FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

THIS IS THE BEGINNING OF MUR # 4289

DATE FILMED 1/23/98 CAMERA NO. 2

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 13, 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.
BUSH-QUAYLE '92 COMPLIANCE COMMITTEE, Inc.
REFERRAL MATTERS

MUR 4289

As requested in the meeting of December 13, 1995, please find attached matters involving debts [illegible] in the final audit report on the Bush-Quayle '92 General Committee, Inc. (General Committee) and the Bush-Quayle '92 Compliance Committee, Inc. (Compliance Committee).

It should be noted that the General Committee and the Compliance Committee did not file the required amendments with their response to the interim audit report (received July 6, 1994). However, amended reports, which substantially disclosed the debts and obligations, were filed on September 7, 1994. These matters may not warrant further consideration.

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.

Attachments:

Bush-Quayle '92 General Committee, Inc. Finding II.B. - Reporting of Debts and Obligations.

Bush-Quayle '92 Compliance Committee, Inc. Finding III.B. - Reporting of Debts and Obligations.

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B. Reporting of Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code requires that each report shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished.

Section 104.11(b) of Title 11 of the Code of Federal Regulations states, in part, that a debt or obligation, the amount of which is $500 or less, shall be reported as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation, the amount of which is over $500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation

incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

During our review of selected disbursements, the Audit staff noted that obligations, owed to 24 vendors, totaling $1,052,098 were not disclosed. These obligations related to expenses incurred for telephone charges, telemarketing, media, events, research, travel reimbursements, direct mail, delivery, air travel, and lodging.

At the exit conference, the General Committee was provided with a schedule of debts and obligations that were not reported. The Treasurer stated that he did not consider any obligations as debts for reporting purposes until the invoice had been received by the Accounting Department and approved for payment by the appropriate personnel.

A written response from the General Committee, dated October 22, 1993, asserted that the invoices were processed and paid in a timely manner. Further, the response explained that the General Committee reported debts and obligations based on the date the invoices were received, and provided explanations as to why certain invoices were not received timely. For example, the original invoice was misplaced and a replacement copy was obtained at a later date from the creditor; in certain instances, invoices were issued to the White House Administrative Office, who then later forwarded the invoices to the General Committee.

The regulatory standard is the date of incurrence not the date the invoice is received in the General Committee's Accounting Department. Although the information provided may explain the delay in the General Committee's actual receipt of a particular invoice, such explanation does not, in the Audit staff's opinion, remove or modify the regulatory requirement that these debts be disclosed as of the date incurred.

In the interim audit report the Audit staff recommended that the General Committee file amended reports to correct the public record.

In response to the interim audit report, the Treasurer states that the standards used by the Audit staff in reviewing debts and obligations "misapplies the regulations" and, as applied, would "place an unreasonable burden on political committees." The Treasurer specifies that the "regulation expressly defines the debt or obligation as 'a loan, written contract, written promise or written agreement to make an expenditure'."

The Treasurer contends that the regulation cited is not relevant because the aforementioned transactions were "generally

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undertaken without a 'written' agreement specifying precise charges in advance and therefore do not fall into the categories listed in the regulation."

In addition, the Treasurer maintains that the General Committee promptly paid and/or reported debts and obligations in accordance with its policy, which in the opinion of the Treasurer, created no financial benefit. According to the Treasurer, the issue was the timing of disclosure.

In conclusion, the Treasurer states that the General Committee has begun to prepare amended reports to disclose the transactions.

The General Committee indicated that the Audit staff considered all debts over $500 as reportable, as of the date incurred, regardless of when the invoice was received. It should be noted that the interim audit report does not suggest that the General Committee should have reported all debts (over $500) as of the date incurred. The debts in question were determined to have been incurred during a reporting period and outstanding at the end of that specific period.

It is the opinion of the Audit staff that the scope of the regulation at 11 C.F.R. §104.11(b) is not limited to loans, written contracts, written promises and written agreements but, inclusive of all debts and obligations including those mentioned above. Therefore, contrary to the interpretation of the General Committee, the regulation cited does apply to the transactions at issue.

As stated above, the regulatory standard is the date of incurrence not the date the invoice is received in the General Committee's Accounting Department. In the Audit staff's opinion, the General Committee's response sufficiently explains why the above debts were not disclosed, however, the explanation does not modify the regulatory requirement that the aforementioned debts are required to be disclosed.

The General Committee indicated amended reports would be ready for filing in the near future. Amendments were filed on September 7, 1994, which materially corrected the disclosure errors.

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During our review of selected disbursements, the Audit staff noted that 16 obligations, owed to eight vendors, totaling $235,587 were not disclosed. The obligations related to expenses incurred for long distance telephone, direct mail, printing of fundraising solicitations, computer consulting, and limousine rental.

At the exit conference, the Compliance Fund was provided with a schedule of debts and obligations that were not disclosed. The Treasurer stated that the Compliance Fund did not consider any obligations as debts for reporting purposes until the invoice had been received by the Accounting Department and authorized for payment by the appropriate personnel.

In a written response, dated October 21, 1993, the Treasurer asserted that the Compliance Fund paid invoices in a timely manner, usually within a few days of receipt. Further, the

Treasurer explained that as soon as invoices were received check authorizations were prepared and items were promptly submitted for payment.

The regulatory standard is the date of incurrence not the date the invoice is received in the Compliance Fund's Accounting Department.

In the interim audit report the Audit staff recommended that the Compliance Fund file an amendment to correct the public record.

In response the Treasurer incorporated by reference the General Committee's response discussed at Finding II.B., Reporting of Debts and Obligations (see pages 8-10).

As noted at Finding II.B., the response sufficiently explains why the above debts were not disclosed; however, the explanation does not nullify the regulatory requirement that the aforementioned debts be disclosed.

The Compliance Fund indicated amendments would be ready for filing in the near future. Amendments were filed on September 7, 1994, which materially corrected the disclosure errors.

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Washington, D.C. 20463

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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

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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.

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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

[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.

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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-

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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.

[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).

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§ 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

[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.

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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).

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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.

[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.

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§ 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

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[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

[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.

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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.

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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

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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.

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

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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.

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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.

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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

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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 I" 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).

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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

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

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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.

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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.*

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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).

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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.

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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

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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)).

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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.

[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.

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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

[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).

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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.

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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.

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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

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[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.

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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 4179

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.

2804382511

2/13/96
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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURS 3664, 4170,
Bush-Quayle '92 Primary Committee,	)	4171 and 4289
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	)	

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)

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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)

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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)

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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)

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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
Secretary of the Commission

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RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

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.

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2. Enter into conciliation with the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Hackaby, 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

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FEDERAL ELECTION COMMISSION
WASHINGTON DC 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		

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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

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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

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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

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Enclosures
Factual and Legal Analyses
Procedures
Conciliation Agreement

cc: President George Bush

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR: 4289

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

I. BACKGROUND

This matter was 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 General Committee, Inc. ("GEC") was the principal committee of the 1992 presidential election campaign of President George Bush and Vice President Dan Quayle. J. Stanley Huckaby was the treasurer of the Committee.

II. FACTUAL AND LEGAL ANALYSIS

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

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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 that were not reported in accordance the Act and the Commission's regulations. 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 Committee's debts did not occur until the GEC 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 GEC received invoices. The Interim Audit Report recommended that the GEC file amendments to correct the public record. On September 7, 1994, 22 months after the general election, the GEC filed amended reports that materially disclosed the GEC's actual debts and obligations.

In response to the Interim Audit Report, the GEC 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 GEC 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 GEC procedures do not release the GEC 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 GEC's actual debt position as of any specific date.

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The GEC 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 General Committee, Inc., and J. Stanley Huckaby, as treasurer, and violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) concerning non-travel related debts an obligations.

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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

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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.

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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 that 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

[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 4288

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 $235,517 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,

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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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COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N.W.
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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

OCT 4 11 53 AM '96
RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL

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

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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

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FAXED 10/15/96

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

Rhonda J. Vosdingh
Assistant General Counsel

Celebrating the Commission's 20th Anniversary

YESTERDAY, TODAY AND TOMORROW
DEDICATED TO KEEPING THE PUBLIC INFORMED

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
Nov 12 12 46 PM '96

November 3, 1996

BY HAND

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

Re: MUR 4269 -- Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as Treasurer

Dear Chairman Elliott:

This letter constitutes the response of Bush-Quayle '92 Compliance Committee, Inc. and J. Stanley Huckaby, as Treasurer (collectively, the "Compliance Committee") and President Bush in the above-captioned matter under review ("MUR") to your letter dated September 24, 1996, and the Factual and Legal Analysis ("Analysis") attached to that letter.

The Analysis concludes that the Compliance Committee should have reported, but did not report, $235,587 as outstanding debts and obligations based on invoices that were received by the Compliance Committee prior to the end of a reporting period but which were paid in a following reporting period. (Analysis at 4-5.) All of these "debts" were paid and reported as expenditures by the Compliance Committee. (*Id.*) Although the Analysis does not identify the specific "debts and obligations" included by the

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Commission in its calculation or the method by which the Commission determined when the Compliance Committee had received an invoice, the Compliance Committee is assuming that the MUR includes the invoices listed on Attachment 3 to the Interim Audit Report of the Compliance Committee (April 1, 1994).[1]

The issue raised by MUR 4289 is related to that raised in MUR 4171 with respect to the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as Treasurer, and the Compliance Committee incorporates by reference the response to MUR 4171.

As set forth in more detail in that response, the Commission should take no further action on MUR 4289 for several reasons.

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[1] Neither the Analysis nor the Interim Audit Report explains the method that the Commission used to identify debts and obligations that should have been reported. It appears that the Commission has made the incorrect assumption that every invoice dated during the first three weeks or so of the month (or earlier) was received by the Compliance Committee during the month and should have been included in the disclosure report to the Commission for that month. It is less clear what approach the Commission adopted for invoices dated during October and November.

The Compliance Committee requests that the Commission provide a schedule setting forth each debt and obligation that the Commission believes should have been reported along with an explanation of why the debt or obligation was included. In addition, the Compliance Committee requests an opportunity to supplement its response in light of the information from the Commission.

A. The Compliance Committee Used Its Best Efforts to Report Expenditures and Debts and Obligations.

The Compliance Committee took extensive measures, and spent substantial resources, to ensure prompt payment and reporting of campaign expenditures and, where prompt payment was not made, to report outstanding debts and obligations. The Compliance Committee's standard practice for processing and paying invoices was as follows: (i) vendors were instructed to submit all invoices to a special mailing address, which was checked daily by the national headquarters, or risk forfeiting the right to payment; (ii) if, however, the vendor did not use the special mailing address, Compliance Committee personnel were instructed immediately to forward invoices to the national headquarters; (iii) upon receipt, Compliance Committee personnel would prepare check authorization forms and, if approved, submit the invoices to the Accounting Department; and (iv) upon receipt, the Accounting Department would process a payment check within a few days, and often within 24 hours. (*See* Decl. of Keith Davis at ¶ 2, Exhibit A).[2]

The Compliance Committee established this procedure not only to ensure prompt payment and reporting of expenditures, but also to ensure that fraudulent or otherwise invalid invoices were

[2] This procedure is identical in material respects to the procedure used by the Clinton/Gore '92 campaign committee. (*See* Report of the Audit Division on Cling/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund at 27 (December 27, 1994).)

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not paid and/or reported. (*See* Davis Decl. at ¶ 3.) A presidential campaign typically receives hundreds of thousands of dollars in invoices for expenses that either were never incurred or are not attributable to the presidential campaign. (*Id.*) The Compliance Committee received numerous such invalid invoices for which it was not responsible. (*Id.*)

The Compliance Committee consistently adhered to its procedure for paying invoices. Indeed, of the invoices that the Commission identified as not reported as a debt or obligation during the post-election audit process, all but three (totalling $30,386) were paid within the same reporting period as the date on the check authorization form. (*See* Davis Decl. at ¶ 5.) These expenditures were then promptly reported on the next expenditure disclosure report.[3] Significantly, the Commission has not questioned that the Compliance Committee promptly reported all of its disbursements.

The system was extremely successful. Most expenditures were paid at the time they were incurred and timely reported to the Commission. The Commission also does not question that, once invoices were received by the Accounting Department, they were paid and reported on a timely basis. Nor does the Commission question that most invoices were promptly reviewed and forwarded

[3] In the relatively few instances in which the Accounting Department was unable promptly to process an invoice, it reported the debt on the next disclosure report. (*Id.* at ¶ 5.)

