Dear Sir/Ms.:

I am enclosing my Notice of Change of Address and Telephone Number for filing in this action.

Very truly yours,

Paul W. Johnson

Paul W. Johnson

Enclosure

lah

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer	)	MUR 2667

NOTICE OF CHANGE OF
ADDRESS AND TELEPHONE NUMBER

The offices of Smith, Duggan & Johnson will be relocated to One Center Plaza, Boston, Massachusetts 02108 as of June 3, 1991. Its new telephone number will be 617-248-1900.

Paul W. Johnson

Paul W. Johnson
Smith, Duggan & Johnson
260 Franklin Street
Boston, Massachusetts 02110
(617) 261-0500
BBO No. 252820

Attorney for Respondent
Massachusetts Republican
State Committee

May 29, 1991

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 1, 1991

Paul Kelly, Jr., Esquire
Hinkle, Cox, Eaton, Coffield and Hensley
218 Montezuma
P.O. Box 2068
Santa Fe, NM 87504-2068

Re: MUR 2667
Republican Campaign Committee
of New Mexico (Federal
Account/Non-Federal Account)
and Barbara Baltz, as Treasurer

Dear Mr. Kelly:

This responds to your letter dated May 29, 1991 requesting clarification regarding whether the Commission had considered your motion submitted in the above-captioned matter.

On May 22, 1990, the Commission considered a General Counsel's report discussing motions from many state party committees addressing both alleged improper notification and requests to end the investigation in this matter. As a result of this discussion, the Commission decided to rescind its reason to believe determinations in order to afford the state party committees notice and an opportunity to respond to the complaint. In doing so, the Commission did not grant the numerous motions to terminate the investigation. Enclosed please find a copy of the Commission's certification dated May 23, 1990, reflecting its decision. Consequently, after affording your clients notice and an opportunity to respond to the complaint, the Commission reconsidered the complaint and determined that there is reason to believe your clients violated the Federal Election campaign Act, as amended.

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I trust this clarifies this matter. If you have any questions please contact Patty Reilly, the attorney assigned to this matter at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

BY: Lois G. Lerner
Associate General Counsel

Enclosure

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OGC 1402

HINKLE, COX, EATON, COFFIELD & HENSLEY

ATTORNEYS AT LAW

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*NOT LICENSED IN NEW MEXICO

OF COUNSEL
O. M. CALHOUN*
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May 29, 1991

Jonathan Bernstein, Esq.
Assistant General Counsel
Federal Election Commission
Washington, D.C. 20463

RECEIVED
FEDERAL ELECTION COMMISSION
OGC
91 JUN -3 PM 3:19

Re: MUR 2667 Republican Campaign Committee of New Mexico (Federal Account/Non-Federal Account) and Barbara Baltz, as Treasurer

Dear Mr. Bernstein:

Thank you for your letter of May 15, 1991. You enclosed with that letter a May 29, 1990 letter which indicates that the Commission considered motions submitted by <u>others</u>. As far as I am concerned, the motion which I filed, supported by a memorandum, has never been responded to by anyone nor, has the Commission acted upon it. You will note in the May 29, 1990 letter that it recites that "the Commission considered motions submitted by others . . .". There is not one mention of my motion nor any discussion of the issues raised in my motion.

I would most appreciate the Commission addressing the issues raised before we proceed further. In every forum that I am familiar with, an unopposed motion is ordinarily granted.

I will await your advice.

Very truly yours,

HINKLE, COX, EATON,
COFFIELD & HENSLEY

Paul Kelly Jr.

Paul Kelly, Jr.

PJK/mh
cc: Patty Reilly, Esq.

RECEIVED
F.E.C.
SECRETARIAT
91 AUG -7 PM 4:05

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	)	
	)	
George Bush for President Committee, Inc. and J. Stanley Huckaby, as treasurer	)	MUR 2667
Republican National Committee and William McManus, as treasurer, et. al.	)	

SENSITIVE

EXECUTIVE SESSION

AUG 13 1991

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On March 19, 1991, the Commission authorized subpoenas to the Republican State Parties and their respective treasurers of the following states: California, Colorado, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, and Wisconsin. Also on that date the Commission authorized a subpoena to the Republican National Committee ("the RNC") and its treasurer.[1] Following revisions requested by the Commission, these subpoenas were issued on April 25, 1991.

Subsequently, this Office has received motions to quash the Commission's subpoenas from the following respondents: Colorado, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Wisconsin and the RNC.[2] Essentially all of the motions raise the same issues. Seven of

1. A complete procedural history of this matter is contained in the General Counsel's report dated December 20, 1990.

2. Thus, we have received motions to quash from all the state parties except California and Texas. Their substantive responses are discussed at Section II.C.

them are virtually identical.[3] All motions and responses received are attached to this report.

II. MOTIONS TO QUASH

A. MAJOR ISSUES

Two major issues are presented by the motions. First, some respondents argue that the Commission's notifications of the complaint and supplement in this action did not comply with the statute, and thus the Commission is said to be precluded from conducting its investigation.[4] Similarly, other respondents assert that the Commission's purported failure to timely notify them prevents the Commission from properly asserting its jurisdiction in this matter.[5]

These two related arguments were previously addressed by the General Counsel's Report dated May 10, 1990, as well as discussed by the Commission at its May 22, 1990 executive session. At that juncture this Office had received numerous requests from respondents styled as "Motion[s] to Rescind Reason to Believe Finding, To Dismiss Complaint, and to Terminate Compliance Proceedings." These motions argued that the respondents who were internally generated in this matter should have received notification of the complaint when it was received in August,

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3. These are the motions filed on behalf of the RNC, as well as the State Parties of Maryland, Colorado, South Carolina, North Carolina, Wisconsin and Kentucky.

