FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE BEGINNING OF MUR # 4170

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 10, 1995

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: BUSH-QUAYLE '92 GENERAL COMMITTEE, INC. AND BUSH-QUAYLE '92 COMPLIANCE COMMITTEE, INC. - REFERRAL MATTERS

On December 27, 1994 the Commission approved the final audit report (FAR) on the Bush-Quayle '92 General Committee, Inc. and Bush-Quayle '92 Compliance Committee, Inc. The final audit report was released to the public on December 29, 1994. In accordance with the Commission approved materiality thresholds, the attached finding from the audit report is being referred to your office:

- Finding III.A. - Disclosure of Occupation and Name of Employer (Bush-Quayle '92 Compliance Committee, Inc.)

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions, please contact Brian Dehoff or Tom Nurthen at 219-3720.

Attachment:

Finding III.A. - Disclosure of Occupation and Name of Employer, pages 9-12.

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III. Findings and Recommendations - Non-repayment Matters
Bush-Quayle '92 Compliance Committee

A. Disclosure of Occupation and Name of Employer

Section 434(b)(3)(A) of Title 2 of the United States Code states that each report shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee during the reporting

period, whose contribution or contributions have an aggregate amount or value in excess of $200 within the calendar year, together with the date and amount of any such contribution.

Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" as, in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

Section 432(i) of Title 2 of the United States Code states, in part, that when the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act.

Section 104.7(a) and (b) of Title 11 of the Code of Federal Regulations states when the Treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. The Treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. For purposes of 11 CFR 104.7(b), such effort shall consist of a clear request for the information (i.e., name, mailing address, occupation, and name of employer) which request informs the contributor that the reporting of such information is required by law.

The Audit staff conducted a sample review of receipts from individuals to determine if for contributions requiring itemization, the requisite information was adequately disclosed. An error rate of 68% was noted with respect to the disclosure of occupation and name of employer on reports filed.

Although the solicitation devices did contain a request for the contributor's occupation and name of employer, the notice was incorrect: "The Federal Election Commission requires us to ask the following information:" (emphasis added). The Regulations require it to state "the reporting of such information is required by law". Therefore, it is the opinion of the Audit staff that the Compliance Fund has not met materially the best efforts provision of 11 C.F.R. §104.7.

This matter was discussed at the exit conference. Representatives of the Compliance Fund did not comment.

Subsequent to the exit conference the Treasurer stated that the Compliance Fund has not contacted its contributors in order to obtain the missing information.

In the interim audit report the Audit staff recommended that the Compliance Fund contact all contributors who have not provided the required contributor information and file amended disclosure reports to correct the public record. Further, the Audit staff stated that such a request should include the appropriate notice that "the reporting of such information is required by law".

In response to the interim audit report the Treasurer states that the Compliance Fund complied with the "best efforts" provisions of 11 C.F.R. §104.7(b). The Treasurer explains that the Compliance Fund contacted each contributor and requested their name, mailing address, occupation, name of employer and notified the contributors that "the Federal Election Commission requires us to ask the following information."

Further, the Treasurer states the Compliance Fund altered the language on its contributor solicitations in response to a July 1, 1992 memorandum issued by the Commission. The revised notification to its contributors stated, "[t]he Federal Election Commission requires us to report the following information." The Treasurer claims the Audit staff determined that the "best efforts" provisions were not met because the Compliance Fund used the phrase "Federal Election Commission requires" as opposed to "the law requires."

The Treasurer contends that the "best efforts" provisions were met for several reasons. First, the Treasurer states that the distinction between "the Federal Election Commission" and "the law" is insignificant because "the regulations properly promulgated by the Commission have the force of law." Secondly, the Treasurer maintains that no specific reason is identified in the interim report as to why the language used by the Compliance Fund was "deficient." The Treasurer continues, "[t]he regulation does not require that specific words be used, only that contributors be informed of the substance of the message." Finally, the Treasurer claims the Audit staff's "interpretation would constitute a material change in the regulation that cannot properly be implemented without a rulemaking proceeding."

In the opinion of the Treasurer, the Compliance Fund's interpretation of the regulation was reasonable and the adopted language was consistent with the "best efforts" requirements.

As stated by the Treasurer, the regulation at 11 C.F.R. §104.7 does not require that specific words be used, only that contributors be informed of the substance of the message. The substance of the message is that the reporting of a contributor's name, mailing address, occupation, and name of employer is required by law.

Although the Compliance Fund has put forth several arguments in support of its position that its actions satisfied the best efforts provision in effect at the time of the solicitations, the language used by the Compliance Fund; "The Federal Election Commission requires us to ask the following information"; does not inform the contributor that the reporting of the information is required by law.

The Compliance Fund did not contact all contributors who did not provide the required contributor information as recommended in the interim audit report. Consequently, no amendments containing information regarding these contributors were filed.

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MURs 3664, 4170, 4171, 4289
Staff Members: Delanie DeWitt Painter
Matthew J. Tanielian

SOURCE: COMPLAINT AND AUDIT REFERRALS

RESPONDENTS: Bush-Quayle '92 Primary Committee, Inc., and
J. Stanley Huckaby, as treasurer

Bush-Quayle '92 General Committee, Inc., and
J. Stanley Huckaby, as treasurer

Bush-Quayle '92 Compliance Committee, Inc., and
J. Stanley Huckaby, as treasurer

RELEVANT STATUTES:
2 U.S.C. § 431(13)(A)
2 U.S.C. § 432(i)
2 U.S.C. § 434(b)(3)(A)
2 U.S.C. § 434(b)(8)
2 U.S.C. § 441a(a)(1)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
26 U.S.C. § 9007(a)
11 C.F.R. § 100.7(b)(8)
11 C.F.R. § 104.7(b)
11 C.F.R. § 114.9(e)
11 C.F.R. § 104.11(b)
11 C.F.R. § 116.1(c)
11 C.F.R. § 116.3
11 C.F.R. § 116.5(b)
11 C.F.R. § 9004.7(b)(5)

COMPLAINANT: MUR 3664 Democratic National Committee

INTERNAL REPORTS CHECKED: Disclosure Reports, Audit Documents

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

This General Counsel's Report addresses four Matters Under Review ("MURs") involving the Bush-Quayle '92 Primary Committee, Inc. ("Primary Committee"), the Bush-Quayle '92 General Committee, Inc. ("GEC"), and the Bush-Quayle '92 Compliance Committee, Inc. ("Compliance Committee") that originated from the 1992 presidential general election campaign of President George Bush and Vice President Dan Quayle.[1]

MUR 4171 was generated by an audit of the Primary Committee undertaken in accordance with 26 U.S.C. § 9007(a). The Primary Committee was the principal authorized campaign committee for President George Bush's campaign for the 1992 Republican presidential nomination. The Audit Division referred five matters to this Office. Based on the facts and considerations of prosecutorial discretion, the Office of General Counsel recommends that the Commission find reason to believe but take no further action concerning matters involving excessive contributions, use of corporate aircraft, and disclosure of occupation and name of employer. This Office further recommends that the Commission find reason to believe and engage in conciliation with the Primary Committee prior to a finding of probable cause to believe concerning the remaining matters involving reporting of debts and obligations and staff advances. This Office recommends the Commission find reason to believe, but take no further action against Robert Holt, an individual who made staff advances.

MUR 3664 was generated by a complaint filed on November 2, 1992 by the Democratic National Committee against the GEC and J. Stanley Huckaby, as treasurer. MUR 3664 involves the GEC's failure to properly report debts and obligations for campaign-related travel.

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[1] President Bush and Vice President Quayle were renominated by the Republican Party on August 20, 1992. The 1992 General Election was on November 3, 1992.

Specifically, the complaint alleged that between August 1992 and the 1992 general election, the GEC failed to report to the Commission any reimbursement made to, or debts and obligations owed to, the United States Treasury for campaign-related use of Air Force One and Air Force Two. On January 25, 1994, the Commission found reason to believe that the GEC violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report estimated debts and obligations incurred for campaign-related travel and authorized further investigation to determine the amount of the apparent violation.[2] The GEC has made two requests that this matter be dismissed. This Office recommends the Commission deny both requests for dismissal and engage in conciliation with the GEC prior to a finding of probable cause to believe.

MUR 4289 was generated by referrals from the joint audit of the GEC and Compliance Committee undertaken in accordance with 26 U.S.C. § 9007(a). The Audit Division referred two matters to this Office concerning the reporting of debts and obligations by the GEC and Compliance Committee. This Office recommends that the Commission find reason to believe and engage in conciliation with the GEC and Compliance Committee prior to a finding of probable cause to believe.

MUR 4170 was generated by a referral from the joint audit of the GEC and Compliance Committee undertaken in accordance with 26 U.S.C. § 9007(a). The Audit Division referred one

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[2] The Commission originally made the reason to believe findings on July 20, 1993. The subsequent findings were made pursuant to the Commission's November 9, 1993 determinations regarding procedures to be followed in light of *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993) ("*NRA*"), *petition for cert. dismissed for lack of jurisdiction*, 115 S.Ct. 537 (1994).