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to the Accounting Department for payment. Overall, for 99 percent of the Compliance Committee's expenditures, either the Commission did not question the disclosure or disclosure was made in the same reporting period as the date on the check authorization form. (*See* Davis Decl. at ¶¶ 5-6.)

The Commission should find, we respectfully submit, that the Compliance Committee has exercised "best efforts" within the meaning of 2 U.S.C. § 432(i) to pay and report expenditures and debts and obligations.

B. The Invoices Did Not Become "Debts and Obligations" Under Section 104.11(b) Until After Being Reviewed and Approved by the Compliance Committee.

As explained in more detail in the response to MUR 4171, Section 104.11(b) of the Commission's regulations applies only to written promises or written agreements by the Compliance Committee to make expenditures. Accordingly, the invoices at issue did not become "debts and obligations" until the invoices were reviewed and approved by the Compliance Committee.[4] Although the Compliance Committee Accounting Department did not date stamp the invoices upon receipt, the invoices could not have been approved by the Compliance Committee prior to the date on

[4] This interpretation is consistent with the actions of the Clinton/Gore campaign, which did not report outstanding invoices until received by the accounting personnel that prepare disclosure reports. (*See* Final Audit Report on Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund at 27 (December 27, 1994).)

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the check authorization form. A review of the records reveals that all but three of the challenged invoices were paid during the same reporting period as the date on the check authorization form. (*See* Davis Decl. at ¶ 5.) The Compliance Committee thus substantially complied with this standard.

C. The Commission Has Not Properly Determined the Date on Which the Compliance Committee Received Invoices.

The Commission states that it found reason to believe that a violation had occurred "where payments were not reported until reporting periods after the ones in which the Compliance Committee received invoices." (Analysis at 5.) Even assuming, as the Commission apparently has done, that the mere issuance of an invoice by a third party triggers a reporting requirement for the Compliance Committee, the Analysis does not indicate how the Commission purports to have determined when the Compliance Committee had received invoices.

During the post-election audit process, the Commission staff indicated that it was assuming that the Compliance Committee received each invoice within several days of the date on the invoice. The date the invoice was prepared, however, is not a reliable indication of when it was received by the Compliance Committee. For example, vendors frequently prepare invoices days in advance of posting them in the mail and delivery could take a week or more. (*See* Davis Decl. at ¶ 10.) Further, notwithstanding the Compliance's Committee's explicit

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instructions to use a special mailing address, sometimes an invoice was sent to the wrong address or simply not delivered. (*Id.*) Moreover, contrary to instructions, the invoice might have been sent to a field office and then had to be forwarded to the Accounting Department. (*Id.*)

The Compliance Committee experienced particular difficulties with some of its vendors that provided fundraising services. Many of the invoices at issue were generated by subcontractors that sent their invoices to intermediate fundraising vendors. These vendors frequently did not forward the invoices immediately to the campaign. Because all but three of the invoices were paid within the same reporting period as the date on the check authorization form, the delay between the invoice date and payment is attributable to the original and intermediate vendors, not the Compliance Committee. (*Id.* at ¶ 11.) It would be unfair and unreasonable for the Commission to ignore these practical realities and to require the Compliance Committee to report debts of which its Accounting Department personnel was not yet aware.

A far better measure of the date of receipt is the date on the check authorization form that was completed at the outset of the approval process. As discussed above, all but three of the invoices were paid within the same reporting period as the date on the check authorization form, leaving only $30,386 in invoices at issue. (*See* Davis Decl. at ¶ 12.)

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D. Even If the Commission Finds the Compliance Committee To Be in Violation of the Reporting Requirements, No Civil Penalty Is Warranted.

As a final consideration, in assessing whether a civil sanction is appropriate, a district court -- and the Commission -- should evaluate the following factors:

> "(1) the good or bad faith of the defendants; (2) the injury to the public; (3) the defendant's ability to pay; (4) the necessity of vindicating the authority of the responsible federal agency." *Federal Election Commission v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989).

Applying these factors to the present case indicates that, even if the Commission concludes that a violation occurred, no civil sanction is warranted.

First, the Compliance Committee undertook substantial good faith efforts to collect and report the information at issue. Indeed, there is no suggestion that the Compliance Committee acted in anything less than utmost good faith. The Compliance Committee's practice gave it no financial benefit; all bills were paid and the expenditures were reported. Moreover, as these funds by definition were used only for legal and accounting purposes, there could be no benefit to the political campaign. Further, in the interest of cooperation, but without conceding error, the Compliance Committee filed "amended reports which materially disclosed the debts and obligations" identified by the

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Commission during the post-election audit process. (Analysis at 9.)

Second, the issue concerns only the timing of disclosure, not the failure to disclose, much less the acceptance of illegal contributions or exceeding of expenditure limits. Overall, 99 percent of the Compliance Committee's total expenditures either were not questioned during the post-election audit process or were paid during the same reporting period as the date first indicating receipt by the Compliance Committee. (*See* Davis Decl. at ¶¶ 6 and 12.) Clearly, there was no intent or effect of depriving voters of information pertinent to their votes.

Third, imposition of a civil fine would require the Compliance Committee to engage in expensive and burdensome fundraising activities that could cost as much as the net amount raised. (*See* Davis Decl. at ¶ 13.) Failure of such efforts would require the Compliance Committee to seek funds from President Bush.

Fourth, where, as here, the political committee has filed amended reports and responded to the requests of the Commission during the post-election audit, there is no further need to vindicate the authority of the Commission. Nor, given the four years that have passed and the withdrawal of President Bush and the Compliance Committee from the political process, is there any need for prospective relief.

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This case is similar in important respects to that in *Federal Election Commission v. National Education Association*, 457 F. Supp. 1102 (D.D.C. 1978). In *NEA*, the organization had adopted a "reverse check-off" system for collecting political contributions from its members. Although the court held "that reverse check-off is a per se violation of [the federal election laws]," it nonetheless ordered the NEA only to return money to members that wanted a refund and declined the Commission's request to assess a civil penalty. The court explained that:

> "[the] violation is not in the nature of intentional disregard of the rights of its dissenting members through coercion, threats, and reprisals. Rather, it is indirect infringement of those rights through excessive zeal in trying to have a more efficient collection system." *Id.* at 1112.

Similarly, the Compliance Committee did not intentionally disregard its obligations. To the contrary, it established an efficient accounting system that, it believed, would meet the requirements of the federal election laws without imposing an undue burden on the campaign.

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* * *

For the reasons set forth therein, the Commission should find that no violations have occurred and promptly close the investigation.

Respectfully submitted,

Bobby R. Burchfield
Thomas O. Barnett

Counsel to Bush-Quayle '92
Compliance Committee, Inc. and J.
Stanley Huckaby, as Treasurer

cc: J. Stanley Huckaby

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VERIFICATION

I DECLARE UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

J. Stanley Huckaby

Dated: November 4, 1996

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EXHIBIT A

DECLARATION OF KEITH A. DAVIS

In accordance with 28 U.S.C. § 1746, I, Keith A. Davis, hereby declare as follows:

1. During the 1992 Presidential election campaign, I served as Assistant Treasurer to the Bush-Quayle '92 Compliance Committee, Inc. ("the Compliance Committee"). As part of my responsibilities, I was involved with virtually every aspect of the finances of the Compliance Committee. This declaration is based upon my personal knowledge.

2. The Compliance Committee took extensive measures, and spent substantial resources, to ensure prompt payment and reporting of campaign expenditures and, where prompt payment was not made, to report outstanding debts and obligations. The Compliance Committee's standard practice for processing and paying invoices was as follows: (i) vendors were instructed to submit all invoices to a special mailing address, which was checked daily by the national headquarters, or risk forfeiting the right to payment; (ii) if, however, the vendor did not use the special mailing address, Compliance Committee personnel were instructed immediately to forward invoices to the national headquarters; (iii) upon receipt, Compliance Committee personnel would complete a check authorization form and submit the invoices, if approved, to the Accounting Department; and (iv) upon receipt, the

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Accounting Department would process a payment check within a few days, and often within 24 hours.

3. The Compliance Committee established this procedure not only to ensure prompt payment and reporting of expenditures, but also to ensure that fraudulent or otherwise invalid invoices were not paid and/or reported. A presidential campaign typically receives hundreds of thousands of dollars in invoices for expenses that either were never incurred or are not attributable to the presidential campaign. The Compliance Committee received numerous such invalid invoices for which it was not responsible.

4. The intent of the Compliance Committee throughout the process was to report in good faith all expenditures and debts and obligations in the manner and time required by the statute and regulations.

5. The Compliance Committee consistently adhered to this practice. Of the $235,587 in invoices that the Commission identified as not reported as a debt or obligation during the post-election audit process for the Compliance Committee, all but three (totalling $30,386) were paid within the same reporting period as the date on the check authorization form and was reported on the next expenditure disclosure report. In the relatively few instances in which the Accounting Department was unable promptly to process an invoice, it reported the debt on the next disclosure report.

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6. More generally, the system was extremely successful. Most expenditures were paid at the time they were incurred and reported immediately to the Accounting Department. Of the $5,042,000 in total expenditures by the Compliance Committee, the Commission has raised a question of the timing of the disclosures of only 5 percent.

7. With respect to the invoices at issue, the Compliance Committee was successful in quickly processing, paying, and reporting the expenditures. There are two dates that track the progress of the invoices: (i) the date of the invoice, which presumably indicates when it was prepared by the vendor, and (ii) the date on which the check authorization form was first filled out, which is the best indicator of the date on which it was received by the national headquarters. As discussed above, all but three of the invoices at issue were paid during the same reporting period as the date on the check authorization form.

8. The Compliance Committee did not understand the 1990 amendment to the regulations to change this longstanding practice. Rather, the rules appeared to apply to "written" agreements that set forth a predetermined amount to be paid on a definite date, and to be applicable to committees settling debts for less than full value. Virtually all of the debts and obligations at issue here were incurred without the benefit of such a written contract. Even to attempt to keep track of the expenses of the campaign personnel at any given

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time would create an administrative nightmare that would cripple a campaign. The Compliance Committee made expenditures of over $5 million. It would be virtually impossible for the Treasurer to monitor expenses as they are incurred by each individual. Further, the Compliance Committee would have had no basis for estimating debts and obligations at the time they were incurred. To attempt to provide speculative estimates without any basis would not provide the Commission or the public with meaningful information and, if anything, would be highly misleading.

9. Based on my 17 years of experience in working with political committees and their efforts to comply with the federal election laws, no political committee has ever been required to estimate outstanding debts at the time of their incurrence. Rather, political committees routinely establish procedures for collecting, processing, paying, and reporting expenditures and outstanding debts similar to the procedures adopted by the Compliance Committee. Consistent with this general practice, the Compliance Committee did not treat invoices as outstanding debts and obligations within the meaning of 11 C.F.R. § 104.11(b) until they were reviewed and approved. Nevertheless, and without conceding error, the Compliance Committee submitted amended reports as requested by the Commission.

10. The Commission audit staff indicated during the post-election audits that it used the date of the invoices to

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infer the date on which they were received by the Compliance Committee. However, the date an invoice was prepared is not always a proper indication of when it was received by the Compliance Committee. For example, vendors frequently prepare invoices days in advance of posting them in the mail. Delivery, especially from vendors outside the Washington, D.C. area, can take a week or more after posting. Further, sometimes an invoice was sent to the wrong address or simply not delivered. In other instances, the invoice was forwarded through a third party. Moreover, the invoice might have been sent to a field office and then forwarded to the Accounting Department.

11. The Compliance Committee experienced particular difficulties with some of its vendors that provided fundraising services. Many of the invoices at issue were generated by subcontractors that sent their invoices to outside vendors. These vendors frequently did not forward the invoices immediately to the campaign. As indicated by the date on the check authorization form, all but three of the invoices were paid during the reporting period in which they were received by the Compliance Committee. Accordingly, the delay between the invoice date and payment appears to be due to the original and intermediate vendors, not the Compliance Committee.

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12. After eliminating the invoices paid during the same reporting period as the date on the check authorization form, there is only $30,386 in invoices at issue.

13. The Compliance Committee does not have funds available to pay any significant civil penalty. In order to raise such funds, the Compliance Committee would have to engage in time consuming and burdensome fundraising activities that could easily cost as much as the net funds raised.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Alexandria, Virginia on November 4, 1996.

Keith A. Davis

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL

Nov 4 12 46 PM '96

November 4, 1996

BY HAND

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

Re: MURs 4289 and 3664 -- Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as Treasurer

Dear Chairman Elliott:

This letter constitutes the response of Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as Treasurer (collectively, the "General Committee") and President Bush in the above-captioned matters under review ("MURs") to your letter dated September 24, 1996, and the Factual and Legal Analysis ("Analysis") attached to that letter.