4. See, e.g., the motions of the State Parties of Ohio, Georgia, New Jersey, and the motions cited in footnote 3, above.

5. See, e.g., the motions of the State Parties of Pennsylvania and Michigan.

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1988, and that the absence of this notification precluded the Commission from conducting its investigation. At the May 22, 1990 meeting the Commission reviewed respondents' contentions that they should have been notified at the time the complaint was received. Although this Office did not believe the notification was deficient, in order to accommodate respondents' concerns, the Commission took the unusual step of rescinding its reason to believe determinations. Moreover, at that time the Commission approved notification letters to those state parties named in the supplement. All of these actions were undertaken to enhance respondents' ability to respond to possible violations noted in the complaint and the supplement. Accordingly, the Commission's most recent reason to believe determinations were made only after a full and complete review of all of the materials available to it.[6]

For respondents to argue now that a possible late notification precludes the Commission from conducting an investigation requires the result that the Commission would be barred from ever internally generating a respondent arguably named in the complaint notwithstanding the volume of evidence discovered during the course of the investigation. The fact that the Act permits respondents to be internally generated, and the fact that

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6. Many of the respondents, except for the State Parties of New Mexico, Georgia and California, did not choose to submit materials relating to the allegations in the complaint and the supplement. Nevertheless the General Counsel's Report contained an analysis of voluminous materials submitted by the Bush for President Committee, also a named respondent in this matter.

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it is the Commission's practice to do so, militates against respondents' conclusion.

Moreover, respondents do not argue, nor can they argue, that they have received insufficient notice. Rather, they are unhappy about the timing of such notice. It is well settled, however, that in an agency proceeding, technical flaws in notice are held cured where actual notice is afforded during the proceedings. See Aaacon Auto Transport, Inc. v. Interstate Commerce Commission, 792 F.2d 1156, 1163 (D.C. Cir. 1986) (citing cases), cert denied, 481 U.S. 1048 (1987). Thus, by providing respondents with copies of the complaint and supplement and by notifying them of the Commission's determinations, this Office believes any possible defects of notice in this matter have been cured.[7]

In fact, what respondents really assert is their second major argument, i.e. that the passage of time in this matter has made it more difficult for them to comply with the subpoenas. In some respects, this Office is in sympathy with this representation. Clearly, had respondents complied with the Commission's request for information well over a year ago, it is likely that their search would be less burdensome than it might be today. Indeed, at an April 1990 meeting between the staff of the Office of the

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7. Some respondents argue that the Commission's subpoenas are a violation of due process rights. It is well settled that due process requires only an opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 424 U.S. 319 (1976). Moreover, due process concerns do not attach because the Commission's preliminary findings and investigations carry no determinative consequences. Hannah v. Larche, 363 U.S. 420 (1960); see also, FTC v. Standard Oil Company of California, 449 U.S. 232, 244 (1980). It is only after de novo review that a full ambit of due process protections attach.

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General Counsel and counsel for some of the respondents, this Office attempted to accommodate this concern. Specifically, the General Counsel suggested that respondents cooperate with the Commission's subpoenas, with the understanding that they would be fully reserving their procedural objections in the event conciliation agreements could not be reached at the conclusion of the administrative proceeding. Counsel declined to extend this cooperation. Thus, it is in part respondents' own previous refusals to produce documents and materials that has occasioned the difficulty they now encounter.

B. OTHER ISSUES

Respondents raise a number of other concerns regarding these subpoenas. First, a number of respondents argue that they are not required to maintain the sort of information sought by the subpoenas. Second, others assert that their staff members have changed since the 1988 election cycle, and the current staff is without knowledge of the activities the subpoenas encompass but will be required to interpret information.[8] Third, other respondents challenge specific questions or type of questions. We discuss each briefly below.

As an initial matter, it is irrelevant whether the materials sought are not required to be retained by statute. What is relevant is whether or not respondents have the material in their possession. Respondents have not stated that they do not have all of the materials sought. Rather, they merely assert it will be

8. See, e.g., all of the responses except New Mexico and California.

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difficult for them to compile this material. Nevertheless, the Commission's subpoenas requires respondents to look for responsive information and to undertake reasonable means to secure such information. Expense and disruption are not automatic grounds for stopping an agency's investigation. See FTC v. Standard Oil Company of California, 449 U.S. 232, 244 (1980).

Another respondent argues that the subpoenas are "fishing expeditions." Michigan Motion at p. 5. Specifically, this motion complains that the subpoena is overbroad for asking for information relating to all trips the Vice President participated in Michigan, rather than only those specifically cited in the complaint. This objection is without foundation. The complaint forms the basis of the Commission's reason to believe determination but does not constrain the Commission from investigating the full scope of questionable activities. Thus, it is appropriate for the Commission to request information regarding all trips by the Vice President to Michigan in which that state party was involved. Moreover, the terms of the subpoena specifically limit the time frame of the questions to the period between June 1 and August 31, 1988. Thus, the limited scope and the limited time frame of these questions are reasonable and are within the scope of the Commission's investigation.