On July 20, 1993, the Commission also approved a Subpoena to Produce Documents and Order to Submit Written Answers directed to the GEC. The Commission did not revote the Subpoena and Order based on the GEC's representation that most of the subpoenaed documents were in the possession of the Audit Division, which was conducting an audit of the GEC pursuant to 26 U.S.C. § 9007(a).

matter to this Office concerning disclosure of occupation and name of employer. This Office recommends that the Commission find reason to believe, but take no further action.

II. MUR 4171

MUR 4171 was generated by an audit of the Bush-Quayle '92 Primary Committee, Inc. The Audit Division referred matters to this Office involving excessive contributions, use of corporate aircraft, staff advances, disclosure of occupation and name of employer, and reporting of debts and obligations. This Office recommends that the Commission find reason to believe and engage in conciliation with the Primary Committee prior to a finding of probable cause to believe concerning matters which involve reporting of debts and obligations and staff advances.

A. EXCESSIVE CONTRIBUTIONS

The Federal Election Campaign Act of 1971, as amended ("the Act"), limits the amount that an individual may contribute to any candidate to $1,000 with respect to any election. 2 U.S.C. § 441a(a)(1)(A). No candidate or political committee shall knowingly accept any contribution which exceeds the contribution limitations. 2 U.S.C. § 441a(f).

The Primary Committee directly received excessive contributions totaling $135,751 during the campaign. The Primary Committee issued timely refund checks for 156 of the contributions totaling $132,751, which were never negotiated.[3] The Primary Committee did not issue timely refund checks for three contributions, with excessive portions totaling $3,000. One of these contributions was received on April 17, 1992, but not refunded until January 14, 1993. Although the refund check was cashed, the refund was not made timely in accordance with

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[3] The Commission notified the Primary Committee by letter dated June 2, 1992 that the Commission will no longer recognize untimely refunds made more than 60 days following the candidate's date of ineligibility or the receipt of the letter, whichever was later. Thus, the Commission did not recognize untimely refunds made by the Primary Committee after October 19, 1992, 60 days after the candidate's date of ineligibility.

Commission policy. The other two contributions were incorrectly attributed. The Primary Committee made a payment to the United States Treasury in the amount of $119,501 on October 21, 1993 and paid the remaining $16,250 for these excessive contributions in response to the Interim Audit Report.

The Primary Committee also received seven excessive contributions totaling $6,050 through joint fundraising events with the Ohio Republican Party State and Federal Accounts. Six of the seven contributors had previously made direct contributions to the Primary Committee. The Primary Committee received these contributions on August 14, 1992 but did not refund them until December 4, 1992. Since the refunds were untimely, the Primary Committee made a payment of $6,050 to the United States Treasury in response to the Interim Audit Report.

The excessive contributions received by the Primary Committee totaled $141,801. While the transactions described here apparently were in violation of 2 U.S.C. § 441a(f), this Office believes that the Commission should take no further action concerning this violation. The Primary Committee attempted to make timely refunds of most of the excessive contributions, but the refund checks were not negotiated by the contributors. Thus, despite its efforts to comply, the Primary Committee was unable to make timely refunds because the checks were stale-dated.

Finally, the Primary Committee did not contest the findings of the Audit Division and promptly made payments for the excessive contributions to the United States Treasury during the audit process, thereby saving Commission resources. Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Bush-

Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f), but take no further action.

B. PROHIBITED CONTRIBUTIONS - USE OF CORPORATE AIRCRAFT

It is unlawful for any corporation to make a contribution in connection with a federal election, or for any candidate or political committee to accept such a contribution. 2 U.S.C. § 441b(a). The Commission's regulations provide that a candidate, candidate's agent or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation that is not licensed to offer commercial services for travel in connection with a federal election must reimburse the corporation in advance. 11 C.F.R. § 114.9(e). The regulations further provide that the amount of the reimbursement shall be the first class airfare for travel to a city served by regularly scheduled commercial service, or the usual charter rate for travel to a city not served by a regularly scheduled commercial service. 11 C.F.R. § 114.9(e).

The Primary Committee paid two corporations for use of company aircraft: $1,434 to the Irvine Company and $9,384 to the Mosbacher Energy Company.[4] While the flights occurred between January 28 and 30, 1992, the Primary Committee did not reimburse the corporations until February 18, 1992, approximately three weeks later.

Because the Primary Committee did not reimburse the corporations in advance for the air travel as required by the regulations, the Primary Committee received a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(e). *See* MUR 3309 (Commission found reason to believe that the Dole for President Committee violated 2 U.S.C.

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[4] The amounts billed and paid approximated the first class airfare and satisfied the billing provisions of the regulations. 11 C.F.R. § 114.9(e).

§ 441b(a) by failing to pay for the use of corporate aircraft in advance). Nevertheless, this Office recommends that the Commission take no further action concerning this matter. The corporations were fully reimbursed within three weeks of the travel, and the Primary Committee contends that it paid the reimbursements immediately upon learning of the flights.[5] *See* Attachment 2 at 3. Moreover, the Primary Committee contends that the incidents were isolated and unintentional. *Id.* In general, the Primary Committee did not allow its staff to use corporate aircraft. *Id.* Following these incidents, the Primary Committee reaffirmed its policy with a written policy statement prohibiting the use of corporate aircraft and requiring staff to clear any exceptions with the Primary Committee's counsel in advance of the date of travel. *Id.* It appears that the Primary Committee's actions prevented any subsequent problems of this kind. Considering the amount of money involved, the relatively short time between the travel and the reimbursement, and the Primary Committee's attempts to comply with the law and to prevent additional violations, this office believes that no further action is appropriate.

Therefore, the Office of General Counsel recommends that the Commission find reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(e), but take no further action.

C. STAFF ADVANCES

Individuals are prohibited from making contributions to any candidate in excess of $1,000 with respect to any election. 2 U.S.C. § 441a(a)(1)(A). No candidate or political

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[5] By contrast, the Dole for President Committee took nearly a year to complete the necessary payments for the use of corporate aircraft. MUR 3309.

committee, or officer or employee of a political committee shall knowingly accept any contribution which exceeds the contribution limitations. 2 U.S.C. § 441a(f).

Expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions. 11 C.F.R. § 116.5(b). The Commission adopted section 116.5 out of a concern that during critical periods in a campaign when an authorized committee is experiencing financial difficulties, individuals may attempt to circumvent the contribution limitations by paying committee expenses and not expecting reimbursement for substantial periods of time. *See* Explanation and Justification for 11 C.F.R. § 116.5(b), 55 *Fed Reg.* 26,382-83 (June 27, 1989)

There are several limited exemptions from this general rule. If an individual has expended funds for transportation expenses on behalf of a candidate, any unreimbursed amount not in excess of $1,000 with respect to a single election will not be considered a contribution. 11 C.F.R. § 100.7(b)(8); *see also* 11 C.F.R. § 116.5(b). Any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is also not a contribution. *Id.* Moreover, advances will not be considered contributions if they are for an individual's personal transportation or for usual and normal subsistence expenses related to travel on behalf of the campaign by an individual who is not a volunteer. 11 C.F.R. § 116.5(b); *see* Explanation and Justification for 11 C.F.R. § 116.5(b)(1), 55 *Fed Reg* 26,382-83 (June 27, 1989). This exemption only applies where the individual is reimbursed within 30 days if a credit card was not used, or within 60 days following the closing date of the billing statement on which the charges first appeared for amounts paid by credit card. 11 C.F.R. § 116.5(b)(2).

An individual, Robert B. Holt, volunteered fundraising services to the Primary Committee and made advances of $12,598 in excess of his $1,000 individual contribution limitation in payments for travel, subsistence, and campaign-related goods and services.[6] The Primary Committee eventually reimbursed all of these expenses.[7]

During the audit, the Primary Committee made a number of arguments to support its position that the advances were not excessive contributions. *See* Attachment 2 at 3-6. Chiefly, the Primary Committee contends that Mr. Holt was a commercial vendor who provided his fundraising activities on a volunteer basis but sought payment for associated travel and telephone expenses. *Id.* Thus, the Primary Committee argues, Mr. Holt's advances should be treated as extensions of credit by a commercial vendor under 11 C.F.R. § 116.3, despite the fact that Mr. Holt was volunteering his services.[8] *Id.* The Primary Committee has not provided sufficient evidence to demonstrate that Mr. Holt was a commercial vendor whose usual and normal business was to provide fundraising services. *See* 11 C.F.R. § 116.1(c). Indeed, based on the evidence provided from the Primary Committee and Mr. Holt, it appears that Mr. Holt is in the oil business. *See* Attachment 1 at 7-10. Moreover, Mr. Holt's advances do not meet the regulatory exemptions to 11 C.F.R. § 116.5 because the expenses were not solely for Mr. Holt's travel and subsistence.

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[6] Mr. Holt made a $1,000 contribution by check on October 8, 1991 and made advances of $12,598 in excess of his contribution limitation. This amount reflects the highest outstanding excessive contribution resulting from over 100 advances Mr. Holt made during a period of ten months.

[7] The $12,598 advanced by Mr. Holt was outstanding for approximately 33 days. Some advances were reimbursed in 13 days, while others remained outstanding for up to 47 days.

[8] The Primary Committee presented this argument in response to the Interim Audit Report. The Commission, however, approved the Final Audit Report which expressly reaches the contrary conclusion.