The Analysis concludes that the General Committee should have reported, but did not report, $1,052,098 as outstanding debts and obligations based on invoices that were received by the General Committee prior to the end of a reporting period but not paid until a later reporting period. (Analysis at 2.) According to the Analysis, $737,908 of the total relates to MUR 4289 and $314,190 of the total relates to MUR 3664. (Id.) All of these invoices were paid and reported as expenditures by

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the General Committee. (*Id.*) Although the Analysis does not identify the specific invoices included by the Commission in its calculation or the method by which the Commission determined when the General Committee had received an invoice, the General Committee is assuming that the MUR includes the invoices listed on Attachment 2 to the Interim Audit Report of the General Committee (April 1, 1994).[1]

The issue raised by MURS 4289 and 3664 is related to that raised in MUR 4171 with respect to the Bush-Quayle '92 Primary Committee, Inc. and J. Stanley Huckaby, as Treasurer, and the General Committee incorporates by reference the response to MUR 4171.

As set forth in more detail in that response, the Commission should take no further action on MURs 4289 and 3664 for several reasons.

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[1] Neither the Analysis nor the Interim Audit Report explains the method that the Commission used to identify debts and obligations that should have been reported. It appears that the Commission has made the incorrect assumption that every invoice dated during the first three weeks or so of the month (or earlier) was received by the General Committee during the month and should have been included in the disclosure report to the Commission for that month. It is less clear what approach the Commission adopted for invoices dated during October and November.

The General Committee requests that the Commission provide a schedule setting forth each debt and obligation that the Commission believes should have been reported along with an explanation of why the debt or obligation was included. In addition, the General Committee requests an opportunity to supplement its response in light of the information from the Commission.

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A. The General Committee Used Its Best Efforts to Report Expenditures and Debts and Obligations.

The General Committee took extensive measures, and spent substantial resources, to ensure prompt payment and reporting of campaign expenditures and, where prompt payment was not made, to report outstanding debts and obligations. For example, the General Committee assigned field personnel to travel with the candidates and pay vendors during or immediately after each event. (See Decl. of Keith Davis at ¶ 2, Exhibit A). These expenditures were reported by facsimile to the Committee's headquarters and included on the next expenditure disclosure report to the Commission. (*Id.*)

Where expenses could not be paid immediately, the General Committee's standard practice for processing and paying invoices was as follows: (i) vendors were instructed to submit all invoices to a special mailing address, which was checked daily by the national headquarters, or risk forfeiting the right to payment; (ii) if, however, the vendor did not use the special mailing address, General Committee personnel were instructed immediately to forward invoices to the national headquarters; (iii) upon receipt, General Committee personnel would prepare check authorization forms and, if approved, submit the invoices to the Accounting Department; and (iv) upon receipt, the Accounting Department would date stamp the invoice and process a

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payment check within a few days, and often within 24 hours. (*See* Davis Decl. at ¶ 3.)[2]

The General Committee established this procedure not only to ensure prompt payment and reporting of expenditures, but also to ensure that fraudulent or otherwise invalid invoices were not paid and/or reported. (*See* Davis Decl. at ¶ 4.) A presidential campaign typically receives hundreds of thousands of dollars in invoices for expenses that either were never incurred or are not attributable to the presidential campaign. (*Id.*) The General Committee, for example, received numerous invalid invoices from state party events for which the General Committee was not responsible. (*Id.*)

The General Committee consistently adhered to its procedure for paying invoices. Indeed, of the invoices that the Commission identified as not reported as a debt or obligation during the post-election audit process, over 95 percent (or $996,445) were paid within the same reporting period in which the Accounting Department received the invoice. (Davis Decl. at ¶ 6.) These expenditures were then promptly reported on the next

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[2] This procedure is identical in material respects to the procedure used by the Clinton/Gore '92 campaign committee. (*See* Report of the Audit Division on Cling/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund at 27 (December 27, 1994).)

expenditure disclosure report.[3] Significantly, the Commission has not questioned that the General Committee promptly reported all of its disbursements.

The system was extremely successful. Most expenditures were paid at the time they were incurred and reported on the next disclosure report. The Commission also does not question that, once invoices were received by the Accounting Department, they were paid and reported on a timely basis. Nor does the Commission question that most invoices were promptly reviewed and forwarded to the Accounting Department for payment. Overall, the General Committee made over $55 million in expenditures, and the disclosure of over 99 percent of those expenditures either was not questioned by the Commission or was made in the same reporting period as the date first indicating the General Committee's receipt of the invoice (*i.e.* the date on the check authorization form). (*See* Davis Decl. at ¶ 7-8.)

The Commission should find, we respectfully submit, that the General Committee has exercised "best efforts" within the meaning of 2 U.S.C. § 432(i) to pay and report expenditures and debts and obligations as required by law.

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[3] In the relatively few instances in which the Accounting Department was unable promptly to process an invoice, it reported the debt on the next disclosure report. (*Id.* at ¶ 6.)

B. The Invoices Did Not Become "Debts and Obligations" Under Section 104.11(b) Until After Being Reviewed and Approved by the General Committee.

As explained in more detail in the response to MUR 4171, Section 104.11(b) of the Commission's regulations applies only to written promises or written agreements by the General Committee to make expenditures. Accordingly, the invoices at issue did not become "debts and obligations" until the invoices were reviewed and approved by the General Committee, which is indicated by the date stamp of the Accounting Department on the check authorization form.[4] The General Committee substantially complied with this standard: 95 percent of the challenged invoice amounts were paid during the same reporting period in which the Accounting Department received the invoice. (*See* Davis Decl. at ¶ 6.)

C. The Commission Has Misapplied the Standard Set Forth in the Analysis.

Even assuming that the standard set forth in the Analysis is correct, the Commission nevertheless has improperly included substantial amounts that were properly paid or reported under that standard.

[4] This interpretation is consistent with the actions of the Clinton/Gore campaign, which did not report outstanding invoices until received by the accounting personnel that prepare disclosure reports. (*See* Final Audit Report on Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund at 27 (December 27, 1994).)

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1. The Commission Has Not Properly Determined the Date on Which the General Committee Received Invoices.

The Commission states that it found reason to believe that a violation had occurred "where payments were not reported until reporting periods after the ones in which the GEC received invoices." (Analysis at 2.) Even assuming, as the Commission apparently has done, that the mere issuance of an invoice by a third party triggers a reporting requirement for the General Committee, the Analysis does not indicate how the Commission purports to have determined when the General Committee received invoices.

During the post-election audit process, the Commission staff indicated that it was assuming that the General Committee received each invoice within several days of the date on the invoice. The date the invoice was prepared, however, is not a reliable indication of when it was received by the General Committee. For example, vendors frequently prepare invoices days in advance of posting them in the mail. (See Davis Decl. at ¶ 11.) Delivery, especially from vendors outside the Washington, D.C. area, can take a week or more after posting. (*Id.*) Further, notwithstanding the General Committee's explicit instructions to use a special mailing address, sometimes an invoice was sent to the wrong address or simply not delivered. (*Id.*) In other instances, again contrary to instructions, the invoice was forwarded through a third party. (*Id.*) Moreover,

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also contrary to instructions, the invoice might have been sent to a field office and then forwarded to the Accounting Department. (*Id.*)

As an example, the General Committee experienced particular difficulties in obtaining invoices for expenses related to travel on Air Force I and II. Despite repeated requests from the General Committee, employees of the United States government took substantial time in generating invoices, and often invoices were delivered to the General Committee weeks or even months after the date on the invoice. (*Id.* at ¶ 12.)

It would be unfair and unreasonable for the Commission to ignore these practical realities and to require the General Committee to report debts of which its Accounting Department personnel were not yet aware.

A far better measure of the date of receipt is the date on the check authorization form that was completed at the outset of the approval process. A review of the records reveals that 80 percent (or $848,639) of the invoices at issue were paid within the same reporting period as the date on the check authorization form. (*See* Davis Decl. at ¶ 8.)

2. The Commission Should Not Include Debts and Obligations for Less than $500 That Were Paid and Reported in a Timely Manner.

The Analysis finds reason to believe that a violation occurred because "11 C.F.R. § 104.11(b) requires committees to

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report debts at the time of incurrence. . . ." (Analysis at 5.) The regulation, however, does not require a debt or obligation for less than $500 to be reported until "the time payment is made or no later than 60 days after such obligation is incurred, whichever comes first." (11 C.F.R. § 104.11(b).) Although the Commission excluded many invoice amounts of less than $500 in calculating the unreported debts and obligations of Bush-Quayle '92 Primary Committee, Inc., it did not exclude such amounts from the calculation for the General Committee. As a result, the Commission has included $27,556 in invoices for single debts of less than $500 that were paid in a timely manner. (See Davis Decl. at ¶ 13.)

* * *

After eliminating invoices paid in the same reporting period that the check authorization form was created and those for less than $500 paid in a timely manner, only $175,903 in invoices remains at issue. (See Davis Decl. at ¶ 15.) The General Committee respectfully submits that, at a minimum, the Commission should limit its consideration of any further action to these invoices.

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D. Even If the Commission Finds the General Committee To Be in Violation of the Reporting Requirements, No Civil Penalty Is Warranted.

As a final consideration, in assessing whether a civil sanction is appropriate, a district court -- and the Commission -- should evaluate the following factors:

> "(1) the good or bad faith of the defendants; (2) the injury to the public; (3) the defendant's ability to pay; (4) the necessity of vindicating the authority of the responsible federal agency." *Federal Election Commission v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989).

Applying these factors to the present case indicates that, even if the Commission concludes that a violation occurred, no civil sanction is warranted.

First, the General Committee undertook substantial efforts to collect and report the information at issue. Indeed, there is no suggestion that the General Committee acted in anything less than utmost good faith. The General Committee's practice gave it no financial benefit or advantage over the opposition; all bills were paid and the expenditures were reported. Further, in the interest of cooperation, but without conceding error, the General Committee filed "amended reports which materially disclosed the debts and obligations" identified by the Commission during the post-election audit process. (Analysis at 9.)

Second, the issue concerns only the timing of disclosure, not the failure to disclose, much less the acceptance

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of illegal contributions or exceeding of expenditure limits. The vast majority of the invoices at issue -- $848,639 -- were paid and reported during the same period as the date first indicating that the General Committee had received the invoice. (*See* Davis Decl. at ¶ 8.)[5] Overall, 99 percent of the General Committee's total expenditures either were not questioned during the post-election audit process or were paid within the reporting period following the invoice date. (*Id.* at ¶ 7-8.) Clearly, there was no intent or effect of depriving voters of information pertinent to their votes.

Third, imposition of a civil fine would require the General Committee to engage in expensive and burdensome fundraising activities that could cost as much as the net amount raised. (*See* Davis Decl. at ¶ 17.) Failure of such efforts would require the General Committee to seek funds from President Bush.

Fourth, where, as here, the political committee has filed amended reports and responded to the requests of the Commission during the post-election audit, there is no further need to vindicate the authority of the Commission. Nor, given

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[5] And of the remaining $203,459 in invoices, over 60 percent -- $128,099 -- are dated after October 14, 1992 and would not have been disclosed prior to the general election even under the Commission's standard. (*See* Davis Decl. at ¶ 16.) Indeed, half of all of the invoices at issue -- $507,387 -- are dated after the last reporting period prior to the general election. (*Id.*)

the four years that have passed and the withdrawal of President Bush and the General Committee from the political process, is there any need for prospective relief.

This case is similar in important respects to that in *Federal Election Commission v. National Education Association*, 457 F. Supp. 1102 (D.D.C. 1978). In *NEA*, the organization had adopted a "reverse check-off" system for collecting political contributions from its members. Although the court held "that reverse check-off is a per se violation of [the federal election laws]," it nonetheless ordered the NEA only to return money to members that wanted a refund and declined the Commission's request to assess a civil penalty. The court explained that:

> "[the] violation is not in the nature of intentional disregard of the rights of its dissenting members through coercion, threats, and reprisals. Rather, it is indirect infringement of those rights through excessive zeal in trying to have a more efficient collection system." (*Id.* at 1112.)

Similarly, the General Committee did not intentionally disregard its obligations. To the contrary, it established an efficient accounting system that, it believed, would meet the requirements of the federal election laws without imposing an undue burden on the campaign.

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For the reasons set forth therein, the Commission should find that no violations have occurred and/or promptly close the investigation.