The Illinois State Party argues that the Commission's questions are vague regarding the "Bush Campaign", questioning whether this refers to "vice presidential staff, precinct level supporters, volunteers and paid staff." Although no other respondent cites this apparent confusion, the proposed letter to

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this respondent will clarify this issue.[9]

The response of the Georgia Republican Party indicates that "most, if not all, records" are no longer available. An affidavit discussing Georgia events is attached to the motion. Respondents "deem" this affidavit "to be fully responsive" to the Commission's subpoena, and note in the affidavit that the events did not contain any "presidential campaign type activities but only state party oriented activities." Nothwithstanding this representation, the response notes that the Victory '88 events were planned with the help of persons associated with the Bush Committee. Although this extra information is helpful, it raises questions regarding the role of the Bush Committee in this event. Absent a fuller response and the relevant factual material, this Office is unable to resolve these factual questions.

A number of the nearly identical motions from the state parties challenge specific questions. For example, questions 1 and 2 in the subpoenas are challenged on the basis that if persons associated with the state party know the answers to these questions, their recollections will have faded.[10] Similarly, respondents challenged questions five and six in the state party

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9. Specifically, this letter will include a paragraph stating "The Commission also noted your apparent confusion regarding the identity of the 'Bush Campaign'. The Commission defines this phrase as volunteers and paid staff of the Bush For President Committee."

10. Question one seeks information regarding what events Vice President Bush attend in the state in which the state party was involved. Question two seeks information regarding the descriptions of the events in question, the entity paying for the event, and the persons who attended.

subpoenas regarding their communications with the Bush campaign and other party committees, characterizing the Commission as naive in believing that respondents can identify each communication it had three years ago. Further, regarding question seven, respondents decline to recall the content of speeches on the grounds that such recollections are "likely to be faded." Moreover, the state parties decline to produce vendor information on the basis that they do not maintain their books and records in a way that makes answering this question easy.

These are simply insufficient reasons for moving to quash a subpoena. It is impossible to conceive that the state parties cannot attempt to answer such basic questions as when the Vice President appeared in the state during a limited three month period prior to the 1988 nominating convention. Their responses that they cannot remember every communication does not excuse them from their apparent stance of having to remember even one such communication. Moreover, the state parties are not being required to produce information that they do not have. They must make reasonable efforts to comply with requests, and although compliance may be difficult, such difficulty is not an excuse for non-compliance. Thus, these assertions cannot stand.

Similar statements are made by the RNC regarding its subpoena. For example, the RNC asserts that it also cannot identify every communication, and thus it is precluded from

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identifying any communications it had regarding the events in question. It declines to provide any information regarding the press conferences arguing such information is "typically not retained." The RNC further declines to provide information on the basis that it is not required to keep it, without reaching the issue of whether or not such information exists. In short, such bare assertions are an insufficient basis for declining to respond to the subpoena.

C. COMMITTEES SUBSTANTIALLY COMPLYING WITH THE COMMISSION'S SUBPOENAS

We have received three responses in this matter from the State Parties of New Mexico, California, and Texas indicating substantial compliance with the subpoenas.[11] In its submission the New Mexico State Party first asserts that the Commission failed to respond to its previous motion in this matter.[12] Additionally, this respondent notes that materials were previously furnished to the Commission in response to questions and that the questions in the current subpoena are essentially the same as the previous one. Respondents are correct that the questions are similar, except for a narrowing of some questions and an addition of another.

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11. As previously noted, the New Mexico State Party also submitted a motion to quash. The other two respondents submitted only substantive materials.

12. The New Mexico Republican Party was mailed a response on May 29, 1990. The response noted that the Commission rescinded its reason to believe determination regarding the New Mexico State Party after considering motions submitted by "others" because all of the responses raised substantially the same arguments. On May 22, 1991, a copy of this response was re-sent. A letter further clarifying this situation, and a modified copy of the certification were also recently mailed.

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Respondents state that these revised questions do not affect their previous response. Thus, respondents have already produced documents and materials to this Office. In light of this substantial compliance, it is unnecessary to reach the issue of respondents' motion to quash. This will be explained to respondents in an appropriate letter.

The California State Party has also submitted a response substantially responding to the Commission's subpoena in this matter. Thus, we make no recommendations regarding filing civil suit as to this respondent.

The Texas State Party first challenges whether the complaint and supplement in this matter alleged that it had made expenditures for the Vice President's trips to Texas. The Factual and Legal Analysis in this matter noted that the supplement apparently alleged that the Texas State Party had paid for certain events associated with the Vice President visits to that state. A definitive statement regarding costs could not be made because the Texas State Party and the RNC had not submitted substantive responses to the complaint and supplement. In any event, the State Party's response asserts, "...the State Party has examined its records regarding the Dallas and Houston trips referenced in the Complaint and the Commission's Factual and Legal Analysis and has determined that neither the State Party nor the Republican Party of Texas paid any expenses associated with these trips. This responds completely to the Commission's Subpoena to Produce Documents and Order to Submit Written Answers." Texas State Party Response at 6. Thus, the Texas State Party has made a search of

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its files and determined that it does not posses responsive materials. Consequently, we make no recommendations regarding filing civil suit as to this respondent.

III. SUMMARY

As discussed above, although respondents have requested that the Commission quash their respective subpoenas in this matter, they have failed both in fact and in law to advance good cause to support such motions. Accordingly, the Office of the General Counsel recommends that these motions be denied.

In our conversations with counsel regarding these subpoenas it appears that they do not envision cooperating with these discovery requests in the event that their motions are denied. Accordingly, in order to expedite this matter and to resolve the pending legal issues, this Office recommends that the Commission authorize the Office of the General Counsel to file suit in the United States District court to enforce these subpoenas.