Therefore, the Office of the General Counsel recommends the Commission find reason to believe that the advances were in-kind contributions from Mr. Holt to the Primary Committee which exceeded his individual contribution limitation by $12,598 in violation of 2 U.S.C. § 441a(a)(1)(A). This Office also recommends the Commission find there is reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting these excessive in-kind contributions. This Office recommends, however, that the Commission exercise its prosecutorial discretion and take no further action against Mr. Holt.[9]

D. DISCLOSURE OF OCCUPATION AND NAME OF EMPLOYER

Committees must file reports with the Commission for each reporting period, disclosing the identification of each person (other than a political committee) who makes a contribution during the reporting period which alone or combined with other contributions within the calendar year has an aggregate value in excess of $200, along with the date and amount of any such contribution. 2 U.S.C. § 434(b)(3)(A). The term "identification" means, in the case of each individual, the name, the mailing address, and the occupation of the individual, as well as the name of his or her employer. 2 U.S.C. § 431(13)(A).

If the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report or records of the committee shall be considered to be in compliance with the Act. 2 U.S.C.

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[9] This recommendation is consistent with the Commission's decisions in several enforcement matters involving similar instances of staff advances to publicly-financed presidential committees. *See, e.g.*, MUR 4172 (Clinton for President Committee) and MUR 3991 (Brown for President). In those matters, the Commission found reason to believe that individuals who made staff advances violated 2 U.S.C. § 441a(a)(1)(A) but took no further action against those individuals. However, the Commission found reason to believe that the committees in those matters violated 2 U.S.C. § 441a(f) and pursued those violations.

§ 432(i). The Commission's regulations provide that a treasurer of a political committee will not be deemed to have exercised best efforts unless he or she has made at least one effort per contribution solicitation, either by a written request or by an oral request which is documented in writing, to obtain the information from the contributor. 11 C.F.R. § 104.7(b) (1994).[10] Such efforts shall consist of a clear request for the information which informs the contributor that the reporting of such information is required by law. *Id.*

The Audit staff conducted a sample of individual contributions received by the Primary Committee and concluded that 56% of the itemized contributions lacked the requisite disclosure of occupation and name of employer information.[11] Therefore, the Primary Committee's compliance rate was only 44%. The request for information in the Primary Committee's solicitations stated: "The Federal Election Commission requires us to ask the following information." After receiving a July 1, 1992 memorandum issued by the Commission on the "best efforts" regulation, the Primary Committee altered the language in subsequent solicitations to state: "The Federal Election Commission requires us to report the following information." *See* Attachment 8. The alteration of the language had no effect on the Primary Committee's low compliance rate. Furthermore, neither the Primary Committee's original language nor the

[10] Effective March 3, 1994, the Commission revised the "best efforts" regulations. 11 C.F.R. § 104.7(b)(1995). However, all solicitations at issue occurred before the effective date of the revised regulation. The Court of Appeals for the D.C. Circuit recently invalidated the provision of the revised regulation that required the use of specific language in solicitation requests, but upheld a separate provision requiring committees to make a stand-alone follow-up request for the information. *Republican National Committee v. F.E.C.*, 76 F.3d 400 (D.C. Cir. 1996) ("*RNC*").

[11] Based on the sample, the Audit staff concluded that there is a 95% statistical likelihood that the total amount of contributions which lacked the disclosure of occupation and name of employer is at least $11,660,942.15 and may be as much as $14,477,603.85.

revised language stated that the reporting of such information is required by law. 11 C.F.R. § 104.7(b); *see* 2 U.S.C. § 434(b)(3)(A).

The Interim Audit Report recommended that the Primary Committee contact all contributors who had not provided the information to request the information and file amended disclosure reports to complete the public record. The Interim Audit Report concluded that the Primary Committee had not met the "best efforts" standard because its request language did not notify contributors that the reporting of such information is required by law. *See* 11 C.F.R. § 104.7(b). The Primary Committee did not contact the contributors or amend its reports to correct the omissions.

Instead of making an effort to contact the contributors and filing amended reports to complete the public record, the Primary Committee contended that it satisfied the "best efforts" provision and, therefore, the contributions omitting disclosure information are in compliance with the Act. Attachment 2 at 6-8. The Primary Committee contended that its request language was consistent with the "best efforts" regulation and that the difference between "the law" and the "Federal Election Commission" is insignificant. *Id.* Moreover, the Primary Committee asserted that it would cost more than $40,000 to contact the contributors. *Id.*

The Primary Committee's assertion that it exercised "best efforts" is erroneous. Neither the request language used before or after the July 1992 alteration indicated that the reporting of such information was required by law.[12] 11 C.F.R. § 104.7(b); *see* 2 U.S.C. § 434(b)(3)(A). Furthermore, the Primary Committee's reports had a compliance rate of only 44% which, in itself, demonstrated the information request language was poorly crafted. While the Primary

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[12] The *RNC* court, in providing what it termed an "accurate explanation of the [best efforts] law," employed the words "federal law," not "Federal Election Commission." *RNC*, 76 F.3d at 406.

Committee experienced an extremely low rate of compliance over several months of solicitations, it nonetheless made no additional efforts to increase the response rate or otherwise obtain the information. Thus, the Primary Committee's actions concerning the contributions which omitted disclosure information do not amount to "best efforts."

Therefore, the Office of the General Counsel recommends the Commission find reason to believe the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A). However, in light of recent revisions of the "best efforts" regulations and the amount of time that has passed since the Primary Committee submitted the disclosure reports at issue, this Office recommends the Commission take no further action on this matter. The previous "best efforts" regulation, the applicable regulation in this matter, did not specify particular language that would satisfy "best efforts." The Commission recognized that the language of committees' solicitation requests was one reason for low compliance rates in the disclosure of occupation and name of employer information and revised the regulation to include specific language for contributor information requests. *See* 58 *Fed. Reg.* 57,725, 57,726 (Oct. 27, 1993); 11 C.F.R. § 104.7(b)(1) (1995). The D.C. Circuit subsequently held that the Commission could not require use of the specific request language. *Republican National Committee v. F.E.C.*, 76 F.3d 400, 406 (D.C. Cir. 1996) ("*RNC*").[13] At the same time, however, the court did not hold that any request language is sufficient to satisfy "best efforts." Thus, the Commission is not precluded from reviewing the Committee's request language. While this Office concludes the Primary Committee did not report information required by the Act and did not use its "best

[13] The Commission also revised the regulations to require a stand alone follow-up request. This provision was upheld in *RNC*, 76 F.3d at 406. The Committee's failure to make a follow-up request is not dispositive, however, because the violations in the present matter fall under the previous "best efforts" regulations.

efforts" to obtain the information, we nonetheless recommend the Commission exercise its prosecutorial discretion and take no further action.

E. REPORTING OF DEBTS AND OBLIGATIONS

Committees are required to disclose on periodic reports to the Commission all outstanding debts and obligations owed by or to the committees. 2 U.S.C. § 434(b)(8). The Commission's regulations provide that outstanding debts must be continuously reported until extinguished. 11 C.F.R. § 104.11(a). Debts in excess of $500 (other than periodic payments for rent or salary) shall be reported as of the date on which they were incurred, and debts below $500 shall be reported as of the time payment is made or not later than 60 days after the debt is incurred, whichever comes first. 11 C.F.R. § 104.11(b). If the exact amount of a debt or obligation is not known, the reporting committee shall report an estimated amount and state that the amount reported is an estimate. *Id.* When the exact amount is determined, the committee must either amend the report containing the estimate or indicate the correct amount for the reporting period in which the correct amount is determined. *Id.*

The Audit Division identified 76 obligations totaling $1,767,548 for a variety of campaign expenditures that the Primary Committee failed to report in accordance with the Act and the Commission's regulations. Attachment 1 at 13. The first reporting of the Primary Committee's debts did not occur until the Committee reported the payments of the debts in question. The amount identified by the Audit Division includes only those debts where payments were not reported until reporting periods after the ones in which the Primary

Committee received invoices.[14] The Primary Committee filed amended reports which materially disclosed the debts and obligations on August 12, 1994, one month after it responded to the Interim Audit Report and 21 months after the general election.

The Primary Committee contends its procedure of reporting debts once the invoice was received and approved for payment was sufficient to comply with the Commission's regulations. However, 11 C.F.R. § 104.11(b) requires committees to report debts as of the time of incurrence (*i.e.*, the date an item was purchased or service was rendered to a committee), not the date of the invoice, and to estimate the amount of the debt or obligation if they are unable to determine the exact amount. The Primary Committee's procedure does not release it and its treasurer from the reporting requirements of 11 C.F.R. § 104.11(b). Since the Primary Committee did not report the debts as they were incurred, the goal of immediate and complete disclosure was not met and the Primary Committee's disclosure reports did not accurately reflect the Primary Committee's actual debts at any specific date. *See* MUR 4173 (Clinton/Gore '92 Committee).

The Primary Committee also argued during the audit that section 104.11(b) is limited to loans and written contracts and does not apply to debts incurred without a written agreement. This conclusion is not supported by the language of the regulation ("a debt or obligation, including a loan, a written contract, written promise or written agreement to make an expenditure . . ."). Rather, this language reveals that "a debt or obligation" includes but is not limited to the enumerated sources.