Respectfully submitted,

Bobby R. Burchfield
Thomas O. Barnett

Counsel to Bush-Quayle '92 General Committee, Inc. and J. Stanley Huckaby, as Treasurer

cc: J. Stanley Huckaby

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VERIFICATION

I DECLARE UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief.

J. Stanley Huckaby

Dated: November 4, 1996

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EXHIBIT A

DECLARATION OF KEITH A. DAVIS

In accordance with 28 U.S.C. § 1746, I, Keith A. Davis, hereby declare as follows:

1. During the 1992 Presidential election campaign, I served as Assistant Treasurer to the Bush-Quayle '92 General Committee, Inc. ("the General Committee"). As part of my responsibilities, I was involved with virtually every aspect of the finances of the General Committee. This declaration is based upon my personal knowledge.

2. The General Committee took extensive measures, and spent substantial resources, to ensure prompt payment and reporting of campaign expenditures and, where prompt payment was not made, to report outstanding debts and obligations. For example, the General Committee assigned field personnel to travel with the candidates and pay vendors during or immediately after each event. These expenditures were reported by facsimile to the General Committee's national headquarters and included on the next expenditure disclosure report to the Commission.

3. Where expenses could not be paid immediately, the General Committee's standard practice for processing and paying invoices was as follows: (i) vendors were instructed to submit all invoices to a special mailing address, which was checked daily by the national headquarters, or risk forfeiting

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the right to payment; (ii) if, however, the vendor did not use the special mailing address, General Committee personnel were instructed immediately to forward invoices to the national headquarters; (iii) upon receipt, General Committee personnel would complete a check authorization form and submit the invoices, if approved, to the Accounting Department; and (iv) upon receipt, the Accounting Department would date stamp the check authorization form and process a payment check within a few days, and often within 24 hours.

4. The General Committee established this procedure not only to ensure prompt payment and reporting of expenditures, but also to ensure that fraudulent or otherwise invalid invoices were not paid and/or reported. A presidential campaign typically receives hundreds of thousands of dollars in invoices for expenses that either were never incurred or are not attributable to the presidential campaign. The General Committee, for example, received numerous invalid invoices from state party events for which the General Committee was not responsible.

5. The intent of the General Committee throughout the process was to report in good faith all expenditures and debts and obligations in the manner and time required by the statute and regulations.

6. The General Committee consistently adhered to its procedure for paying invoices. Of the $1,052,098 in invoices that the Commission identified as not reported as a

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debt or obligation during the post-election audit process for the General Committee, $996,445 (or 95 percent) was paid within the same reporting period in which the Accounting Department received the invoice and was reported on the next expenditure disclosure report. In the relatively few instances in which the Accounting Department was unable promptly to process an invoice, it reported the debt on the next disclosure report.

7. More generally, the system was extremely successful. Most expenditures were paid at the time they were incurred and reported immediately to the Accounting Department. Of the $55,239,000 in total expenditures by the General Committee, the Commission has raised a question of the timing of the disclosures of only 2 percent.

8. With respect to the invoices at issue, the General Committee was successful in quickly processing, paying, and reporting the expenditures. There are three dates that track the progress of the invoices: (i) the date of the invoice, which generally indicates when it was prepared by the vendor, (ii) the date on which the check authorization form was first filled out, which is the best indicator of the date on which it was received by the national headquarters, and (iii) the date stamp of the Accounting Department, which indicates when the invoice was approved by the General Committee. As discussed above, 95 percent of the invoices at issue were paid during and reported for the same reporting

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period as the Accounting Department date stamp. The large majority -- $848,639 -- was paid during and reported for the same reporting period as the date on the check authorization form. Moreover, $623,299 of the invoices at issue were paid during and reported for the reporting period immediately after the period covered by the date of the invoice.

9. The General Committee did not understand the 1990 amendment to the regulations to change this longstanding practice. Rather, the rules appeared to apply to "written" agreements that set forth a predetermined amount to be paid on a definite date, and to be applicable to committees settling debts for less than full value. Virtually all of the debts and obligations at issue here were incurred without the benefit of such a written contract. Even to attempt to keep track of the expenses of the hundreds of campaign personnel working across the country at any given time would create an administrative nightmare that would cripple a campaign. The General Committee made over $50 million in expenditures in less than three months. It would be virtually impossible for the Treasurer to monitor expenses as they are incurred by each individual. Further, the General Committee would have had no basis for estimating debts and obligations at the time they were incurred. To attempt to provide speculative estimates without any basis would not provide the Commission or the public with meaningful information and, if anything, would be highly misleading.

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10. Based on my 17 years of experience in working with political committees and their efforts to comply with the federal election laws, no political committee has ever been required to estimate outstanding debts at the time of their incurrence. Rather, political committees routinely establish procedures for collecting, processing, paying, and reporting expenditures and outstanding debts similar to the procedures adopted by the General Committee. Consistent with this general practice, the General Committee did not treat invoices as outstanding debts and obligations within the meaning of 11 C.F.R. § 104.11(b) until they were reviewed and approved. Nevertheless, and without conceding error, the General Committee submitted amended reports as requested by the Commission.

11. The Commission audit staff indicated during the post-election audits that it used the date of the invoices to infer the date on which they were received by the General Committee. However, the date an invoice was prepared is not always a proper indication of when it was received by the General Committee. For example, vendors frequently prepare invoices days in advance of posting them in the mail. Delivery, especially from vendors outside the Washington, D.C. area, can take a week or more after posting. Further, sometimes an invoice was sent to the wrong address or simply not delivered. In other instances, the invoice was forwarded through a third party. Moreover, the invoice might have been

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sent to a field office and then forwarded to the Accounting Department.

12. The General Committee experienced particular difficulties in obtaining invoices for expenses related to travel on Air Force I and II. Despite repeated requests from the General Committee, employees of the United States government took substantial time in generating invoices, and often invoices were delivered to the General Committee weeks or even months after the date on the invoice.

13. The Commission appears to have adopted inconsistent approaches between the Primary Committee and the General Committee with respect to the reporting of outstanding debts and obligations of less than $500. With respect to the Primary Committee, the Commission typically appears to have excluded single debts for less than $500 from the calculation of the invoices at issue. With respect to the General Committee, the Commission appears not to have excluded single debts for less than $500 in its calculation of the amount at issue. As a result, the total for the General Committee includes $27,556 in single debts for less than $500 that were paid within 60 days as required by Section 104.11(b).

14. Some national vendors, such as AT&T, provided services to numerous General Committee field offices and issued separate invoices from the vendor's own regional offices.

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15. After subtracting the invoices paid during the same reporting period as the date on the check authorization form as well as the expenses for less than $500 paid in a timely manner, the remaining invoices at issue amount to only $175,903.

16. Of the $203,459 in invoices that were not paid during the same reporting period as the date on the check authorization form, over 60 percent -- $128,099 -- are dated after October 14, 1992 and would not have been required to be disclosed prior to the general election even under the standard applied by the Commission. Indeed, half of all of the invoices at issue -- $507,387 -- are dated after the last period for which reports were due to the Commission prior to the general election.

17. The General Committee does not have funds available to pay any significant civil penalty. In order to raise such funds, the General Committee would have to engage in time consuming and burdensome fundraising activities that could easily cost as much as the net funds raised.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Alexandria, Virginia on November 4, 1996.

Keith A. Davis

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 13, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

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 January 25, 1994, the Commission found reason to believe that the Bush-Quayle '92 General Committee, Inc. (the "GEC") and J. Stanley Huckaby, as treasurer, 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 (MUR 3664). On September 10, 1996 the Commission found reason to believe that the Bush-Quayle Primary Committee, Inc. (the "Primary Committee") and J. Stanley Huckaby, as treasurer, 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 (MUR 4171). On the same date, 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 Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Committee") 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.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred in these matters.

The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of these matters. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may

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submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

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

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Brief

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BEFORE THE FEDERAL ELECTION COMMISSION

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

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

On January 25, 1994, the Commission found reason to believe that the Bush-Quayle '92 General Committee, Inc. (the "GEC") and J. Stanley Huckaby, as treasurer, 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 (MUR 3664).[1] The GEC responded to the reason to believe findings on October 25, 1993 and February 23, 1994, and requested that the matter be dismissed. The Commission denied the GEC's request on September 10, 1996.

On September 10, 1996 the Commission found reason to believe that the Bush-Quayle Primary Committee, Inc. (the "Primary Committee") and J. Stanley Huckaby, as treasurer, 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 (MUR 4171). On the same date, in MUR 4289, the Commission found reason to

[1] The Commission originally made the reason to believe findings in MUR 3664 on July 20, 1993. The subsequent findings were made following *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *petition for cert. dismissed for lack of jurisdiction*, 115 S.Ct. 537 (1994).

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believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b), and that the Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Committee") 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. On November 4, 1996 the Committees responded to the Commission's reason to believe findings in MURs 4171 and 4289, and the GEC reiterated its arguments to the Commission's findings in MUR 3664.[2]

The Primary Committee accepted excessive in-kind contributions in the form of staff advances from Robert Holt, an individual who volunteered fundraising services. The staff advances were not solely for Mr. Holt's travel and subsistence expenses and thus did not meet the regulatory exemptions to 11 C.F.R. § 116.5(b). The advances exceeded the individual contribution limitation by $12,598. 2 U.S.C. § 441a(a)(1)(A). Therefore, there is probable cause to believe that the Primary Committee violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions in the form of staff advances.

Moreover, the Primary Committee did not properly report $1,767,548 in debts and obligations as required by the FECA and Commission regulations.[3] 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.11(b). The Primary Committee did not report the amounts of its debts or estimates of the debts as of the date that the debts were incurred. Instead, the Primary Committee reported debts only after an invoice was received and the Primary Committee approved payment of the invoice. This procedure does not satisfy the reporting requirements of the Act and regulations. Moreover, the Primary Committee made no attempt to estimate its

[2] Throughout this Brief, "Committees" refers to the GEC, the Primary Committee and the Compliance Committee.

[3] Throughout this Brief, the "Act" and the "FECA" refer to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-55.

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debts. Therefore, there is probable cause to believe that the Primary Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report properly $1,767,548 in debts and obligations.

The GEC and the Compliance Committee followed the same incorrect reporting procedure as the Primary Committee. The GEC did not properly report $1,048,190 in debts related to travel on government aircraft, helicopters and ground transportation as required by law. 2 U.S.C. § 434(b)(8); 11 C.F.R. §§ 104.11(b) and 9004.7. In addition, the GEC did not properly report $737,908 in debts and obligations that were not related to travel. The GEC did not report the amounts of its debts or estimates of the debts as of the date that the debts were incurred, but waited until after an invoice was received and the GEC approved payment of the invoice to report each debt. Moreover, the GEC made no effort to estimate any of the debts before payment was approved. Therefore, there is probable cause to believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report properly $1,048,190 in travel-related debts and obligations and violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report properly $737,908 in non-travel related debts and obligations.

Finally, the Compliance Committee did not properly report $235,587 in debts and obligations as required by the Act and regulations. 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.11(b). Like the Primary Committee and the GEC, the Compliance Committee did not report the amounts of its debts or estimates of the debts as of the date that the debts were incurred. The Compliance Committee reported its debts only after it had received an invoice and approved payment of the debt and did not estimate any of its debts. Therefore, there is probable cause to believe that the Compliance Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report properly $235,587 in debts and obligations.

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II. ANALYSIS

A. 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). A contribution includes a gift, loan, advance, deposit of money, or anything of value. 2 U.S.C. § 431(8)(A)(i). No candidate or political 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 in-kind contributions and are, consequently, subject to the contribution limitations of 2 U.S.C. § 441a(a)(1)(A). 11 C.F.R. § 116.5(b). 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 his or her 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 the 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).

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Thus, even if an advance is for an individual's own travel expenses, it is still an in-kind contribution if the expenses are not reimbursed timely pursuant to 11 C.F.R. § 116.5(b). A staff advance in excess of the contribution limitations, which is not for exempt travel and subsistence reimbursed in a timely manner under 11 C.F.R. § 116.5(b), is an excessive in-kind contribution on the date that it is incurred. 11 C.F.R. § 116.5.