IV. RECOMMENDATIONS

1. Deny the motions to quash submitted on behalf of the State Parties of: Colorado, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Wisconsin, as well as the Republican National Committee.

2. Authorize the Office of the General Counsel to file civil suit to enforce the subpoenas issued to:

   a. Colorado Republican Federal Campaign Committee (Federal Account/Non-Federal Account) and Douglas L. Jones, as treasurer,

   b. Republican Party of Florida (Federal Account/Non-Federal Account) and Shirlee Browne, as treasurer,

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c. Georgia Republicans (Federal Account/Non-Federal Account), and Marvin H. Smith, as treasurer,

d. Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as treasurer,

e. Republican Party of Kentucky (Federal Account/Non-Federal Account) and Larry J. Steinberg, as treasurer,

f. Republican State Central Committee of Maryland (Federal Account/Non-Federal Account) and Susan L. Saum, as treasurer,

g. Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer,

h. Michigan Republican State Committee (Federal Account/Non-Federal Account) and Ronald D. Dahlke, as treasurer,

i. New Jersey Republican State Committee (Federal Account/Non-Federal Account) and Robert D. Franks, as treasurer,

j. North Carolina Republican Executive Committee (Federal Account/Non-Federal Account) and Carl G. Ward, as treasurer,

k. Ohio Republican Party Committee (Federal Account/Non-Federal Account) and Virginia S. Cheney, as treasurer,

l. Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yoros, as treasurer,

m. South Carolina Victory '88 (Federal Account/Non-Federal Account and Tony Deny, as treasurer,

n. Tennessee Republican Party (Federal Account/Non-Federal Account) and Robert C. Brannon, as treasurer,

o. Republican Party of Wisconsin (Federal Account/Non-Federal Account) and Robert R. Barrow, as treasurer, and

p. Republican National Committee and William J. McManus, as treasurer

2604371352

3. Approve the appropriate letters.

Date 8/7/91

LMNoble (OFR)
Lawrence M. Noble
General Counsel

Attachments
Responses of the State Parties of:

1. Colorado
2. Florida
3. Georgia
4. Illinois
5. Kentucky
6. Maryland
7. Massachusetts
8. Michigan
9. New Jersey
10. New Mexico
11. North Carolina
12. Ohio
13. Pennsylvania
14. South Carolina
15. Tennessee
16. Texas
17. Wisconsin
18. Response of the Republican National Committee

2 4 0 4 3 7 1 3 5 1 3

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 2667
George Bush for President Committee,	)	
Inc. and J. Stanley Huckaby, as	)	
treasurer;	)	
Republican National Committee and	)	
William McManus, as treasurer; et al.	)	

CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on August 13, 1991, do hereby certify that the Commission decided by a vote of 5-1 to take the following actions in MUR 2667:

1. Deny the motions to quash submitted on behalf of the State Parties of: Colorado, Florida, Georgia, Illinois, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, and Wisconsin, as well as the Republican National Committee.

2. Authorize the Office of the General Counsel to file civil suit to enforce the subpoenas issued to:

   a. Colorado Republican Federal Campaign Committee (Federal Account/Non-Federal Account) and Douglas L. Jones, as treasurer;

   b. Republican Party of Florida (Federal Account/Non-Federal Account) and Shirlee Browne, as treasurer;

(continued)

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c. Georgia Republicans (Federal Account/ Non-Federal Account), and Marvin H. Smith, as treasurer;

d. Illinois Republican State Central Committee (Federal Account/Non-Federal Account) and Thomas W. Ewing, as treasurer;

e. Republican Party of Kentucky (Federal Account/Non-Federal Account) and Larry J. Steinberg, as treasurer;

f. Republican State Central Committee of Maryland (Federal Account/Non-Federal Account) and Susan L. Saum, as treasurer;

g. Massachusetts Republican State Committee (Federal Account/Non-Federal Account) and Lawrence Novak, as treasurer;

h. Michigan Republican State Committee (Federal Account/Non-Federal Account) and Ronald D. Dahlke, as treasurer;

i. New Jersey Republican State Committee (Federal Account/Non-Federal Account) and Robert D. Franks, as treasurer;

j. North Carolina Republican Executive Committee (Federal Account/Non-Federal Account) and Carl G. Ward, as treasurer;

k. Ohio Republican Party Committee (Federal Account/Non-Federal Account) and Virginia S. Cheney, as treasurer;

l. Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yoros, as treasurer;

(continued)

9 6 0 4 3 7 1 3 5 1 5

m. South Carolina Victory '88 (Federal Account/Non-Federal Account) and Tony Deny, as treasurer;

n. Tennessee Republican Party (Federal Account/Non-Federal Account) and Robert C. Brannon, as treasurer;

o. Republican Party of Wisconsin (Federal Account/Non-Federal Account) and Robert R. Barrow, as treasurer; and

p. Republican National Committee and William J. McManus, as treasurer.

3. Approve the appropriate letters as recommended in the General Counsel's report dated August 7, 1991, but direct the Office of General Counsel to include in the letter to the Georgia Republicans what specific information has not yet been submitted by them in response to the subpoena.

Commissioners Elliott, Josefiak, McDonald, McGarry, and Thomas voted affirmatively for the decision; Commissioner Aikens dissented.