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[14] *See infra* footnote 18 (detailing the Audit Division's method of identifying violations of 11 C.F.R. § 104.11(b)).

Therefore, this Office recommends that the Commission find reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to properly disclose its debts and obligations.

III. MUR 3664

On January 25, 1994, the Commission found reason to believe the GEC violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.11(b) and 9004.7. The GEC has made two separate requests that this matter be dismissed. Prior to the Commission's revote of the reason to believe findings, the GEC argued that it was not required to report debts or obligations until it had been billed for them. *See generally* Attachment 3. After the revote of the reason to believe findings, the GEC reasserted this argument and also argued that the revote failed to cure the defect in the Commission's composition identified by the D.C. Circuit in *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993) ("*NRA*"), *petition for cert. dismissed for want of jurisdiction*, 115 S.Ct. 537 (1994). *See generally* Attachment 4. This Office recommends that both requests for dismissal be denied.

A. FURTHER CONSIDERATION OF THIS MATTER IS CONSTITUTIONAL

Following the *NRA* decision, the Commission voted to reconstitute itself, excluding the ex *officio* members from all closed proceedings. On November 9, 1993, the reconstituted Commission considered the General Counsel's legal analysis of the effect of the *NRA* decision on Commission actions and adopted specific policies regarding how to proceed in *NRA*-affected matters. In MUR 3664, the Commission, pursuant to those procedures, revoted on the finding of reason to believe.

In its *NRA*-based request for dismissal, the GEC argues that the presence of the former *ex officio* members of the Commission during deliberations on the original reason to believe finding impermissibly tainted the proceedings, creating a constitutional defect that cannot be cured through reconstitution and ratification. The recent decision of the Court of Appeals in *F.E.C. v. Legi-Tech, Inc.* conclusively rejected such a defense, finding that "the better course is to take the FEC's post-reconstruction ratification of its prior decisions at face value and treat it as an adequate remedy for the NRA constitutional violation." *F.E.C. v. Legi-Tech, Inc.*, 75 F.3d 704, 709 (D.C. Cir. 1996).

Therefore, this Office recommends that the Commission deny the request to dismiss this matter on *NRA*-related grounds.

B. REPORTING OF DEBTS AND OBLIGATIONS

1. Applicable Law

Committees are required to disclose on periodic reports to the Commission all outstanding debts and obligations owed by or to the committees. 2 U.S.C. § 434(b)(8). A political committee owing a debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure under $500 must report the debt as of the time the payment is made, or no later than 60 days after such an obligation is incurred, whichever is first. 11 C.F.R. § 104.11(b). Any debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure over $500 must be reported as of the date on which the obligation is incurred, except that any obligation incurred for rent, salary, or other regularly recurring administrative expense must not be reported as a debt before the payment due date. *Id.* If the exact amount of the debt or obligation is not known, the report shall

state that the amount reported is an estimate. *Id.* When the exact amount is determined, the committee must either amend the report containing the estimate or indicate the correct amount on the report for the reporting period in which the correct amount is determined. *Id.*

All campaign-related travel of publicly-funded candidates for the offices of President and Vice President of the United States is a qualified campaign expense, and costs of such travel must be reported by the candidates' authorized campaign committees as expenditures. 26 U.S.C. § 9004(b) and 11 C.F.R. § 9004.7(a). If a candidate for President or Vice President uses a government conveyance paid for by a governmental entity for campaign-related travel, the candidate's authorized committee must pay the appropriate governmental entity an amount equal to the first class commercial airfare plus the cost of other services in the case of travel to a city served by regularly scheduled commercial air service or, in the case of travel to a city not served by regularly scheduled commercial service, the commercial charter rate plus the cost of other services. 11 C.F.R. § 9004.7(b)(5).

2. **Facts**

The GEC's use of military airplanes for campaign-related travel was identified and billed separately depending on the aircraft used and the identity of the primary passenger on the plane. Attachment 5. As noted in the Final Audit Report

> In most cases, trips by the President were identified and billed as Air Force I, whereas, trips made by the Vice President were identified and billed as Air Force II. Further, there were several instances when the First Lady (Barbara Bush), staff and advance personnel made campaign-related trips on aircraft provided by the United States Air Force. These trips were usually identified and billed as "Airlift Operations" [sic]

Id. at 5-6. Billings originated with the United States Air Force and were routed through the White House Military Office to the GEC. *Id.* In most cases, bills included a passenger manifest

for each flight and a summary memorandum listing campaign-related passengers billable to the GEC. *Id.*

The GEC paid a total of $459,992 for political passenger travel on Air Force One occurring between August 17, 1992 and the day before the general election, November 2, 1992. Attachment 6 at 10-14. The GEC did not contemporaneously report any actual or estimated debt with respect to the amounts it eventually paid for campaign-related use of Air Force One.

The GEC paid a total of $396,455 for political passenger travel on Air Force Two occurring between August 21, 1992 and election day, November 3, 1992. *Id.* at 15-19. The GEC did not contemporaneously report any actual or estimated debt with respect to the amounts it eventually paid for campaign-related use of Air Force Two.

The GEC paid a total of $52,752 for political passenger travel on other Air Force aircraft between September 2, 1992 and November 2, 1992. *Id.* at 20-22. In addition, the Committee's Schedule B-P reports show a payment of $13,519.36 to "U.S. Treasurer/Airlift Operations" that does not correspond to any payments detailed on the Airlift Operations spreadsheet attached to the Interim Audit Report.[15] *See id.* The GEC did not contemporaneously report any actual or estimated debt with respect to the amounts it eventually paid to "U.S. Treasurer/Airlift Operations."

The GEC's Schedule B-P reports show seven payments totaling $110,902.13 to "Treasurer of United States/DOD Helicopters" or "U.S. Treasurer/Marine 1" for campaign-related use of government-owned helicopters. The first of these payments, in the

[15] This amount does not include Airlift Operations debts incurred for less than $500 dollars. *See* 11 C.F.R. § 104.11(b).

amount of $31,564.38, was made November 2, 1992, the day before the general election. The remaining payments were made between November 6, 1992 and July 20, 1993. The GEC did not contemporaneously report any actual or estimated debt with respect to the amounts it eventually paid for use of government helicopters.

The GEC's Schedule B-P reports show four payments totaling $14,570 to "U.S. Treasurer/Limousines" or "U.S. Treasurer/Limousines/Vice President" for campaign-related ground transportation in government-owned vehicles.[16] One of these payments, in the amount of $6,820, was made October 14, 1992. The others were made after the general election, on December 2, 1992 and January 14 and May 11, 1993. The GEC did not contemporaneously report any actual or estimated debt with respect to the amounts it eventually paid for use of government-owned ground transportation

In response to the original reason to believe finding in this matter, the GEC argued that it had "either paid promptly or reported all invoices for campaign-related travel by President Bush and Vice President Quayle." Attachment 3 at 2. However, the GEC's treasurer explained during the audit exit conference that the Committee "did not consider any obligations as debts for reporting purposes until the invoice had been received by the [GEC's] Accounting Department and approved for payment by the appropriate personnel." Attachment 5 at 9.

The GEC failed to report travel-related debts totaling $1,048,190 as required by the Act and the Commission's regulations. Attachment 9. The first reporting of the travel-related debts did not occur until the GEC reported the payments of the debts. Thus, although the GEC

[16] This amount does not include ground transportation debts incurred for less than $500 dollars. *See* 11 C.F.R. § 104.11(b)

properly disclosed the payments, it had never reported the corresponding debt in the reports. Included in the total unreported travel-related debt identified by this Office was $314,190 for campaign-related travel on Air Force One and Air Force Two that had also been identified by the Audit Division in its audit of the GEC.[17] The amounts identified by the Audit Division include only those debts where payments were not reported until reporting periods after the ones in which the GEC received the invoice.[18] *See* Attachment 6 at 23-26. In addition to the $314,190 identified by the Audit Division, there was $734,000 in campaign-related travel debt that the GEC failed to estimate and report as required under 11 C.F.R. § 104.11(b). Consequently, the total amount of campaign-related travel debts and obligations not properly reported was $1,048,190.

The Interim Audit Report recommended that the GEC file amendments to correct the public record with respect to these and other debts itemized in the Interim Audit Report. Attachment 6 at 7. On September 7, 1994, the GEC filed amended reports that materially corrected the disclosure errors identified in the Interim Audit Report. Attachment 5 at 10.

3. Analysis

The GEC asserts that the reporting of its debts did not violate the debt reporting or estimation requirements of 11 C.F.R. § 104.11(b). The GEC argues, first, that the regulation

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[17] The GEC's non-travel related debts identified by the Audit Division are addressed in detail at Part IV of this Report.

[18] In the 1992 presidential election cycle, the Audit Division limited its measuring of compliance with 11 C.F.R. § 104.11(b) by the use of an "invoice plus ten" test. Under this test, an apparent violation of the debts and obligations reporting requirements was identified where the auditors determined that the payment or first reporting of a debt came in a reporting period later than the period in which the date that was ten days after the invoice date. Where a debt was not timely reported under the "invoice plus ten" test, the committee also apparently failed to comply with the estimation requirement of section 104.11(b), unless the invoice date fell within the same reporting period as the actual date of incurrence, thereby making estimation unnecessary. The "invoice plus ten" test was used in the calculation of untimely reported debt that was referred by the Audit Division with respect to the Bush Quayle '92 Primary Committee, Inc. and the Clinton Gore '92 Committee.

does not require reporting or estimation of debt prior to the receipt of an invoice; second, that 11 C.F.R. § 104.11(b) applies only to debts incurred in writing; third, that 11 C.F.R. § 104.11(b) applies only to debts in the process of settlement by terminating committees; and finally, that application of the regulation to the GEC and similarly situated committees would "produce administrative difficulties and unfairness." Attachment 3 at 2-5.