An individual, Robert B. Holt, provided fundraising services to the Primary Committee on a volunteer basis. Mr. Holt made advances of at least $12,598 in excess of the $1,000 individual contribution limitation in payments for travel, subsistence and campaign-related goods and services.[4] The Primary Committee eventually reimbursed all of these expenses.[5]

The Primary Committee argues that the staff advances by Mr. Holt were not excessive contributions because he was a commercial vendor who provided volunteer fundraising services but sought payment for associated travel and telephone expenses. 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. Moreover, the Primary Committee claims that most of Mr. Holt's expenditures were for transportation costs that were timely reimbursed, that the amount involved is overstated, and that the maximum outstanding balance was $5,500.

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

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

[5] 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.

services. *See* 11 C.F.R. §§ 116.1(c); 116.5(b). Based on the limited evidence provided by the Primary Committee, it appears that Mr. Holt is in the oil business, rather than a commercial vendor of fundraising services. 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 his travel and subsistence expenses and reimbursed in a timely manner. Thus, the advances were in-kind contributions from Mr. Holt to the Primary Committee which exceeded the individual contribution limitation by $12,598. 2 U.S.C. § 441a(a)(1)(A). Further, the Primary Committee has not provided any additional documentation to support its figures, while the Commission's Audit staff's calculations were based on all of the available documentation provided to the Commission during the audit of the Primary Committee.

Therefore, the Office of General Counsel recommends that the Commission find there is probable cause to believe that the Primary Committee violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions from Robert Holt.

B. REPORTING OF DEBTS AND OBLIGATIONS

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). Outstanding debts must be continuously reported until extinguished. 11 C.F.R. § 104.11(a). A debt or obligation includes a loan, written contract, written promise, or written agreement to make an expenditure. 11 C.F.R. § 104.11(b). A debt or obligation under $500 must be reported as of the time the payment is made, or no later than 60 days after it is incurred, whichever comes first. *Id.* Any debt or obligation 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.*

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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.*

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); 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).

The Primary Committee failed to report properly 76 obligations totaling $1,767,540 for a variety of campaign expenditures, including telephone charges, media, direct mail, travel, lodging, and computer consulting. The Primary Committee did not report these debts until it reported payment of the debts. The Primary Committee filed amended reports which materially disclosed the debts and obligations on August 12, 1994, 21 months after the general election.

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The GEC failed to report properly travel-related debts totaling $1,048,190 as required by the Act and the Commission's regulations.[6] The GEC did not report the travel-related debts when they were incurred, but first reported them only when it paid the debts.

The GEC paid a total of $459,992 for political passenger travel on Air Force I that occurred between August 17, 1992 and the day before the general election, November 2, 1992. The GEC paid a total of $396,455 for political passenger travel on Air Force II that occurred between August 21, 1992 and election day, November 3, 1992. Moreover, the GEC paid $52,752 for political passenger travel on other Air Force aircraft between September 2, 1992 and November 2, 1992. In addition, the GEC'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. The GEC's Schedule B-P reports also show seven payments totaling $110,902.13 to "Treasurer of United States/DOD Helicopters" or "U.S. Treasurer/Marine I" for campaign-related use of government-owned helicopters. The first of these payments, in the 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. Further, the GEC's Schedule B-P reports show four payments totaling $14,570 to "U.S. Treasurer/Limousines" or "U.S. Treasurer/Limousines/Vice

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[6] 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. Generally, trips by the President were identified and billed as Air Force I and trips made by the Vice President were identified and billed as Air Force II. Campaign-related trips by the First Lady, staff and advance personnel on aircraft provided by the United States Air Force were identified and billed as "Airlift Operations." Billings originated with the United States Air Force and were routed through the White House Military Office to the GEC. In most cases, bills included a passenger manifest for each flight and a summary memorandum listing passengers billable to the GEC.

President" for campaign-related ground transportation in government-owned vehicles.[7] 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. Thus, the GEC did not contemporaneously report any actual or estimated amounts for the debts it incurred for campaign-related use of Air Force I and Air Force II, other government airplanes, helicopters and ground transportation.

In addition to travel-related debts, the GEC failed to report properly other debts and obligations totaling $737,900 as of the time they were incurred. These debts were related to telephone charges, telemarketing, media, events, research, travel reimbursements, direct mail, and other campaign expenditures. Like the travel-related debts, the GEC only reported these debts at the time of payment.

Similarly, the Compliance Committee failed to report properly debts totaling $235,587 in accordance with the Act and the Commission's regulations. These obligations related to campaign expenditures such as long distance telephone, direct mail, printing of fundraising solicitations, and computer consulting. The Compliance Committee reported the debts only at the time of payment, not as of the date of incurrence. On September 7, 1994, 22 months after the general election, the GEC and Compliance Committee filed amended reports that materially disclosed their actual debts and obligations.

All of the Committees followed similar procedures in processing their debts and obligations. Under their procedures, a debt was not reported until the invoice had been received

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[7] These amounts do not include Airlift Operations and ground transportation debts incurred for less than $500 dollars. *See* 11 C.F.R. § 104.11(b).

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and payment of the invoice was approved. Thus, the Committees' procedure created a significant delay between the date that a debt was incurred and the public disclosure of that debt.

The Committees contend that they used best efforts to process debts and obligations systematically, and that their system prevented payment of invalid and fraudulent expenditures. They reiterate the argument they made during the audit that the debts and obligations did not have to be reported under 11 C.F.R. § 104.11(b) until the invoices were received and payment of the invoices was approved by the Committees.

However, the Committees are wrong. The Commission's regulations explicitly require committees to report debts as of the time of incurrence, not the date of the invoice or check authorization form, and to estimate the amount of the debt or obligation if they are unable to verify the correct amount. 11 C.F.R. § 104.11(b). The Committees' procedures do not comport with the regulations and do not release them from the reporting requirements of 11 C.F.R. § 104.11(b) or satisfy best efforts. Far from making best efforts to report their debts and obligations, the Committees did not even attempt to estimate any of their debts and obligations on their disclosure reports or to report any debts where the amount incurred was known before the invoice was received. Since the Committees did not report the correct amount or an estimate of debts when they were incurred, their disclosure reports did not accurately reflect the Committees' actual debts, and the goal of immediate and complete disclosure was undermined.

The Committees' concern that campaigns may receive invalid or even fraudulent invoices from vendors is legitimate, and is of particular concern to publicly-financed presidential campaigns where payment of invalid debts would result in non-qualified campaign expenses. Nevertheless, the regulations require reporting, not immediate payment, of debts and obligations. If a committee properly reports the exact amount or a reasonable estimate of a debt when it is

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incurred, the committee may revise the report later if any portion of the debt proves to be incorrect. 11 C.F.R. § 104.11(b).

The Committees contend that 11 C.F.R. § 104.11(b) only applies to debts and obligations related to written agreements, based on the language of the regulation: ". . . loan, written contract, written promise, or written agreement. . . ." The Committees assert that this interpretation is supported by settled rules of statutory construction and cite *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.

The Committees' contention is not supported by the language of the regulation, which states: "[a] debt or obligation, *including* a loan . . . ." 11 C.F.R. § 104.11(b) (emphasis added). "*Expressio unius*" does not apply in this situation because it would contradict the express language of the regulation. Reading the language in context reveals that the terms "debts" and "obligations" include but are not limited to the specifically enumerated sources. That conclusion is consistent with previous interpretations of the word "includes" in the FECA. *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, "It 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)).

The Committees further argue that the 1990 revision of the regulations that led to the current language in 11 C.F.R. § 104.11(b) was not intended to create a new burdensome

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reporting requirement for committees. Further, they contend that reporting debts as of the date of incurrence is pragmatically impossible and would lead to speculative and misleading reporting.

The regulation does not create an unduly burdensome reporting requirement because it permits committees to make a reasonable estimate of debts and obligations until the correct amount can be verified. Moreover, the requirement to report as of the date that a debt is incurred is not a new requirement. 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). Since 1990, the regulation has stated that committees must report debts "as of the date on which the obligation was incurred." 11 C.F.R. § 104.11(b) (1995). Although the language of the regulation changed, the meaning of the regulation did not. The Commission viewed "as of the time of the transaction" and "as of the date on which the obligation was incurred" as interchangeable terms. The Explanation and Justification for 11 C.F.R. § 104.11(b) (1990) discusses situations where reporting and estimation for debts not yet billed is required and states that "new language is also included which follows the current policy that if the 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) (affirming Commission policy set forth in Advisory Opinion ("AO") 1980-38). In addition, the Commission has previously rejected arguments that debts over $500 must be reported from a date other than "the date on which the debt was incurred."[8]

[8] 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 before it received an invoice for the 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).

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The argument that the regulation is not practicable and could lead to misleading reports is also not persuasive. Campaigns, particularly publicly-financed campaigns that must adhere to an expenditure limit, should be aware of the amount of their debts and obligations when they are incurred. Campaign officials must keep track of obligations simply to know how much money is available for future expenditures. Moreover, it is important that publicly-financed campaigns fully and accurately disclose the amounts of their debts and obligations to the public as of the date of incurrence so that the public may evaluate how the campaign is using public funds and whether the campaign is adhering to the expenditure limitations. If it is impossible to ascertain the exact amount of a debt, the regulation permits a committee to report a reasonable estimate of the debt. 11 C.F.R. § 104.11(b). Generally, it should not be difficult for a committee to determine a reasonable estimate. Moreover, it would be more misleading for a committee to fail to disclose a debt than for it to report the available information or a reasonable estimate.

The Committees claim that the Commission has not properly calculated the amount of the debts and obligations. They assert that the Commission's Audit staff incorrectly included single debts of the GEC under $500 totaling $27,556 and aggregated debts under $500 that the Primary Committee owed to vendors totaling $56,615. The Committees contend that these debts were properly reported within 60 days after the date of incurrence. Moreover, the Committees contend that the total amount should not include invoices that were paid in the same reporting period as the Committees received the invoices.

Again, the date of incurrence, not the date that the Committees received the invoice or issued a check authorization form, is the controlling date for reporting of the debt. 11 C.F.R. § 104.11(b). With respect to their argument concerning single debts and aggregated debts under $500, the Committees have provided no documentation to support their assertions that the

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Commission's Audit staff incorrectly calculated these figures. Nor have they provided documentation to support their own calculations. In any event, the amount of debts under $500 that the Committees argue is involved is approximately $84,000, which is a small fraction of the total amount in violation, approximately $3,700,000.

Therefore, the Office of General Counsel recommends that the Commission find probable cause to believe that the Primary Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to disclose properly its debts and obligations totaling $1,767,548. Moreover there is probable cause to believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report properly $1,048,190 in travel-related debts and obligations. There is further probable cause to believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report properly non-travel related debts and obligations totaling $737,908. Finally there is probable cause to believe that the Compliance Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to disclose properly $235,587 in debts and obligations.

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III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause 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;

2. Find probable cause 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 properly debts and obligations;

3. Find probable cause 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 properly travel-related debts and obligations;

4. Find probable cause to believe that the Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8), 11 C.F.R.

§§ 104.11(b) and 9004.7 by failing to report properly travel-related debts and obligations; and

5. Find probable cause 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 properly debts and obligations.

3/13/97
Date

Lawrence M. Noble
General Counsel

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THOMAS O. BARNETT
DIRECT DIAL NUMBER
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March 19, 1997

VIA HAND DELIVERY

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

MAR 19 3 05 PM '97

Re: MURs 3664, 4170, 4171, and 4289

Dear Ms. Painter:

We received on March 18, 1997, the General Counsel's brief in the above-referenced matters under review ("MURs") concerning the 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, the "Committees"). As we discussed by telephone today, the Committees request a 30-day extension of time until May 2, 1997, to respond to the General Counsel's brief.

The General Counsel's brief addresses five sets of issues raised in four separate MURs that, according to the General Counsel, involve substantial sums of money and large numbers of transactions. These issues require significant time and effort to address in a responsive brief. It also appears from an initial review of the brief that the General Counsel raises new factual issues that require investigation by the Committees.

Further, Bobby Burchfield, the principal counsel to the Committees in the MURs, has previous commitments -- including an arbitration hearing beginning next week that will continue past the current response date -- that will make it extraordinarily difficult for him to devote substantial attention to this matter until mid-April.

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While we are sensitive to the concern you expressed in our telephone conversation that the Commission does not grant extensions of time as a matter of course, the Committees have promptly responded to the Commission at each stage of the process and we do not make the request without due consideration. We respectfully submit that the circumstances warrant a full 30-day extension of time to respond (or, at the barest minimum, a 20-day extension) so that the Committees will have adequate time to prepare a fair response to the issues raised by the General Counsel's brief.

We appreciate your consideration of this request.