Attest:

8-15-91
Date

Marjorie W. Emmons
Marjorie W. Emmons
Secretary of the Commission

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Benjamin L. Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2667
Republican Party of Wisconsin
(Federal Account/Non-Federal
Account) and Robert R. Barrow,
as treasurer

Dear Mr. Ginsberg:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

2604213517

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Benjamin Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2667
South Carolina Victory '88
(Federal Account/Non-Federal
Account) and Tony Denny, as
treasurer

Dear Mr. Ginsberg:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

9604371318

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Benjamin Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2667
Colorado Republican Federal Campaign Committee (Federal Account/Non-Federal Account) and Douglas L. Jones, as treasurer

Dear Mr. Ginsberg:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Benjamin L. Ginsberg, Esquire
Republican National Committee
310 First Street, S.E.
Washington, D.C. 20003

Re: MUR 2667
Republican National Committee
(Federal Account/Non-Federal
Account) and William J.
McManus, as treasurer

Dear Mr. Ginsberg:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

9604371750

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Frank B. Strickland, Esquire
Wilson, Strickland & Benson, P.C.
1360 Peachtree Street, N.E.
Atlanta, GA 30309

RE: MUR 2667
Georgia Republicans
(Federal Account/Non-Federal
Account) and Marvin H. Smith,
as treasurer

Dear Mr. Strickland:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. The Commission also reviewed your response in this matter and appreciates your efforts to respond to the subpoena. The Commission determined, however, that it needed further information in a number of areas before your response could be deemed in substantial compliance with its subpoena. First, your response dated May 13, 1991 states that except for information previously provided to the Commission, "most, if not all, records which are not required to be retained by the Federal Election Campaign Act are no longer available." Please clarify whether your clients in fact possess any other documents responsive to the Commission's subpoena. Second, the General Counsel's Factual and Legal Analysis in this matter noted a speech made by the Vice President. Please state whether this speech was made at any event paid for by your clients. Third, your response states that events paid for by your clients were coordinated with persons associated with the Bush Campaign in Georgia. Please describe this coordination. Additionally, state whether the Vice President appeared in your state on any other dates in which the State Party was involved between June 1, and August, 31, 1988, and if so, please answer all questions in the subpoena as to such event(s).

2604371352 1

The Office of the General Counsel requests that you submit your response within fifteen days from your receipt of this letter. Please note in the event that you fail to provide this information, the Commission has authorized the Office of the General Counsel to file civil suit in the United States District Court to enforce this subpoena.

If you have any questions, please contact Patty Reilly, the attorney assigned to this matter at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Gordon Strauss, Esquire
Thompson, Hine and Flory
2900 DuBois Tower
511 Walnut Street
Cincinnati, OH 45202

Re: MUR 2667
Ohio Republican Party's Federal Candidates Campaign Committee (Federal Account/Non-Federal Account) and Robert Wilson, as treasurer

Dear Mr. Strauss:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

2604371352

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Edward Gross, Esquire
Gross & Novak
Colonial Oaks Office Park
Brier Hill, Building C
P.O. Box 188
East Brunswick, NJ 08816

Re: MUR 2667
New Jersey Republican State Committee (Federal Account/Non-Federal Account) and Kathleen A. Donovan, as treasurer

Dear Mr. Gross:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Maclin P. Davis, Esquire
Heiskell, Donelson, Dearman, Adams
Williams & Kirsch
Suite 600, Nashville City Center
511 Union Street
Nashville, TN 37219

Re: MUR 2667
Tennessee Republican Party
Federal Election Account
Victory '88 (Federal
Account/Non-Federal Account)
and Robert C. Brannon, as
treasurer

Dear Mr. Davis:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Paul W. Johnson, Esquire
Smith, Duggan & Johnson
260 Franklin Street
Boston, MA 02110

Re: MUR 2667
Massachusetts Republican Party
(Federal Account/Non-Federal
Account) and Lawrence Novak, as
treasurer

Dear Mr. Johnson:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Eric E. Doster, Esquire
Foster, Swift, Collins and Smith, P.C.
313 South Washington Square
Lansing, MI 48933-2193

Re: MUR 2667
Michigan Republican State Committee (Federal Account/Non-Federal Account) and Ronald D. Dahlke, as treasurer

Dear Mr. Doster:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

9604371357

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Richard P. Taylor, Esquire
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: MUR 2667
Republican State Central Committee of Maryland (Federal Account/Non-Federal Account) and Susan K. Saum-Wicklien, as treasurer

Dear Mr. Taylor:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

9604371358

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Kenneth L. Connor, Esquire
719 North Calhoun Street
P.O. Box 311
Tallahassee, FL 32302

Re: MUR 2667
Republican Party of Florida
Federal Campaign Committee
(Federal Account/Non-Federal
Account) and Shirlee Bowne, as
treasurer

Dear Mr. Connor:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

9104371359

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Arthur C. Zeidman, Esquire
General Counsel
1410 Hillsbourgh Street
Raleigh, NC 27605

Re: MUR 2667
North Carolina Republican Executive Committee (Federal Account/Non-Federal Account) and John J. Carrington, as treasurer

Dear Mr. Zeidman:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Andrew D. Leipold, Esquire
2000 One Logan Square
Philadelphia, PA 19103

Re: MUR 2667
Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yaros, as treasurer

Dear Mr. Leipold:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Larry J. Steinberg, Treasurer
Republican Party of Kentucky
P.O. Box 1068
Frankfort, KY 40602

Re: MUR 2667
Republican Party of Kentucky
(Federal Account/Non-Federal
Account) and Larry J.
Steinberg, as treasurer

Dear Mr. Steinberg:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Craig S. Burkhardt, Esquire
Sorling, Northrup, Hanna,
Cullen and Cochran, Ltd.
Suite 800, Illinois Building
P.O. Box 5131
Springfield, IL 62705