The Commission previously considered and rejected the GEC's argument that 11 C.F.R. § 104.11(b) does not require reporting or estimation of debt prior to the receipt of an invoice. MUR 3664 (First General Counsel's Report, approved July 9, 1993, at 6-7).[19] The reporting requirements of 11 C.F.R. § 104.11(b) have consistently required committees to report debts that exceed $500 at the time they incur such debts (*i.e.*, the date travel was taken), and if a committee is unable to determine the exact amount of debt, it is required to provide an estimate of the debt incurred. Prior to 1990, 11 C.F.R. § 104.11(b) required committees to report debts "as of the time of the transaction." 11 C.F.R. § 104.11(b) (1989). In 1990, the Commission changed this language to require that committees report debts "as of the date on which the obligation was incurred." 11 C.F.R. § 104.11(b) (1995). The new language was intended to clarify the existing regulation; the Commission viewed "as of the time of the transaction" and "as of the date on which the obligation was incurred" as interchangeable terms. *See* Advisory Opinion ("AO") 1980-38. The Explanation and Justification for the 1990 amendment to 11 C.F.R. § 104.11(b) makes clear reference to such situations where reporting and estimation for debts not yet billed is required, stating that "new language is also included which follows the current policy that if the

[19] The Commission also rejected the GEC's argument that 11 C.F.R. § 104.11(b) applies only to debts in the process of settlement by terminating committees. *Id.*

exact amount is not known, the committee should report an estimated amount." Explanation and Justification of Regulations for 11 C.F.R. § 104.11(b), 55 *Fed Reg.* 26,378, 26,385 (June 27, 1990) (clarifying Commission policy set forth in AO 1980-38). Furthermore, the Commission has rejected past arguments that debts over $500 must be reported from a date other than "the date on which the debt was incurred."[20]

In support of its argument that 11 C.F.R. § 104.11(b) applies only to debts incurred in writing, the GEC focuses on the phrases "loan, *written* contract, *written* promise, or *written* agreement" in the language of the regulation. Attachment 3 at 3 (quoting 11 C.F.R. § 104.11(b)) (emphasis is the GEC's). The GEC then attempts to support its position by referring to "settled rules of construing statutes and regulations" and citing *Hawkeye Chemical Co. v. St. Paul Fire and Marine Ins. Co.*, 510 F.2d 322, 327 (7th Cir. 1975). In *Hawkeye*, the Seventh Circuit applied the maxim "*expressio unius est exclusio alterius*," or, the expression of one excludes the other. *Id.*

"*Expressio unius*" does not apply in this situation because it would contradict the express language of the regulation. Had the GEC quoted all of the pertinent part of the regulation in its argument, it would have read "a debt or obligation, *including* a loan, a written contract, written promise or written agreement to make an expenditure . . ." 11 C.F.R. § 104.11(b) (emphasis added). A reading of the language in context indicates that the terms "debts" or "obligations" include but are not limited to the enumerated sources. That conclusion is consistent with

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[20] For example, in MUR 2304, the Cranston for President Committee ("the Cranston Committee") failed to report properly $225,733 in debts that it had incurred. The Cranston Committee argued that it was not required to report debts without first receiving an invoice for such obligations. The Commission rejected this argument and found that debts over $500 were required to be reported at the time such debts were incurred or "at the time of the transaction." *See also* MUR 2706 (committee was required to report debt of telephone survey from date of the survey, not from date of payment for such survey); MUR 3494 (committee was required to report debt stemming from computer rental from date of rental agreement, not from any other date).

previous interpretations of the word "includes" in the Act. *See, e.g., FEC v. Massachusetts Citizens for Life*, 769 F.2d 13, 17 (1st Cir. 1985). In *Massachusetts Citizens for Life*, the court stated "[i]t has been said 'the word 'includes' is usually a term of enlargement, and not of limitation . . . It, therefore, conveys the conclusion that there are other items includable, though not specifically enumerated . . . .'" *Id.* (quoting 2A N. Singer, *Sutherland Statutes and Statutory Construction* 133 (4th ed. 1984)).

Finally, the GEC's argument that application of 11 C.F.R. § 104.11(b) to travel on government conveyances would work a hardship is overstated. First, the debt at issue here, travel on government-owned conveyances by publicly-funded presidential candidates, is perhaps the easiest of all debts to estimate because of the recordkeeping requirements of 11 C.F.R. § 9004.7. While this Office is mindful that the information necessary to estimate accurately debts for the use of Air Force aircraft was not provided to the GEC until the bill itself was provided, the GEC could presumably have arranged for the Air Force and the White House, which were not typical business vendors, to have provided this information or estimates of this information more rapidly, even if the bills themselves were not yet ready. Second, the regulation requires only that a committee report a reasonable estimate. Thus, the estimation requirement would create only minimal additional work for a committee, an inconvenience greatly outweighed by the value of immediate and complete public disclosure.

Therefore, the Office of General Counsel recommends the Commission deny the GEC's request to dismiss MUR 3664. This Office further recommends the Commission engage in conciliation with the GEC prior to a finding of probable cause to believe.

IV. **MUR 4289**

MUR 4289 was generated by the joint audit of the GEC and Compliance Committee ("the Committees"). The Audit Division referred matters to this Office involving reporting of debts and obligations by both the GEC and Compliance Committee. This Office recommends that the Commission find reason to believe that the GEC and Compliance Committee failed to disclose properly its debts and obligations and engage in conciliation with the Committees prior to a finding of probable cause to believe.

Political committees are required to disclose on periodic reports to the Commission all outstanding debts and obligations owed by or to the committees. 2 U.S.C. § 434(b)(8). A political committee owing a debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure under $500 must report the debt as of the time the payment is made, or no later than 60 days after such an obligation is incurred, whichever is first. 11 C.F.R. § 104.11(b). Any debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure over $500 must be reported as of the date on which the obligation is incurred, except that any obligation incurred for rent, salary or other regularly recurring administrative expenses need not be reported as a debt before the payment due date. *Id.* If the exact amount of the debt or obligation is not known, the report shall state that the amount reported is an estimate. *Id.* When the exact amount is determined, the committee must either amend the report containing the estimate or indicate the correct amount on the report for the reporting period in which the correct amount is determined. *Id.*

In the Interim Audit Report, the Audit Division identified $1,052,098 in GEC debts and $235,587 in Compliance Committee debts that were not reported in accordance the Act and the

Commission's regulations. Attachment 6 at 6, 9. The $1,052,098 in GEC debts includes $737,908 at issue in this matter; the additional $314,190 in debts concern campaign-related travel which are covered in MUR 3664. The first reporting of the Committees' debts did not occur until the GEC and Compliance Committee reported the payments of the debts. The amounts identified by the Audit Division include only those debts where payments were not reported until reporting periods after the ones in which the Committees received invoices.[21] *See id.* at 23-26. The Interim Audit Report recommended that the Committees file amendments to correct the public record. *Id.* at 6, 9. On September 7, 1994, 22 months after the general election, the GEC and Compliance Committee filed amended reports that materially disclosed the Committees' actual debts and obligations. Attachment 5 at 10, 14.

In response to the Interim Audit Report, the GEC and Compliance Committee explained that their procedure for reporting debts and obligations was to report the debts once an invoice was received and approved for payment. Attachment 7 at 4-5. At the exit conference, the Committees stated that the invoices were paid in a timely manner. However, 11 C.F.R. § 104.11(b) requires committees to report debts at the time of incurrence (*i.e.*, the date an item was purchased or service rendered), not the date of the invoice; if committees are unable to determine the exact amount of debt, they are required to provide an estimate of the debt incurred. Thus, the Committees' procedures do not release the Committees and their treasurer from the reporting requirements of 11 C.F.R. § 104.11(b). By failing to disclose the debts as they were incurred, the goal of immediate and complete disclosure was not met because the disclosure

[21] *See supra* footnote 18 (detailing the Audit Division's method of calculation for violation of the debt and obligation requirement of 11 C.F.R. § 104.11(b)).

reports did not include the Committees' actual debt position as of any specific date. *See* MUR 4173 (Clinton/Gore '92 Committee).

The GEC and Compliance Committee also argued during the audit that section 104.11(b) is limited to loans and written contracts and does not apply to debts incurred without a written agreement. This conclusion is not supported by the language of the regulation ("a debt or obligation, including a loan, a written contract, written promise or written agreement to make an expenditure . . ."). Rather, this language reveals that a "debt or obligation" includes but is not limited to the enumerated sources.