Sincerely,

Thomas O. Barnett

Thomas O. Barnett

cc: J. Stanley Huckaby

28043825216

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 27, 1997

VIA FACSIMILE AND CERTIFIED MAIL

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

RE: MURs 3664, 4171, 4289

Dear Mr. Barnett:

This is in response to your letter dated March 19, 1997, requesting an additional 30 days to submit your clients' response to the General Counsel's Brief.

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 is due by close of business on April 22, 1997.

If you have any questions, please call me at (202)219-3690.

Sincerely,

Delanie DeWitt Painter
by KH

Delanie DeWitt Painter
Attorney

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WASHINGTON, D.C. 20463

April 7, 1997

SENSITIVE

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman KBC
Associate General Counsel

SUBJECT: Bush-Quayle '92 Committees Request for Extension of Time - MURs 3664, 4171 and 4289

On March 13, 1997, the Office of General Counsel sent a General Counsel's Brief in Matters Under Review ("MUR") 3664, 4171 and 4289 to the Bush-Quayle '92 General Committee, Inc. (the "GEC") and J. Stanley Huckaby, as treasurer, the Bush-Quayle Primary Committee, Inc. (the "Primary Committee") and J. Stanley Huckaby, as treasurer, and the Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Committee") and J. Stanley Huckaby, as treasurer (collectively, the "Committees"). The Committees received the Brief on March 18, 1997, and their response was due in 15 days, on April 2, 1997.

On March 19, 1997, the Committees requested an extension of time of 30 days, until May 2, 1997, to respond to the General Counsel's Brief. Attachment. The reasons given for the extension request included counsel's conflicting work commitments including an arbitration hearing that would make it difficult for him to complete a response by the due date. The Committees contend that the circumstances warrant a 30-day extension of time, or "at barest minimum," a 20-day extension of time.

By letter dated March 27, 1997, this Office granted respondents a 20-day extension of time to respond to the General Counsel's Brief. The Committees provided detailed reasons that substantiate their need for an extension of time, and do not appear to be attempting to delay the enforcement process. However, given the age of these cases and the statute of limitations concerns, this Office concluded that the full 30-day extension of time requested by the Committees was not appropriate. Therefore, this Office has granted a 20-day extension of time to the Committees. The responsive brief is now due on April 22, 1997.

Attachment
Letter from Thomas O. Barnett, Esq. dated March 19, 1997

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April 22, 1997

VIA HAND DELIVERY

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

APR 22 4 35 PM '97

Re: MURs 3664, 4170, 4171, and 4289

Dear Ms. Painter:

You will find enclosed the response of the 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 to the General Counsel's brief in the above-referenced matters under review ("MURs").

Thank you for your attention to this matter.

Sincerely,

Bobby R. Burchfield

Enclosures

cc: J. Stanley Huckaby

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of 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	MURs 3664, 4171 and 4289

RESPONDENTS' OPPOSITION TO GENERAL COUNSEL'S BRIEF

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April 22, 1997

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of		
Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer,		
Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer,		MURs 3664, 4171 and 4189
Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer		

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RESPONDENTS' OPPOSITION TO GENERAL COUNSEL'S BRIEF

On March 18, 1997, the Bush-Quayle '92 Primary Committee, Inc. (the "Primary Committee"), Bush-Quayle '92 General Committee, Inc. (the "General Committee"), Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Committee"), and J. Stanley Huckaby, as treasurer of each (collectively, the "Committees"), received the General Counsel's Brief recommending that the Commission find probable cause to believe that the Committees violated the Federal Election Campaign Act in the above-referenced MURs. By letter dated March 27, 1997, the Commission granted the Committees an extension of time until April 22, 1997, to submit a responsive brief.

The General Counsel's arguments can be grouped into two sets of issues. First, the General Counsel takes the

position that the Primary Committee did not prepay the expenses of a campaign fundraiser, Mr. Robert Holt, and that, as a result, the Primary Committee received a transitory in-kind campaign contribution during the reimbursement period. Second, the General Counsel believes that the Committees did not properly report outstanding debts and obligations. In both instances, the timing of the action is the sole issue. The General Counsel confirms that the Committees fully reimbursed Mr. Holt for his expenses and that the Committees fully reported their expenditures. There has been no allegation, and of course there is no evidence, that any of the Committees intentionally violated the law.[1/]

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I. THE COMMISSION SHOULD TAKE NO FURTHER ACTION CONCERNING THE EXPENSE REIMBURSEMENT PROCEDURE FOR A CAMPAIGN FUNDRAISER.

The General Counsel recommends finding probable cause to believe that the Primary Committee temporarily received an in-kind contribution from Mr. Robert Holt, a campaign fundraiser, because his expenses were not paid in advance. (G.C. Br. at 5.)[2/] The Primary Committee

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1/ The Committees responded on November 4, 1996, to the Commission's reason-to-believe findings for these MURs and incorporate by reference those responses.

2/ The General Counsel does not identify the expenses of Mr. Holt that are the subject of the recommended probable cause finding. The Primary Committee requests that the Commission provide a statement listing each expenditure at issue and that the Primary Committee be allowed an opportunity to address the specific expenditures after receiving

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respectfully submits that the Commission should take no further action for two reasons.

A. Mr. Holt Was a Commercial Vendor

Commission regulations provide that:

> "[a] commercial vendor that is not a corporation may extend credit to a . . . political committee . . .[which] will not be considered a contribution . . . provided that the credit is extended in the ordinary course of the commercial vendor's business and the terms are substantially similar to the extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." (11 C.F.R. § 116.3.)

The Primary Committee's reimbursement of Mr. Holt's expenses complied with this regulation.

Mr. Holt provided the Primary Committee with fundraising services similar to those he provides to a variety of political campaigns as well as charitable and other organizations. (*See* Holt Decl. at ¶¶ 1-4, included as Ex. A.) These services were of a kind commonly purchased by campaigns from commercial vendors.[2/] Pursuant to his standard business

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[2/](...continued)
clarification from the Commission. In the meantime, the Primary Committee is responding on the assumption that the expenses include those identified in Attachment 4 to the Interim Audit Report of the Primary Committee dated April 1, 1994.

[3/] The Commission has reviewed and approved numerous instances in which political committees have obtained similar help from fundraising organizations. (*See, e.g.*, Adv. Op. 1991-32, Fed. Election Camp. Fin. Guide (CCH) ¶ 6048 at 11,787 (1992) (creating donor list and speaking with potential

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practice when travelling on behalf of clients, Mr. Holt submitted an invoice for any expenses incurred in providing his services to the campaign. (Holt Decl. at ¶ 4.) The Committee promptly paid each invoice upon receipt. The Commission staff has confirmed that Mr. Holt received full reimbursement for his expenses and that the longest "advance" remained outstanding for only 47 days (G.C. Br. at 5), and was promptly paid upon submission of an invoice. This practice was no more favorable than Mr. Holt's treatment of other campaigns and non-political organizations using his fundraising and other business services.

The General Counsel does not dispute that Mr. Holt's expenses were properly reimbursed if he was a commercial vendor. Rather, the General Counsel takes the position that Mr. Holt was not a commercial vendor because he "was volunteering his services" and because he "is in the oil business, rather than a commercial vendor of fundraising services." (G.C. Br. at 5-6.) We respectfully submit that neither fact disqualifies Mr. Holt from rendering services as a commercial vendor.

First, "commercial vendors" are defined as "any persons providing goods or services to a candidate or political committee whose usual and normal business involves

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2/ (...continued)
donors); Adv. Op. 1991-18, Fed. Election Camp. Fin. Guide (CCH) ¶ 6023 at 11,721 (1991) (calling potential donors); Adv. Op. 1992-24, Fed. Election Camp. Fin. Guide (CCH) ¶ 6067 at 11,830 (1992) (fundraising speeches).)

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the sale, rental, lease or provision of those goods or services." (11 C.F.R. § 116.1(c).) The regulations do not prohibit Mr. Holt, or any other individual commercial vendor, from donating his or her personal time. Indeed, the Commission has addressed numerous instances in which a "commercial" service is provided by an individual without charge. (*See, e.g.*, Adv. Op. 1980-42, Fed. Election Camp. Fin. Guide (CCH) ¶ 5507 at 10,583 (1980) (entertainer providing free service at a concert with reimbursement for expenses); Adv. Op. 1982-4, Fed. Election Camp. Fin. Guide (CCH) ¶ 5671 at 10,880 (1982) (donation of labor for office renovation).)

The Commission has advised in an analogous context that an accounting firm providing services as an in-kind contribution may extend credit for expenses to a political committee on the same terms provided to other clients. (*See* Adv. Op. 1991-37, Fed. Election Camp. Fin. Guide (CCH) ¶ 6040 at 11,763, 11,766 (1991) (allowing donee campaign to be charged for expenses while receiving accounting and other consultation services as an in-kind contribution). It makes no difference in terms of benefit to the campaign whether Mr. Holt incurred the expenses as a paid consultant or as a volunteer.[1/]

[1/] An interpretation of the commercial vendor regulation as inapplicable to volunteers would raise serious First Amendment concerns. It would, with no adequate justification, treat an individual commercial vendor that desired to volunteer for a

(continued...)

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Second, the fact that Mr. Holt also is in the oil business does disqualify him from commercial vendor status. We dare say that virtually all vendors of services to political campaigns engage in businesses other than those relating to political campaigns, and nothing in the regulation defining commercial vendor requires that the "usual and normal business" be the "exclusive" business. (See 11 C.F.R. § 116.1(c).) Mr. Holt's uncontradicted declaration establishes that he regularly provides fundraising services to a variety of political and charitable organizations on the same terms provided to the Primary Committee. (See Holt Decl. at ¶ 4.)[5/]

Because Mr. Holt was acting as a commercial vendor, the Primary Committee's reimbursement of his expenses conformed to Commission regulations.

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4/ (...continued)
campaign differently than such a vendor who was being paid. Moreover, the regulation as interpreted by the General Counsel would impose an unjustifiable burden on a campaign that accepted the service of a volunteer commercial vendor, thus restricting the campaign's First Amendment rights of speech and association.

5/ Nor does it matter whether Mr. Holt earns money through his fundraising activities. The regulation defining a commercial vendor explicitly includes individuals who "provide", but do not sell, rent, or lease, the goods or services at issue.

B. The Practice for Reimbursing Mr. Holt Provided No Significant Financial Benefit to the Primary Committee.

The Commission adopted the regulations concerning the extension of credit to campaigns:

> "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." (Analysis at 4, citing Explanation and Justification for 11 C.F.R. § 116.5(b), 55 Fed Reg. 26,382-83 (June 27, 1989).)

The Primary Committee received no significant financial benefit from the process for reimbursing Mr. Holt. All of Mr. Holt's campaign-related expenses were paid by the Primary Committee promptly upon receipt of the invoice. As observed above, no expense was outstanding for more than 47 days, and most for far less. At all times until Mr. Holt resigned from the Primary Committee in July 1992, the Primary Committee had a cash balance of millions of dollars. (See Davis Decl. at ¶ 5, Ex. B.) Because of the minimal average outstanding balance for Mr. Holt's expenses, the Primary Committee clearly intended to obtain no benefit from the timing of the reimbursement, and certainly obtained no such benefit.[5/] Further, Mr. Holt's expenses were duly included in the

[5/] The Primary Committee has recalculated the outstanding balance and concurs that the maximum outstanding balance was $12,598. This amount, however, is misleading. The typical outstanding balance was substantially less, usually less than half that amount. (See Davis Decl. at ¶ 5.)

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expenditure reports filed with the Commission. It is not plausible that the Primary Committee was seeking to "circumvent the contribution limitations" through its reimbursement procedures.

* * *

The Primary Committee respectfully submits that no violation occurred and that, even if the Commission were to conclude otherwise, the circumstances do not warrant any further action by the Commission.

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II. THE COMMISSION SHOULD TAKE NO FURTHER ACTION CONCERNING THE REPORTING OF DEBTS AND OBLIGATIONS.

The Committees are required to report the amount and nature of outstanding debts and obligations on a periodic basis. (See 2 U.S.C. § 434(b)(8); 11 C.F.R. § 104.11(a).) Debts and obligations in the amount of $500 or less must be reported at the time payment is made or within 60 days after the obligation is incurred, whichever comes first. "A debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure, the amount of which is over $500, shall be reported as of the date on which the debt or obligation is incurred, except [for certain recurring payments.]" (11 C.F.R. § 104.11(b).)

The General Counsel recommends finding probable cause to believe that each of the Committees violated these

provisions by failing to report debts and obligations "as of the date on which the debt or obligation [was] incurred." (G.C. Br. at 6 and 10.) The amounts questioned by the General Counsel are as follows:

Primary Committee	$1,767,548
General Committee	$1,786,098[1/]
Compliance Committee	$ 235,587

(G.C. Br. at 7-9.)