Re: MUR 2667
Illinois Republican State
Central Committee (Federal
Account/Non-Federal
Account) and Thomas W. Ewing,
as treasurer

Dear Mr. Burkhardt:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

The Commission also noted your apparent confusion regarding the identity of the "Bush Campaign". The Commission defines this phrase as volunteers and paid staff of the Bush For President Committee.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

2604371353

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 26, 1991

Paul Kelly, Jr., Esquire
Hinkle, Cox, Eaton, Coffield and Hensley
218 Montezuma
P.O. Box 2068
Santa Fe, NM 87504-2068

RE: MUR 2667
Republican Campaign Committee
of New Mexico (Federal
Account/Non-Federal Account)
and Barbara Baltz, as Treasurer

Dear Mr. Kelly:

On August 13, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter. In view of your clients' substantial compliance with this subpoena, the Commission determined that it was not necessary to reach the merits of this motion.

If you have any other information which you wish to bring to our attention regarding this matter, please contact Patty Reilly, the attorney assigned to this matter, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

9604371354

06 C 2373

LAW OFFICES
HEISKELL, DONELSON, BEARMAN, ADAMS, WILLIAMS & KIRSCH
A PROFESSIONAL CORPORATION
SUITE 600 · NASHVILLE CITY CENTER
511 UNION STREET
NASHVILLE, TENNESSEE 37219
(615) 256-0515
TELECOPIER
(615) 726-7378

SUITE 404
5680 RIDGEWAY CENTER PARKWAY
MEMPHIS, TENNESSEE 38120
(901) 526-2000
TELECOPIER (901) 767-3203

TWENTIETH FLOOR
FIRST TENNESSEE BUILDING
165 MADISON AVENUE
MEMPHIS, TENNESSEE 38103
(901) 526-2000
TELECOPIER (901) 577-2303

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KNOXVILLE, TENNESSEE 37929
(615) 522-4400
TELECOPIER (615) 971-5191

TENTH FLOOR
JAMES BUILDING
735 BROAD STREET
CHATTANOOGA, TENNESSEE 37402
(615) 267-4400
TELECOPIER (615) 267-4410

A. L. HEISKELL 1890-1980
E. B. WILLIAMS, JR. 1898-1974
J. H. SHEPHERD 1893-1983
WM. F. KIRSCH, JR. 1924-1988
LEO BEARMAN 1902-1980

LEWIS R. DONELSON
MACLIN P. DAVIS, JR.
EARNEST WILLIAMS, III
FRIERSON M. GRAVES, JR.
ROY HEATHLEY
DAVID G. WILLIAMS
DONALD A. MALMO
ROBERT NORFLEET WHITE
RICHARD D. BIRD
LEO BEARMAN, JR.
MAURICE WEALER
WILLIAM HUME BARR
JAMES T. O'HARE
STEPHEN H. BILLER
RICHARD B. GOBBETT
MICHAEL F. PLEASANTS
ROBERT WALKER
BOYD L. RHODES, JR.
W. MICHAEL RICHARDS
JOHN C. SPEER
CHARLES T. TUGGLE, JR.
SAMUEL H. MAYS, JR.
H. WYNNE JAMES, III
COURTNEY N. PEARRE
LARRY E. KILLEBREW
JON P. MCCALLA
WILLIAM P. KENWORTHY
ROBERT C. LIDDON
DANIEL B. HATZENBUEHLER
WILLIAM H. D. FONES, JR.
STEPHEN G. ANDERSON
ALLAN J. WADE
SUSAN G. ELLIOTT
HENRY P. DOGGRELL
JOHN A. GUPTON, III
STEPHEN D. MAKEFIELD
CHARLES C. HARRELL
R. MARK GLOVER
DAVID E. FIELDER
HARRIS PATTON QUINN
GEORGE T. LEWIS, III
RICHARD J. MCAFEE
JOHN C. PHIPPS II
BEN C. ADAMS, JR.
EUGENE J. PODESTA, JR.
RANDAL S. MASHBURN
SAM B. BLAIR, JR.
CARLA PEACHER RYAN
MARY L. ARONOV
JOHN R. BRANSON
CARL E. BUCHLER
JOHN R. GREGORY
CHARLES O. WALKER
DEBORAH S. HUMBLE
JOHN P. DOYLE
J. RUSSELL HELDMAN
SHEILA JORDAN CUNNINGHAM
SUSAN DUVIER BASS
CHARLES M. KEY
JOHN F. MURRAH
MATTHEW T. HARRIS
LINDA M. CROUCH
JOHN R. GRAYSON, JR.
JILL M. STEINBERG
STACY BLOUNT DIVINE
WILLIAM B. CLEMMONS, JR.
MICHAEL C. PATTON
STEPHEN E. BOTH
SCOTT M. WAGONY
JOE A. FORNER
BARBARA A. ROSE
DAVID T. POPWELL
MONIQUE A. NASSAR
JACK E. MELVIN, JR.
STEPHEN W. RAGLAND
KIMBLE H. SCOTT
TRACEY COLEMAN
NELWYN L. RHODES
M. CLAY BETHELL
ELIZABETH E. CHANCE
CHARLES F. MORROW
KAREN L. MURCHISON
ROBERT H. W. SHEA
BRADLEY E. TRAMMELL
M. SCOTT WILENTZ
NORA L. HOBBS
THOMAS M. TEVILLE
PHILIP S. WEEKS
R. ALAN PRITCHARD, JR.
PAUL A. ROBINSON, JR.
ROBERT L. BARRAZIN
JOSEPH HICKMAN PEPPER, JR.
COUNSEL
ROBERT H. BURTON
BEN C. ADAMS
EDWARD R. GROGAN
PAUL F. LUTZMAN
H. BUCKNER CLE
O. ROBERT MORRIS