Thus, this Office recommends that the Commission find reason to believe that the Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, and the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) relating to $737,908 of non-travel related debts and obligations and enter into conciliation prior to a finding of reason to believe.[22]

V. MUR 4170

MUR 4170 was generated by the joint audit of the GEC and Compliance Committee. The Audit Division referred one matter to this Office involving disclosure of occupation and name of employer by the Compliance Committee. This Office recommends that the Commission find reason to believe that the Compliance Committee failed to report occupation and name of employer information, but take no further action.

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[22] The Commission previously found reason to believe the GEC violated 2 U.S.C. § 434(b)(8) relating to travel-related debts and obligations in MUR 3664. *See supra* Part III of this Report.

Committees are required to submit periodic reports to the Commission, disclosing the identification of each person (other than a political committee) making aggregate contributions in excess of $200 per calendar year, along with the date and amount of any such contribution. 2 U.S.C. § 434(b)(3)(A). Identification of each individual includes the name, mailing address, occupation of the contributor, and name of his or her employer. 2 U.S.C. § 431(13)(A).

If the treasurer of a political committee shows that "best efforts" have been used to obtain, maintain, and submit the information required by 2 U.S.C. § 431(13), any report or records of the committee shall be considered to be in compliance with the Act. 2 U.S.C. § 432(i). The treasurer of a political committee will be deemed to have exercised "best efforts" in obtaining the required information only if he or she has satisfied the requirements of 11 C.F.R. § 104.7. The Commission's regulations provide that a treasurer of a political committee will not be deemed to have exercised best efforts unless he or she has made at least one effort per contribution solicitation, either by a written request or by an oral request which is documented in writing, to obtain the required identification information from the contributor. 11 C.F.R. § 104.7(b)(1994).[23] Such efforts shall consist of a clear request for the information which informs the contributor that the reporting of such information is required by law. *Id.*

The Audit staff conducted a sample of individual contributions received by the Compliance Committee and concluded that 68% of the itemized contributions lacked the

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[23] Effective March 3, 1994, the Commission revised the "best efforts" regulations. 11 C.F.R. § 104.7(b)(1995). However, all solicitations at issue occurred before the effective date of the revised regulation. *See supra* footnote 10 (detailing the Commission's revised the "best efforts" regulations, 11 C.F.R. § 104.7(b), and subsequent litigation).

requisite disclosure of occupation and name of employer information.[24] Therefore, the Compliance Committee's compliance rate was only 32%. The request for information in the Compliance Committee's solicitations stated: "The Federal Election Commission requires us to ask the following information." After receiving a July 1, 1992 memorandum issued by the Commission on the "best efforts" regulation, the Compliance Committee altered the language in subsequent solicitations to state: "The Federal Election Commission requires us to report the following information." *See* Attachment 8. The alteration of the language had no effect on the Compliance Committee's low compliance rate. Furthermore, neither the Compliance Committee's original language nor the revised language stated that the reporting of such information is required by law. 11 C.F.R. § 104.7(b); *see* 2 U.S.C. § 434(b)(3)(A).

The Interim Audit Report recommended that the Compliance Committee contact all contributors who had not provided the information to request the information and file amended disclosure reports to complete the public record. The Interim Audit Report concluded that the Compliance Committee had not met the "best efforts" standard because its request language did not notify contributors that the reporting of such information is required by law. *See* 11 C.F.R. § 104.7(b). The Compliance Committee did not contact the contributors or amend its reports to correct the omissions.

Instead of making an effort to contact the contributors and filing amended reports to complete the public record, the Compliance Committee contended that it satisfied the "best efforts" provision and, therefore, the contributions omitting disclosure information are in

[24] The Audit staff's sample was calculated with a 95% statistical likelihood. The above referenced amount, $2,107,208, is the lowest estimation based on that sample. The highest estimation would be $2,495,943.

compliance with the Act. Attachment 2 at 6-8. The Compliance Committee contended that its request language was consistent with the "best efforts" regulation and that the difference between "the law" and the "Federal Election Commission" is insignificant. *Id.*

The Compliance Committee's assertion that it exercised "best efforts" is erroneous. Neither the request language used before or after the July 1992 alteration indicated that the reporting of such information was required by law.[25] 11 C.F.R. § 104.7(b); *see* 2 U.S.C. § 434(b)(3)(A). Furthermore, the Compliance Committee's reports had a compliance rate of only 32% which, in itself, demonstrated the information request language was poorly crafted. While the Compliance Committee experienced an extremely low rate of compliance over several months of solicitations, it nonetheless made no additional efforts to increase the response rate or otherwise obtain the information. Thus, the Compliance Committee's actions concerning the contributions which omitted disclosure information do not amount to "best efforts."

Therefore, the Office of the General Counsel recommends the Commission find reason to believe the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A). However, in light of recent revisions of the "best efforts" regulations and the amount of time that has passed since the Compliance Committee submitted the disclosure reports at issue, this Office recommends the Commission take no further action on this matter. The previous "best efforts" regulation, the applicable regulation in this matter, did not specify particular language that would satisfy "best efforts." The Commission recognized that the language of committees' solicitation requests was one reason for low compliance rates in the disclosure of occupation and name of employer information and revised the regulation to

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[25] The *RNC* court, in providing what it termed an "accurate explanation of the [best efforts] law," employed the words "federal law," not "Federal Election Commission." *RNC*, 76 F.3d at 406.

include specific language for contributor information requests. *See* 58 *Fed Reg.* 57,725, 57,726 (Oct. 27, 1993); 11 C.F.R. § 104.7(b)(1) (1995). The D.C. Circuit subsequently held that the Commission could not require use of the specific request language. *Republican National Committee v. F.E.C.*, 76 F.3d 400, 406 (D.C. Cir. 1996) ("*RNC*").[26] At the same time, however, the court did not hold that any request language is sufficient to satisfy "best efforts." Thus, the Commission is not precluded from reviewing the Committee's request language. While this Office concludes the Compliance Committee did not report information required by the Act and did not use its "best efforts" to obtain the information, we nonetheless recommend the Commission exercise its prosecutorial discretion and take no further action.

VI. CONCILIATION AND CIVIL PENALTIES

[26] The Commission also revised the regulations to require a stand alone follow-up request. This provision was upheld in *RNC*, 76 F.3d at 406. The Committee's failure to make a follow-up request is not dispositive, however, because the violations in the present matter fall under the previous "best efforts" regulations.

VII. RECOMMENDATIONS

MUR 4171

1. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by receiving excessive contribution checks, but take no further action;

2. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(e) by failing to reimburse corporations in advance of corporate air travel, but take no further action;

3. Find reason to believe that Robert B. Holt violated 2 U.S.C. § 441a(a)(1)(A) by making in-kind contributions in the from of advances in excess of his individual contribution limitations, but take no further action;

4. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Robert B. Holt;

5. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to report occupation and name of employer information, but take no further action;

6. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report debts and obligations;

7. Enter into conciliation with the Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe;

8. Approve the attached Conciliation Agreement;

9. Approve the attached Factual and Legal Analyses; and

10. Approve the appropriate letters.

MUR 3664

1. Deny the requests of Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as treasurer, to dismiss this matter;

2. Enter into conciliation with the Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe; and

3. Approve the attached Conciliation Agreement; and

4. Approve the appropriate letters.

MUR 4289

1. Find reason to believe that the Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report non-travel related debts and obligations;

2. Find reason to believe that the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report non-travel related debts and obligations;

3. Enter into conciliation with the Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, and the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe;

4 Approve the attached Conciliation Agreement;

5. Approve the attached Factual and Legal Analysis; and

6. Approve the appropriate letters

MUR 4170

1. Find reason to believe that the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to report occupation and name of employer information, but take no further action;

2. Approve the attached Factual and Legal Analysis; and

3. Approve the appropriate letters

8/13/96
Date

Lawrence M. Noble
General Counsel

Attachments:

1. Audit Referral Materials, Primary Committee
2. Bush-Quayle '92 Primary Committee Response to the Interim Audit Report
3. Committee's October 25, 1993 Request for Dismissal
4. Committee's February 23, 1994 Request for Dismissal
5. Final Audit Report General and Compliance Committee (approved December 27, 1994)
6. Interim Audit Report General and Compliance Committee
7. Bush-Quayle '92 General and Compliance Committee Response to the Interim Audit Report
8. Commission Memorandum to Bush-Quayle '92 (July 1, 1992)
9. Calculation of Travel-Related Debts and Obligations - MUR 3664
10. Proposed Factual and Legal Analysis - Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer
11. Proposed Factual and Legal Analysis - Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer
12. Proposed Factual and Legal Analysis - Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer
13. Proposed Factual and Legal Analysis - Robert B. Holt
14. Proposed Global Conciliation Agreement - Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer; Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer; Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURS 3664, 4170,
Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer;	)	4171 and 4289
Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer;	)	
Bush-Quayle '92 Compliance Committee, Inc. and J. Stanley Huckaby, as treasurer	)	

CORRECTED CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on September 10, 1996, do hereby certify that the Commission decided by a vote of 4-1 to take the following actions in the above-captioned matters:

MUR 4171

1. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by receiving excessive contribution checks, but take no further action;

2. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. 114.9(e) by failing to reimburse corporations in advance of corporate air travel, but take no further action;

(continued)

MUR 4171 (continued)

3. Find reason to believe that Robert B. Holt violated 2 U.S.C. § 441a(a)(1)(A) by making in-kind contributions in the form of advances in excess of his individual contribution limitations, but take no further action;

4. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Robert Holt;

5. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to report occupation and name of employer information, but take no further action;

6. Find reason to believe that the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report debts and obligations;

7. Enter into conciliation with the Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe;

(continued)

MUR 4171 (continued)

8. Approve the Conciliation Agreement attached to the General Counsel's August 13, 1996 report;

9. Approve the Factual and Legal Analyses attached to the General Counsel's August 13, 1996 report; and

10. Approve the appropriate letters.

MUR 3664

1. Deny the requests of Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, to dismiss this matter;

2. Enter into conciliation with the Bush-Quayle General Committee, Inc. and J. Stanley Huckaby, as treasurer, prior to a finding or probable cause to believe;

3. Approve the Conciliation Agreement attached to the General Counsel's August 13, 1996 report; and

4. Approve the appropriate letters.

(continued)

MUR 4289

1. Find reason to believe that the Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report non-travel related debts and obligations;

2. Find reason to believe that the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report non-travel related debts and obligations;

3. Enter into conciliation with the Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as treasurer, and the Bush-Quayle '92 Compliance Committee, Inc. and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe;

4. Approve the Conciliation Agreement attached to the General Counsel's August 13, 1996 report;

5. Approve the Factual and Legal Analysis attached to the General Counsel's August 13, 1996 report; and

6. Approve the appropriate letters.

(continued)

MUR 4170

1. Find reason to believe that the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to report occupation and name of employer information, but take no further action;

2. Approve the Factual and Legal Analysis attached to the General Counsel's August 13, 1996 report; and

3. Approve appropriate letters.

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

Attest:

9-13-96
Date

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

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 18, 1996

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman
Associate General Counsel

SUBJECT: Errata - First General Counsel's Report, dated August 13, 1996
MURs 3664, 4170, 4171, 4289

This memorandum is being submitted on a 24 hour tally vote because it addresses two non-substantive issues related to the First General Counsel's Report in MURs 3664, 4170, 4171 and 4289, approved by the Commission on September 10, 1996: 1) an error in a recommendation in MUR 4171; and 2) the omission of a recommendation to close the file in MUR 4170.

On page 33 of the Report, at recommendation #7 of MUR 4171, this Office inadvertently substituted the word "General" in place of the word "Primary." The recommendation should read: "Enter into conciliation with the Bush-Quayle '92 *Primary* Committee, Inc., and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe." This revised recommendation is consistent with language found at page 2 of the Report. Furthermore, MUR 4171 exclusively concerned the Bush-Quayle '92 Primary Committee, Inc.

In addition, this Office inadvertently omitted a recommendation to close the file in MUR 4170. The Commission made a finding of reason to believe but determined to take no further action on the only outstanding issue in that matter.

RECOMMENDATIONS

1. Rescind the Commission's September 10, 1996 vote on recommendation #7 of MUR 4171 in the First General Counsel's Report on MURs 3664, 4170, 4171, and 4289, dated August 13, 1996.

2. Enter into conciliation with the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe.

3. Close the file in MUR 4170.

Staff Assigned: Delanie DeWitt Painter
Matthew J. Tanielian

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS/BONNIE J. ROSS
COMMISSION SECRETARY

DATE: SEPTEMBER 19, 1996

SUBJECT: MURs 3664, 4170, 4171, 4289 - MEMORANDUM TO THE COMMISSION DATED SEPTEMBER 18, 1996.

The above-captioned document was circulated to the Commission on Wednesday, September 18, 1996 at 11:00 .

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

Commissioner Aikens	XXX	- FOR THE RECORD ONLY
Commissioner Elliott		
Commissioner McDonald		
Commissioner McGarry		
Commissioner Potter		
Commissioner Thomas		

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as treasurer--Errata.	)	MURs 3664, 4170, 4171, and 4289
	)	

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on September 20, 1996, the Commission decided by a vote of 4-1 to take the following actions in MURs 3664, 4170, 4171, and 4289:

1. Rescind the Commission's September 10, 1996 vote on recommendation #7 of MUR 4171 in the First General Counsel's Report on MURs 3664, 4170, 4171, and 4289 dated August 13, 1996.

2. Enter into conciliation with the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, prior to a finding of probable cause to believe.

3. Close the file in MUR 4170.

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

Attest:

9-20-96
Date

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Wed., Sept. 18, 1996 4:28 p.m.
Circulated to the Commission: Thurs., Sept. 19, 1996 11:00 a.m.
Deadline for vote: Fri., Sept. 20, 1996 4:00 p.m.

bjr

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 24, 1996

Bobby R. Burchfield, Esq.
Covington & Burling
1201 Pennsylvania Ave., N.W.
Suite 913
Washington, D.C. 20044

RE: MURs 3664, 4170, 4171, and 4289

Dear Mr. Burchfield:

On September 10, 1996, the Federal Election Commission found that there is reason to believe that your clients the Bush Quayle Primary Committee, Inc. and J. Stanley Huckaby, as treasurer (the "Primary Committee"), the Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as treasurer ("the GEC") and the Bush-Quayle '92 Compliance Committee, Inc. and J. Stanley Huckaby, as treasurer ("the Compliance Committee") violated provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analyses, which formed the bases for the Commission's findings are attached for your information. The Commission's findings related to three matters: MUR 4170, involving the Compliance Committee, MUR 4171, involving the Primary Committee, and MUR 4289, involving the GEC and Compliance Committee. The Commission also made determinations concerning an open matter, MUR 3664, involving the GEC.

Specifically, in MUR 4170, the Commission found reason to believe that the Compliance Committee violated 2 U.S.C. § 434(b)(3)(A) by failing to report occupation and name of employer information. However, after considering the circumstances of that matter, the Commission determined to take no further action on the violation and closed the file in MUR 4170.

In addition, in MUR 4171, the Commission found reason to believe that the Primary Committee violated 2 U.S.C. § 441a(f) by receiving excessive contribution checks, 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.9(e) by failing to reimburse corporations in advance for air travel, and 2 U.S.C. § 434(b)(3)(A) by failing to report occupation and name of employer information. However, after considering the circumstances of this matter, the Commission also determined to take no further action on those violations.

Also in MUR 4171, the Commission found reason to believe that the Primary Committee violated 2 U.S.C. § 441a(f) by accepting excessive contributions in the form of staff advances from an individual, and 2 U.S.C. § 434(b)(8)) and 11 C.F.R. § 104.11(b) by failing to report debts and obligations. Moreover, in MUR 4289, the Commission found reason to believe that the GEC

violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b), and that the Compliance Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report non-travel related debts and obligations. Finally, the Commission considered the GEC's request to dismiss MUR 3664 and determined to deny the request.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of these matters. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that violations have occurred and proceed with conciliation.

In order to expedite the resolution of these matters, the Commission has also decided to offer to enter into negotiations directed toward reaching a conciliation agreement in settlement of these matters prior to findings of probable cause to believe. Enclosed is a global conciliation agreement in settlement of MURs 4171, 4289 and 3664 for the Primary Committee, GEC and Compliance Committee that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

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 437(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lee Ann Elliott

Lee Ann Elliott
Chairman

Enclosures
Factual and Legal Analyses
Procedures
Conciliation Agreement

cc: President George Bush

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MURs: 4170, 4289

RESPONDENT: Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer

I. BACKGROUND

These matters were generated by the Federal Election Commission ("Commission") in the normal course of it carrying out its supervisory responsibilities pursuant to the Federal Election Campaign Act of 1971, as amended ("the Act"). 2 U.S.C. § 437g(a)(2). The Bush-Quayle '92 Compliance Committee, Inc. ("Compliance Committee") was the legal and accounting compliance fund for the 1992 general presidential election campaign of President George Bush and Vice President Dan Quayle. J. Stanley Huckaby was the treasurer of the Compliance Committee.

II. FACTUAL AND LEGAL ANALYSIS

A. MUR 4170

Committees are required to submit periodic reports to the Commission, disclosing the identification of each person (other than a political committee) making aggregate contributions in excess of $200 per calendar year, along with the date and amount of any such contribution. 2 U.S.C. § 434(b)(3)(A). Identification of each individual includes the name, mailing address, occupation of the contributor, and name of his or her employer. 2 U.S.C. § 431(13)(A).

If the treasurer of a political committee shows that "best efforts" have been used to obtain, maintain, and submit the information required by 2 U.S.C. § 431(13), any report or

records of the committee shall be considered to be in compliance with the Act. 2 U.S.C. § 432(i). The treasurer of a political committee will be deemed to have exercised "best efforts" in obtaining the required information only if he or she has satisfied the requirements of 11 C.F.R. § 104.7. The Commission's regulations provide that a treasurer of a political committee will not be deemed to have exercised best efforts unless he or she has made at least one effort per contribution solicitation, either by a written request or by an oral request which is documented in writing, to obtain the required identification information from the contributor. 11 C.F.R. § 104.7(b)(1994). Such efforts shall consist of a clear request for the information which informs the contributor that the reporting of such information is required by law. *Id.*

The Audit staff conducted a sample of individual contributions received by the Compliance Committee and concluded that 68% of the itemized contributions lacked the requisite disclosure of occupation and name of employer information.[1] Therefore, the Compliance Committee's compliance rate was only 32%. The request for information in the Compliance Committee's solicitations stated: "The Federal Election Commission requires us to ask the following information." After receiving a July 1, 1992 memorandum issued by the Commission on the "best efforts" regulation, the Compliance Committee altered the language in subsequent solicitations to state: "The Federal Election Commission requires us to report the following information." The alteration of the language had no effect on the Compliance Committee's low compliance rate. Furthermore, neither the Compliance Committee's original

[1] The Audit staff's sample was calculated with a 95% statistical likelihood. The above referenced amount, $2,107,208, is the lowest estimation based on that sample. The highest estimation would be $2,495,943.

language nor the revised language stated that the reporting of such information is required by law. 11 C.F.R. § 104.7(b); *see* 2 U.S.C. § 434(b)(3)(A).