Although the General Counsel does not identify the specific debts and obligations included in its recommended finding, the Committees proceed on the assumption that the amounts at issue are those invoices listed on Attachment 6 to the Interim Audit Report of the Primary Committee (April 1, 1994), Attachment 2 to the Interim Audit Report of the General

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1/ Of this amount, the audit staff identified only $1,052,098 in invoices that were not reported within the same period in which the audit staff inferred, albeit incorrectly, that the underlying invoices were received by the Committees. Although less than clear, it appears that the General Counsel has added approximately $734,000 in General Committee expenditures for travel on government conveyances that the General Counsel believes should have been reported regardless of whether the General Committee had received an invoice. (*See* G.C. Br. at 8 and Factual and Legal Analysis for MUR 4289 at 2 (September 1996).) The calculations performed by Keith Davis with respect to the General Committee address the debts and obligations identified by the audit staff and attached to the Interim Audit Report. The audit staff reviewed, but did not question, the reporting of the travel invoices that the General Counsel has added to the total.

Committee (April 1, 1994), and Attachment 3 to the Interim Audit Report of the Compliance Committee (April 1, 1994).[1/]

Neither the General Counsel's Brief nor the Interim Audit Reports explain the method used to identify debts and obligations that should have been reported. The audit staff, from whose work the figures appear to be drawn, made the incorrect assumption that every invoice dated during the first three weeks or so of the month was received by the Committees during the month and should have been included in the disclosure report to the Commission for that month. The General Counsel, however, takes a different approach under which the Committees should have reported "debts as of the time of incurrence, not the date of the invoice or check authorization form, and to estimate the amount of the debt or obligation if they are unable to verify the correct amount." (G.C. Br. at 10.)[2/]

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[1/] The Committees renew their request (made in response to the Commission's reason-to-believe finding) that the Commission provide a schedule setting forth each debt and obligation that the Commission believes should have been reported along with an explanation of why the debt or obligation was included. In addition, the Committees request an opportunity to supplement their response in light of any information provided by the Commission.

[2/] As discussed in Section II.B below, the General Counsel interprets Section 104.11(b) in a manner inconsistent with past applications to other presidential campaigns, including the 1988 Bush campaign, without providing an adequate explanation for the change. (*Cf. Federal Election Commission v. Bush-Quayle '92 Primary Committee, Inc.*, 104 F.3d 448, 453-55 (D.C. Cir. 1997) (vacating Commission repayment determination for failure to explain a similar deviation from prior application of regulations).)

The Committees respectfully submit that the Commission should take no further action on this issue for several reasons: (i) the Committees used their best efforts to collect and process invoices and report expenditures and debts and obligations in a timely fashion; (ii) the standard proposed by the General Counsel is arbitrary and capricious; (iii) the invoices did not become "debts and obligations" within the meaning of Section 104.11(b) until after they were received and approved by the Committees, (iv) even if Section 104.11(b) does apply, the Commission has not properly calculated the debts and obligations that should have been disclosed, and (v) no civil penalty is warranted.

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A. The Committees Used Their Best Efforts to Report Expenditures and Debts and Obligations.

Both Congress and the Commission have recognized that providing all information required by the statute and regulations may, at times, be impossible. Accordingly, Congress provided (and Commission regulations reiterate):

> "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 record of such committee shall be considered in compliance with this Act . . .." (2 U.S.C. §432(i).)

The Committees exercised their best efforts promptly to comply with the reporting requirements for expenditures and debts and obligations.

The Committees took extensive measures, and spent substantial resources, to address these concerns while simultaneously seeking to ensure prompt payment and reporting of campaign expenditures and, where prompt payment was not made, to report outstanding debts and obligations. For example, the Primary and General Committees assigned field personnel to travel with the candidates and pay vendors during or immediately after each event. (*See* Davis Decl. at ¶ 6, Ex. B.) These expenditures were reported by facsimile to the Committees' headquarters and included on the next expenditure disclosure report to the Commission. (*Id.*)

When expenses could not be paid immediately, the Primary and General Committees' standard practice for processing and paying invoices was as follows: (i) vendors were instructed to submit all invoices to a special mailing address, which was checked daily by the national headquarters, or risk forfeiting the right to payment; (ii) if, however, the vendor did not use the special mailing address, Committee personnel were instructed immediately to forward invoices to the national headquarters; (iii) upon receipt, Committee personnel would prepare a check authorization form to confirm that each invoice was valid and, if so, submit the invoice to the Accounting Department; and (iv) upon receipt, the Accounting Department would date stamp the check authorization form and process a payment check within a few days, and often

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within 24 hours. (*See* Davis Decl. at ¶ 7.)[10/] The Compliance Committee followed the same procedure, with the exception that the Accounting Department did not date stamp the check authorization forms. (*See* Davis Decl. at ¶ 7.)

The Committees established this procedure not only to ensure prompt payment and reporting of expenditures, but also to ensure that fraudulent or otherwise invalid invoices were not paid and/or reported. (*See* Davis Decl. at ¶ 8.) A presidential campaign typically receives hundreds of thousands of dollars in invoices for expenses that either were never incurred or are not attributable to the presidential campaign. (*Id.*) For example, the Primary and General Committees received numerous invalid invoices from state party events for which the Committees were not responsible. (*Id.*)[11/] The General Counsel concedes that the Committees had a "legitimate" concern regarding the proper processing, verification, and payment of expenditures (at page 10).

The Committees consistently adhered to this procedure for paying invoices. Indeed, of the Primary

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[10/] This procedure is identical in material respects to the procedure used by the 1988 campaign of President Bush (*see* Davis Decl. at ¶ 17) and by the Clinton/Gore '92 campaign committee (*see* Report of the Audit Division on Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund at 27 (December 27, 1994)).

[11/] The General Counsel agrees (at page 10) that concern over the receipt of "invalid or even fraudulent invoices from vendors is legitimate," but argues that the concern is limited to payment of such invoices. The reporting of invalid or fraudulent invoices, however, would undermine the goal of accurate disclosure.

Committee invoices that the audit staff identified during the post-election audit process as not reported as a debt or obligation, all but $12,893 were paid within and reported for the same reporting period in which the Accounting Department received the invoice. (Davis Decl. at ¶ 9.)[12] Similarly for the General Committee, only 5 percent of the expenditures challenged by the audit staff (or $55,653) were not paid within and reported for the same reporting period in which the Accounting Department received the invoice. (*Id.*) For the Compliance Committee, all but three invoices (totalling $30,386) were paid within and reported for the same reporting period in which the check authorization form was dated. (*Id.*)

The system was extremely successful. Overall, the Primary Committee made expenditures in excess of $38 million, and over 98 percent of those expenditures either were not questioned by the Commission or were paid within the same reporting period as the first indication that the Primary Committee had received the invoice (*i.e.* the date on the check authorization form). (*Id.* at ¶¶ 11 and 13.) For both the General and Compliance Committees, the figure is over 99 percent. (*Id.* at ¶¶ 9, 11, and 13.)[13] The General

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[12] In the relatively few instances in which the Accounting Department was unable promptly to process an invoice, each Committee reported the debt on the next disclosure report. (*Id.*)

[13] Most check authorization forms have two dates. The first is the date placed on the form by campaign personnel responsible for determining the validity of the invoice. (*Id.* (continued...)

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Counsel's assertion that the Committees "did not even attempt to estimate" certain debts and obligations (*see* G.C. Br. at 10) ignores the extensive efforts made to collect, process, and pay invoices so that they were reported as expenditures in the reporting period.

The reasonableness of the Committees' approach is underscored by the use of a similar system by Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund. The Clinton campaign explained its reporting method as follows:

> "[T]he Committee's accounting staff which was responsible for entering debts and compiling the information to produce the debt schedules had no information concerning those debts until such time as the information regarding the debts was submitted to the accounting department. The Committee is somewhat mystified as to how it was supposed to know about debts prior to the time they were entered into the accounting system." (Final Audit Report at 27 (December 27, 1994).)[11/]

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11/ (...continued)
at ¶ 17.) The second date is the date stamp placed on the form by the Accounting Department after the invoice was validated. (*Id.*) Although the Accounting Department date stamp is the proper basis for determining when a debt was outstanding and reportable, the figures in the text use the earlier date and demonstrate the prompt processing of the invoices by each Committee.

11/ The Committees do not know what actions the Commission may have taken with respect to the Clinton/Gore campaign on this issue. If, however, the Commission has decided not to pursue the issue for the Clinton/Gore campaign, the Committees urge the Commission to treat the Bush-Quayle Committees consistently.

All of the Committees' substantial efforts were made in a good faith attempt to collect and report the information required by the statute and the regulations. If, in hindsight, the Commission would have preferred that the Committees establish a different system, this judgment should not distract the Commission from the extensive efforts that were made by the Committees. Nor should the Commission lose sight of the past practice, such as that approved for the 1988 Bush campaign, upon which the Committees reasonably were relying during the 1992 election cycle. Congress recognized that practical difficulties would arise and sought through the "best efforts" provision to give credit to political committees striving in good faith to comply with the federal election laws. We respectfully submit that the Commission should apply the "best efforts" provision as it was intended and take no further action in this regard.[15/]

B. The Standard Proposed by the General Counsel Is Arbitrary and Capricious.

The General Counsel takes the position that the Committees "must report debts as of the time of incurrence, not the date of the invoice or check authorization form, and to estimate the amount of the debt or obligation if they are

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[15/] A decision to take no further action would be consistent with the Commission's treatment of other alleged violations of the requirement to report debts and obligations cited in the General Counsel's brief (at p. 12 n.8). In MURs 2706 and 3494, for example, the Commission took no further action after making a reason-to-believe finding.

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unable to verify the correct amount." (G.C. Br. at 10.) Put simply, no campaign, and especially not a presidential campaign, could meet this standard. Presidential campaigns spend millions of dollars in a matter of months. The General Committee, for example, expended over $50 million in just three months. (*See* Davis Decl. at ¶ 15.) These expenditures were "incurred" in locations spread across the country by hundreds of field personnel in thousands of transactions. (*Id.* at ¶ 14.) It is simply not possible for a political committee to know -- or to estimate -- the expenditures at the time each is incurred.[16/]

The Commission should reject the interpretation proposed by the General Counsel for at least two reasons.

First, to our knowledge, the Commission has never applied the standard in the strict form posited by the General Counsel. Keith Davis confirms that the Commission has never in his 17 years of experience required any campaign with which he has been involved to report each and every debt and obligation over $500 as of the time each was incurred, regardless of whether an invoice had been received. (Davis Decl. at ¶ 16.) Rather, both before and after the 1992

16/ The General Counsel suggests that presidential committees can reasonably estimate expenditures at any time because they must "be aware of the amount of their debts and obligations when they are incurred" so as to stay within the overall expenditure limit. (G.C. Br. at 13.) The expenditure limit may require political committees to establish overall budgets, but committees do not, and cannot, track specific debts in all amounts over $500 as they are "incurred."

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election cycle, the Commission has accepted reasonable efforts to report debts and obligations as soon as the accounting department in the campaign became aware of them. *(Id.)*

Taking the specific example of travel on Air Force I and Air Force II, in each of the four presidential elections between 1976 and 1992 at least one of the candidates used government conveyance for campaign travel. Neither the 1988 campaign of then-Vice President Bush nor, to our knowledge, any other campaign since the passage of the Federal Election Campaign Finance Act has reported estimates of unbilled costs incurred for Air Force I and Air Force II. (*Id.* at ¶ 17.) In 1988, President Bush's campaign experienced difficulties obtaining invoices from U.S. government employees similar to those experienced by the Committees in 1992. (*Id.*) The 1988 Bush campaign -- like the 1992 campaign -- did not report such expenditures until after the accounting department received invoices. (*Id.*) Because many of the invoices were not received until weeks or months after the November 1988 election, the underlying expenditures also were not reported until after the election. (*Id.*) Notwithstanding the full disclosure of this practice to the Commission audit staff, the Commission raised no objection. (*Id.*)

The General Counsel provides no justification for deviating from the Commission's prior practice.[17/] To the

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17/ The three MURs cited by the General Counsel (at page 12 n.8.) do not support the recommended finding. In MUR 3494, (continued...)