WRITER'S DIRECT DIAL (615)

August 30, 1991

FEDERAL ELECTION COMMISSION
91 SEP -2 AM 10:39

Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667 - Tennessee Republican Party Federal Election Account Victory '88 and Robert C. Brannon, as Treasurer

FEDERAL ELECTION COMMISSION
91 SEP -3 PM 3:55

Dear Mr. Noble:

Receipt is acknowledged of your letter to me of August 26, 1991. Apparently, this was sent to me because I originally was the attorney for the respondents Tennessee Republican Party and Robert C. Brannon in this proceeding. However, in 1990 I withdrew and was replaced by William R. Baker, Esq. of Ashland City, Tennessee.

In your letter to me of August 26, 1991, you state that the Commission considered and denied my motion to quash the subpoena in this matter and that my response is due ten days from receipt of your letter. The motion to quash the subpoena was not filed by me. It was filed by W. R. Baker, Esq. Enclosed is copy of Mr. Baker's letter to the Federal Election Commission dated May 13, 1991 transmitting the motion to quash and requesting that he be informed about the Commission's consideration of it.

You should notify Mr. Baker of the Commission's action on the motion rather than me since I do not represent any party in this

proceeding and Mr. Baker represents the Tennessee Republican Party and Robert C. Brannon, Treasurer.

Respectfully Yours,

Maclin P. Davis, Jr.

Maclin P. Davis, Jr.

MPD/mn
cc: William R. Baker, Esq.
Mr. Tommy Hopper

2604371376

OBC 2384

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 SEP -2 AM 10: 13

Andrew D. Leipold
2000 One Logan Square
Philadelphia, PA 19103

91 SEP -3 PM 3:57

August 29, 1991

Colleen Miller
Acting Assistant General Counsel for Litigation
Federal Election Commission
Washington, D.C. 20463

Re: MUR 2667; Republican Federal Committee of Pennsylvania (Federal Account/Non-Federal Account) and Jacob D. Yaros, as Treasurer

Dear Ms. Miller:

This will confirm our telephone conversation this afternoon, in which you agreed that respondents in the above-captioned matter have until September 30, 1991, to respond to Mr. Noble's letter of August 26, 1991.

Thank you for your consideration.

Sincerely,

Andrew D. Leipold

ADL/cs

2604311357

OB-C 24106

Republican
National
Committee

Benjamin L. Ginsberg
Chief Counsel

Michael A. Hess
Janice P. Lacy
Deputy Chief Counsels

91 SEP -9 PM 3:00

September 6, 1991

Lawrence M. Noble
General Counsel
Federal Election Commission
Washington, D.C. 20463

Attn: Colleen Miller

Re: MUR 2667
Republican National Committee
South Carolina Victory '88
Republican Party of Wisconsin
North Carolina Republican Executive Committee
Republican State Central Committee of Maryland
Colorado Republican Federal Campaign Committee
Republican Party of Kentucky

Dear Mr. Noble:

On August 28, 1991, we received your letter informing us that the motions of the above-named respondents to quash the subpoenas in MUR 2667 were denied and that responses would be due ten days from our receipt of the letter. We intend to respond to the subpoenas on behalf of these respondents. These responses would be due September 7, 1991, but since that date falls on a Saturday, the deadline for response is September 9, 1991. 11 C.F.R § 111.2(a).

We have been working diligently to meet this deadline. We have found, however, that because the Commission's inquiry concerns specific information of events from

Dwight D. Eisenhower Republican Center • 310 First Street Southeast • Washington, D.C. 20003 • (202) 863-8638
Telex: 701144 • FAX: (202) 863-8820

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1988, we are having difficulty in locating relevant persons and materials. In order to provide complete responses, we are attempting to locate persons with recollection of the events in question, many of whom have since left the respondent committees. Also, some of the requested material is not easily accessible and the respondent committees are still searching their files (some of which were warehoused, and not classified by event) for the relevant information. Finally, we received the Commission's determination to deny our motions close to the holiday weekend, when many relevant persons and staff were on vacation.

All of these factors have significantly hindered our attempts to expeditiously respond to the subpoenas, especially since we are representing seven respondents in this matter. Accordingly, we respectfully request an extension of thirty (30) days, until October 8, 1991, to respond to the subpoenas. We also request this extension in light of our September work and travel schedules.

Thank you for your consideration.

Sincerely,

Janice P Lacy

Janice P. Lacy

2604371359

06C2410

FOSTER, SWIFT,
COLLINS & SMITH, P.C.
ATTORNEYS AT LAW
313 South Washington Square
Lansing, MI 48933-2193
PH (517) 371-8100
FX (517) 371-8200

ERIC E. DOSTER
(517) 371-8241

September 5, 1991

Ms. Colleen Miller
Office of The General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

91 SEP -9 PM 3:45

RE: MUR 2667; Request for Extension for Filing Responsive Brief and Responses to Subpoena and Order

Dear Ms. Miller:

Pursuant to our conversation earlier today, the purpose of this letter is to request an extension of twenty (20) days for purposes of filing a responsive brief and responses to the Subpoena and Order in MUR 2667. The basis for this request is that, up until we received notification that the Commission denied our motion to quash the subpoena in the above-captioned matter, it was unnecessary for the MRSC to even begin preparing a response to the Commission's January 17, 1991 reason to believe finding. By this letter, we are informing you that, as soon as the MRSC received notification that its motion to quash the subpoena in the above-captioned matter was denied by the Commission, we began preparing our responsive brief and responses to the Subpoena and Order; however, our ability to prepare adequate responses has been severely hindered by the unusual nature of these proceedings.