The Interim Audit Report recommended that the Compliance Committee contact all contributors who had not provided the information to request the information and file amended disclosure reports to complete the public record. The Interim Audit Report concluded that the Compliance Committee had not met the "best efforts" standard because its request language did not notify contributors that the reporting of such information is required by law. *See* 11 C.F.R. § 104.7(b). The Compliance Committee did not contact the contributors or amend its reports to correct the omissions.

Instead of making an effort to contact the contributors and filing amended reports to complete the public record, the Compliance Committee contended that it satisfied the "best efforts" provision and, therefore, the contributions omitting disclosure information are in compliance with the Act. The Compliance Committee contended that its request language was consistent with the "best efforts" regulation and that the difference between "the law" and the "Federal Election Commission" is insignificant. The Compliance Committee's assertion that it exercised "best efforts" is erroneous. Neither the request language used before or after the July 1992 alteration indicated to [illegible] the reporting of such information was required by law.[2] 11 C.F.R. § 104.7(b); *see* 2 U.S.C. § 434(b)(3)(A). Furthermore, the Compliance Committee's reports had a compliance rate of only 32% which, in itself, demonstrated the information request language was poorly crafted. While the Compliance Committee experienced an extremely low rate of

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[2] In *Republican National Committee v. FEC*, 76, F.3d 400, 406 (D.C. Cir. 1996), the court, in providing what it termed an "accurate explanation of the [best efforts] law," employed the words "federal law," not "Federal Election Commission."

compliance over several months of solicitations, it nonetheless made no additional efforts to increase the response rate or otherwise obtain the information. Thus, the Compliance Committee's actions concerning the contributions which omitted disclosure information do not amount to "best efforts."

Therefore, the Commission has found reason to believe the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(3)(A).

B. MUR 4289

Political committees are required to disclose on periodic reports to the Commission all outstanding debts and obligations owed by or to the committees. 2 U.S.C. § 434(b)(8). A political committee owing a debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure under $500 must report the debt as of the time the payment is made, or no later than 60 days after such an obligation is incurred, whichever is first. 11 C.F.R. § 104.11(b). Any debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure over $500 must be reported as of the date on which the obligation is incurred, except that any obligation incurred for rent, salary or other regularly recurring administrative expenses need not be reported as a debt before the payment due date. *Id.* If the exact amount of the debt or obligation is not known, the report shall state that the amount reported is an estimate. *Id.* When the exact amount is determined, the committee must either amend the report containing the estimate or indicate the correct amount on the report for the reporting period in which the correct amount is determined. *Id.*

In the Interim Audit Report, the Audit Division identified $235,587 in Compliance Committee debts that were not reported in accordance the Act and the Commission's regulations.

The first reporting of the Committee's debts did not occur until the Compliance Committee reported the payments of the debts. The amount identified by the Audit Division includes only those debts where payments were not reported until reporting periods after the ones in which the Compliance Committee received invoices. The Interim Audit Report recommended that the Compliance Committee file amendments to correct the public record. On September 7, 1994, 22 months after the general election, the Compliance Committee filed amended reports that materially disclosed the Compliance Committee's actual debts and obligations.

In response to the Interim Audit Report, the Compliance Committee explained that its procedure for reporting debts and obligations was to report the debts once an invoice was received and approved for payment. At the exit conference, the Compliance Committee stated that the invoices were paid in a timely manner. However, 11 C.F.R. § 104.11(b) requires committees to report debts at the time of incurrence (*i.e.*, the date an item was purchased or service rendered), not the date of the invoice, if committees are unable to determine the exact amount of debt, they are required to provide an estimate of the debt incurred. Thus, the Compliance Committee's procedures do not release the Compliance Committee and its treasurer from the reporting requirements of 11 C.F.R. § 104.11(b). By failing to disclose the debts as they were incurred, the goal of immediate and complete disclosure was not met because the disclosure reports did not include the Compliance Committee's actual debt position as of any specific date.

The Compliance Committee also argued during the audit that section 104.11(b) is limited to loans and written contracts and does not apply to debts incurred without a written agreement. This conclusion is not supported by the language of the regulation ("a debt or obligation,

including a loan, a written contract, written promise or written agreement to make an expenditure . . ."). Rather, this language reveals that a "debt or obligation" includes but is not limited to the enumerated sources.

Therefore, the Commission has found reason to believe that the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b).

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BOBBY R. BURCHFIELD
DIRECT DIAL NUMBER
(202) 662-5350

October 4, 1996

VIA HAND DELIVERY

Rhonda Vosdingh, Esq.
Delanie DeWitt Painter, Esq.
Office of the General Counsel
Federal Election Commission
999 E. Street, N.W.
Washington, D.C. 20463

Re: MURs 3664, 4170, 4171 and 4289

Dear Mss. Vosdingh and Painter:

Our clients, Bush-Quayle '92 Primary Committee, Inc., Bush-Quayle '92 General Committee, Inc., Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer of each (collectively, "Respondents"), received the notice of the "reason to believe" findings and proposal for conciliation from Commission Chairman Lee Ann Elliott in the above-captioned matters under review on September 27, 1996. Accordingly, the fifteen-day period for responding will end on Saturday, October 12, 1996 (which, with the Columbus Day holiday, means the responses currently are due on October 15th).

We have begun reviewing the materials and considering with our clients the appropriate responses. As Tom Barnett discussed with Ms. Vosdingh by telephone yesterday, however, the Commission has issued simultaneously four "reason to believe" findings and proposed a global conciliation agreement that requires the Respondents to consider and respond to an unusually large number of issues. Further, counsel to the Respondents have been occupied with completion of the briefing for the appeal of the Commission's repayment determination and will be preparing for oral argument scheduled for the end of this month. Under these circumstances, Respondents request a 30-day extension of time until November 12, 1996, to submit pertinent factual and legal materials. Although we recognize that this requested

extension is longer than usual, we respectfully submit that it is appropriate in these circumstances.

We appreciate your consideration of this request.

Sincerely,

Bobby R. Burchfield
Thomas O. Barnett

cc: J. Stanley Huckaby

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 15, 1996

VIA FACSIMILE AND FIRST CLASS MAIL

Bobby R. Burchfield, Esq.
Thomas O. Barnett, Esq.
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

RE: MURs 3664, 4170, 4171, 4289

Dear Messrs. Burchfield and Barnett:

This is in response to your letter dated October 4, 1996, requesting an extension of 30 days until November 12, 1996 to respond to the notice of the Commission's reason to believe findings against your clients, Bush-Quayle '92 Primary Committee, Inc., Bush-Quayle '92 General Committee, Inc., Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer of each, and the proposed conciliation agreement.

Considering the Federal Election Commission's responsibilities to act expeditiously in the conduct of investigations, the Office of General Counsel cannot grant your full request, but can only agree to a 20-day extension. Accordingly, the response to the reason to believe findings is due by close of business on November 4, 1996. If you are interested in pursuing pre-probable cause to believe conciliation, we will also extend the period for pre-probable cause conciliation until November 18, 1996. Given the limited period of time allowed for pre-probable cause to believe conciliation, it would be most productive and beneficial for you to submit any counter-offer to our proposed conciliation agreement with your response on November 4, 1996.

If you have any questions, please contact Delanie Painter, the attorney assigned to this matter, at (202)219-3690.

Sincerely,

Rhonda J. Vosdingh
Assistant General Counsel

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1201 PENNSYLVANIA AVENUE, N.W.
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BRUSSELS CORRESPONDENT OFFICE
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November 4, 1996

BY HAND

The Honorable Lee Ann Elliott
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 4170 -- Bush-Quayle '92 Compliance Committee, Inc. and J. Stanley Huckaby, as Treasurer

Dear Chairman Elliott:

Your letter dated September 24, 1996 indicates that the Commission has decided to take no further action with respect to the above-captioned matter under review ("MUR") concerning Bush-Quayle '92 Compliance Committee, Inc., and its Treasurer J. Stanley Huckaby (collectively, the "Compliance Committee"). The Compliance Committee acknowledges the Commission's decision to close the investigation and believes that the decision rests on a correct reading of *Republican National Committee v. Federal Election Commission*, 76 F.3d 400 (D.C. Cir. 1996) (pet. for cert. filed September 9, 1996).

Respectfully submitted,

Bobby R. Burchfield
Thomas O. Barnett

Counsel to Bush-Quayle '92
Compliance Committee, Inc.

cc: J. Stanley Huckaby

FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

THIS IS THE END OF MUR # 4170

DATE FILMED 2/9/98 CAMERA NO. 2

CAMERAMAN EES