Your positive consideration of this request would be appreciated. Since we did not receive Mr. Noble's letter until August 28, 1991, the original filing deadline became September 9, 1991. Upon approval of this request, the filing deadline will be September 30, 1991.

Sincerely yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

Eric Doster

Eric E. Doster

91 SEP -9 PM 12:30

EED/kem
cc: David J. Doyle
Sue E. Wadel
David W. McKeague

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 9, 1991

William Robert Baker, Esquire
209 N. Main Street
P.O. Box 245
Ashland City, TN 37015-0245

Re: MUR 2667
Tennessee Republican Party
Federal Election Account
Victory '88 (Federal
Account/Non-Federal Account)
and Robert C. Brannon,
as treasurer

Dear Mr. Baker:

We have been informed that you have replaced Maclin P. Davis as counsel for the above-captioned respondents. Consequently, this is to inform you that on August 14, 1991, the Commission considered your motion to quash the subpoena in the above-captioned matter and denied the motion. Accordingly, your response is now due ten days from your receipt of this letter. In the event that you fail to comply with the Commission's subpoena, the Commission has authorized the Office of the General Counsel to seek judicial enforcement of this subpoena.

If you have any questions, please contact Colleen Miller, Acting Assistant General Counsel for Litigation, at (202) 376-5690.

Sincerely,

Lawrence M. Noble
General Counsel

9604371354 1

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OF COUNSEL
JOHN C. PENNINGTON
ROBERT G. WILLIS
DANIEL I. MACINTYRE
EDWARD H. SAUNDERS

September 13, 1991

By facsimile: (202) 219-3923

Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

Re: Georgia Republican Party and Marvin H. Smith, as Treasurer
MUR 2667

Dear Mr. Noble:

This is in reply to your letter of August 26, 1991, requesting further information before the Commission can deem our clients' response to be in substantial compliance with the subpoena.

The individuals who may have knowledge of the additional information requested in your letter are no longer employed by the Georgia Republican Party. Most of the work done on events such as the one in question was done by volunteers. It is virtually impossible to determine which volunteers worked on events in 1991, much less in 1988. Similarly, the State Chairman (also a volunteer) who was in office in 1988 no longer holds that office. Despite contacts with three individuals as of the date of this letter, we have been unable to obtain the additional information requested in your letter. It is unclear at this time whether or not our efforts will be successful, but we will continue those efforts. Under the circumstances, we respectfully request additional time to respond to your letter of August 26, 1991, and to the subpoena, such time to run through and including October 4, 1991.

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Thank you for your cooperation.

Sincerely,

Frank B. Strickland

FBS/lha

cc: Oscar N. Persons, Esq.

9 4 0 4 3 7 1 3 5 1 3

OBC 2803

RECEIVED
FEDERAL ELECTION COMMISSION
MAIL ROOM

91 SEP 16 PM 2:16

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Ida Jackson
Secretary

Shirlee Bowne'
Treasurer

Ginny Dinkins
Assistant
Secretary

John Laurent
Assistant
Treasurer

Chester Clem
National
Committeeman

Maryanne Morse
National
Committeewoman

September 12, 1991

91 SEP 17 PM 3:28
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FEDERAL ELECTION COMMISSION

Ms. Colleen Miller
Federal Election Committsion
999 E Street NW
Washington, DC 20463

Re: MUR 2667
Republican Party of Florida
Federal Campaign Committee
(Federal Account/Non-Federal
Account) and Shirlee Bowne, as
treasurer

Dear Ms. Miller:

This letter is to follow-up our telephone conversation of Tuesday, September 10, 1991 regarding MUR 2667.

We are preparing the information you have have requested and anticipate completing the answers to your questions shortly.

If we find that the delay in responding to your request extends longer than one week, we will file for a formal extension.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Barbara S. Morrison

Barbara S. Morrison
Deputy Executive Director

719 North Calhoun Street ★ Post Office Box 311 ★ Tallahassee, Florida 32302 ★ Bus: (904) 222-7920 ★ Fax: (904) 681-0184
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Post Office Box 5131
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91 SEP 12 AM 10: 50

Thomas L. Cullen
of Counsel
Sorling, Curran and Hardin
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Carl A. Sorling
(1944-1991)
B. Leroy Curran, Jr.
(1944-1959)
John H. Hardin
(1945-1978)
George W. Cullen
(1930-1986)

Fax No. 1-217-522-3173

September 11, 1991

VIA FEDERAL EXPRESS

91 SEP 13 PM 2:32
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Mr. Lawrence M. Noble
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington D.C. 20463

Attn: Lois G. Lerner

RE: MUR 2667 Illinois Republican State Central Committee and Thomas W. Ewing, as treasurer

Dear Mr. Noble:

We are in receipt of the Subpoena to Produce Documents Order to Submit Written Answers in the above referenced matter. The Illinois Republican State Central Committee is in the process of reviewing its records and preparing its response. The response will be finished within one week, at which time we will deliver it to you.

If you have any questions regarding this response, please direct them to the undersigned.

Sincerely,

Mark K. Cullen

Mark K. Cullen

MKC:tm

MKC.TMM.091191.8222.A.1