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contrary, the General Counsel confirms that the regulation in effect during the 1988 election cycle -- requiring debts and obligations to be reported "as of the time of the transaction" -- has the same meaning as the 1992 and 1996 version of the regulation -- requiring reports "as of the date on which the obligation was incurred." (*See* G. C. Br. at 12.) Adopting a new interpretation of the regulation without adequate justification will not withstand judicial scrutiny. As the D.C. Circuit only recently admonished:

> "[A]n agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or

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12/(...continued)
the General Counsel's Report takes the position that a computer lease entered into in May 1990 "should have been reported as a debt and an expenditure as of the date of that writing." (First General Counsel's Report at 16 (December 7, 1992) (emphasis added).) Further, notwithstanding the existence of a written contract that went unreported from May 1990 until after the general election, the Commission ultimately took no action and closed the file.

In MUR 2706, the General Counsel recommended taking no action against the campaign for failure to report an outstanding debt because the campaign "did not receive an invoice for the services conducted by . . . the last day of the . . . reporting period." (First General Counsel's Report at 8 (February 7, 1989).) The Commission accepted the recommendation and took no further action.

In MUR 2304, the campaign acknowledged that it had received invoices for approximately $150,000 of the expenditures at issue that "should have been reported as debts and were not." (General Counsel's Report at 3-4 (May 22, 1987).) The Commission entered into a conciliation agreement that resolved the alleged failure to report $225,733 in debts along with $7,050 in illegal contributions for payment of a civil penalty of only $1,500. (Conciliation Agreement for MUR 2304 (May 5, 1988).)

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> swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." *Bush-Quayle '92 Primary Committee, Inc. v. Federal Election Commission*, 104 F.3d 448, 453 (D.C. Cir. 1997) (*quoting Greater Boston Tel. Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir.), *cert. denied*, 403 U.S. 923 (1971)).

Where, as here, the Commission has approved, both before and after the 1992 election cycle, reporting practices by political committees similar to those adopted by the Committees, the Commission should take no further action with respect to this issue.

Second, adoption of the General Counsel's interpretation would impose a crippling burden on political campaigns. (Davis Decl. at ¶¶ 14-15.) The burden not only would impermissibly infringe protected political speech activities, but also would create an unacceptable risk of arbitrary or discriminatory enforcement -- a risk amply illustrated by the current proceedings. The General Counsel simultaneously has adopted two inconsistent standards in the same investigation. In the Factual and Legal Analyses for the reason-to-believe findings in MURS 4170, 4171 and 4289, the General Counsel explained that 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 [Committee] received invoices." (*E.g.*, Factual and Legal Analysis for MUR 4289 at 2 (September 1996).) At the same time, the General Counsel has included travel-related debts

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regardless of whether the General Committee had received invoices. (G.C. Br. at 8.) Indeed, the audit staff presumably passed over many of the same travel invoices that the General Counsel now seeks to include.

A regulation that grants unfettered discretion to an enforcement authority will not be upheld precisely because it allows such arbitrary enforcement. In an analogous context, the Supreme Court has explained as follows:

> "[W]e have recognized recently that the more important aspect of the vagueness doctrine 'is not actual notice, but the other principal element of the doctrine -- the requirement that a legislature establish minimal guidelines to govern law enforcement.' Where the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors and juries to pursue their personal predilections.'" *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (internal citations omitted).[12]

Here, the Committees did not know before the election (and, in view of the inconsistency between the audit staff and the General Counsel, still do not know) what standard will be applied to reporting of debts and obligations.

The Commission should reject the interpretation of the General Counsel and continue to apply Section 104.11(b) to allow political committees to report expenditures, debts, and

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[12] *See also Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) ("ordinance is void for vagueness, both in the sense that it fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute and because it encourages arbitrary and erratic arrests and convictions.") (citations omitted).

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obligations as they reasonably become aware of them. Any other approach would constitute an unnecessary, and impermissible, burden on protected First Amendment activities.

C. The Invoices Did Not Become "Debts and Obligations" Under Section 104.11(b) Until After Being Reviewed and Approved by the Committees.

The General Counsel recommends finding probable cause to believe that the Committees violated Section 104.11(b), which provides for the reporting of debts and obligations, "including a loan, written contract, written promise or written agreement to make an expenditure." (11 C.F.R. § 104.11(b) (emphasis added).) The omission of the adjective "written" before "loan" is inconsequential, since the regulations make clear that a loan must be "evidenced by a written instrument." (*See* 11 C.F.R. §§ 100.7(b)(11) and 100.8(b)(12).) These examples of written debts serve to limit the scope of the regulation to similar situations. (*See, e.g., Hawkeye Chemical Co. v. St. Paul Fire & Marine Ins. Co.*, 510 F.2d 322, 327 (7th Cir.), *cert. denied*, 421 U.S. 965 (1975).) Thus, the requirement to report outstanding "debts and obligations" under Section 104.11(b) is limited to situations in which the political committee has made a written promise or a written agreement to make an expenditure. Then, and only then, will the reporting committee have a reasonably definite basis for determining the amount of its unbilled obligation. This is the way the Commission has always applied

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the regulation in the past. (*See* Davis Decl. at ¶ 16; MURs 2304, 2706, and 3494 discussed in note 17 above.)

Applying the regulation to the expenditures at issue here, there was no written promise or written agreement by the Committees until they had <u>received and approved</u> the invoice for payment.[19/] Accordingly, these expenditures did not become reportable "debts and obligations" within the meaning of Section 104.11(b) until each invoice was received by the Accounting Department, which is indicated by the departmental date stamp on the check authorization form.[20/] The Committees complied with this standard. (*See* Davis Decl. at ¶ 9.)

The General Counsel argues that "in context ... the terms 'debts and 'obligations' include but are not limited to the specifically enumerated sources." (G.C. Br. at 11). The context of the regulation, however, indicates that it was not intended to impose such an extraordinarily burdensome

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19/ The mere issuance of an invoice by a vendor, the event upon which the audit staff appears to have relied, represents no more than a <u>request</u> for payment by the vendor that may, or may not, reflect a promise or agreement by the recipient Committee. As discussed above, political committees receive significant numbers of invalid invoices. It does not, in any event, reflect a <u>written</u> promise or agreement by the Committees until it is approved.

20/ This interpretation is consistent with the actions of the Clinton/Gore campaign, which did not report outstanding invoices until received by the accounting personnel who prepared disclosure reports.

reporting requirement.[21/] The General Counsel agrees that the Commission did not intend to impose any new reporting requirement when it promulgated the current version of Section 104.11(b) in 1990. (G.C. Br. at 12.) This concession is critical.

As observed above, the Commission has never consistently applied the regulation in the manner now proposed by the General Counsel. Indeed, our research has not identified a single presidential committee for which the Commission has sought to enforce an obligation to report debts and obligations as the General Counsel recommends here.

The Commission has not consistently applied the standard proposed by the General Counsel because, as discussed above, it would be impossible to meet. The Committees incurred expenses on a massive scale without a contemporaneous written agreement or written promise. (*See* Davis Decl. at ¶ 14-15.) It would be virtually impossible for the Treasurer to monitor expenses as they are incurred by each individual. Moreover, the Treasurer would have no basis for providing any

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[21/] The decision in *FEC* v. *Massachusetts Citizens for Life*, 769 F.2d 13, 17 (1st Cir. 1985), *aff'd*, 479 U.S. 238 (1986), cited by the General Counsel at p. 11, merely holds that the term "includes" may not limit the statutory meaning where the context indicates such limitation was not intended. As discussed in the text, the context of § 104.11(b), and the Commission's past and present application of it, indicate that no broader meaning was intended. Further, the Committees should not be subject to civil penalties for relying on a reasonable interpretation of the statute, even if the Commission adopts another interpretation. (*Cf. General Electric Co.* v. *U.S. E.P.A.*, 53 F.3d 1324, 1333-34 (D.C. Cir. 1995).)

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meaningful estimate of expenditures of which it was not yet aware.[22/] If political committees did provide speculative estimates without any basis, the result would be an unintelligible mass of information that would be confusing and misleading. Speculative estimates also would be subject to abuse. By providing inflated "estimates," for example, committees could mask their financial status, hoarding millions of dollars for a last-minute campaign blitz. In contrast, where the committee -- as opposed to a vendor -- produces or affirms a written document promising or agreeing to make an expenditure, it can far more reasonably be charged with knowledge of, and a contemporaneous obligation to disclose, the promise or agreement.

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D. The General Counsel's Recommendation Is Based on Flawed Audit Staff Calculations.

The amounts in the General Counsel's brief are based on calculations performed by the audit staff that are flawed for two reasons.

1. The Audit Staff Did Not Properly Determine the Date on Which the Committees Received Invoices.

22/ The General Counsel believes that its interpretation of the regulation is not unduly burdensome because a committee can make a "reasonable estimate of debts and obligations until the correct amount can be verified." (G.C. Br. at 12.) This response does not explain what basis the Committees should have used to provide estimates of debts, many of which the Accounting Department was not even aware of at the time the General Counsel believes the debts should have been reported.

Although the General Counsel now argues that the date on which the Committees received an invoice is not relevant -- only the date of "incurrence" matters -- the calculations of the audit staff (and the Commission's reason-to-believe finding) were based on the assumption that a violation had occurred "where payments were not reported until reporting periods after the ones in which the . . . Committee received invoices." (*E.g.*, Factual and Legal Analysis for MUR 4171 at 9 (September 1996).) These calculations are flawed because the audit staff used an improper method for inferring the date the Committees received invoices.[22/]

During the post-election audit process, the Commission audit staff indicated that it was assuming that the Committees received each invoice within several days of the date on the invoice. (*See* Davis Decl. at ¶ 19.) Contrary to the assumption of the audit staff, the date the invoice was prepared is not a reliable indication of when it was received by the Committees. For example, vendors frequently prepare invoices days in advance of posting them in the mail. (*Id.*) Delivery, especially from vendors outside the Washington, D.C. area, can take a week or more after posting. (*Id.*) Further, notwithstanding the Committees' explicit instructions to use a

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22/ The General Counsel has sought to avoid the problem of determining when invoices were received by interpreting the regulation to require reporting even before the receipt of the invoice. As discussed above, however, this interpretation is an insupportable standard that has never been consistently applied by the Commission.

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special mailing address, sometimes an invoice was sent to the wrong address or simply not delivered. (*Id.*) In other instances, again contrary to instructions, the invoice was forwarded through a third party. (*Id.*) Moreover, also contrary to instructions, the invoice might have been sent to a field office and then had to be forwarded to the Accounting Department. (*Id.*)

The General Committee encountered particular difficulty in obtaining invoices for travel on government conveyances, including Air Force I and Air Force II. Despite repeated requests from the General Committee, employees of the U.S. government took substantial time preparing invoices. (*Id.* at ¶ 20.) Many of these invoices arrived weeks or even months after the date on the invoice. (*Id.*) Nor, even if it had been aware of a reporting requirement, could the General Committee have generated reasonable estimates of such expenditures. In its final audit report, the Commission acknowledged the "inherent difficulties" in determining the amounts due even <u>after</u> the invoice had been received; the difficulties existing before receiving the invoices were imponderably severe. (*See* Final Audit Report of the General Committee at 7 (December 27, 1994).)[24/]

[24/] As discussed above, the same problems arose in obtaining campaign-related travel invoices in 1988 for travel on Air Force II by then-Vice President Bush. (Davis Decl. at ¶ 17.) The campaign in 1988 did not report these expenditures until after receiving the invoices -- often well after the general election -- and the Commission raised no objection during the post-election audit. (*Id.*)

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The first confirmation of the date of receipt by a Committee appears on the check authorization form that was completed at the outset of the review process. The Committees have calculated that the following amounts of the invoices at issue were paid within the same reporting period as the date on the check authorization form:

Primary Committee:	$1,192,843
General Committee:	$ 848,639
Compliance Committee:	$ 205,201

(*See* Davis Decl. at ¶¶ 9 and 13.)[25/]

2. The Audit Staff Improperly Included Debts and Obligations for Less than $500 That Were Paid and Reported in a Timely Manner.

Section 104.11(b) does not require a debt or obligation for less than $500 to be reported until "the time payment is made or no later than 60 days after such obligation is incurred, whichever comes first." (11 C.F.R. § 104.11(b).) Based on a review of the records, the General Counsel appears to have excluded many debts for less than $500, but nonetheless included approximately $84,000 in such debts that were paid within 60 days. These debts also should be excluded from the invoices at issue. (*See* Davis Decl. at ¶ 21.)

25/ Although the Commission audit staff had full access to these invoices, the General Counsel claims that these calculations have not been adequately documented by the Committees. The supporting documents are included as Exhibits C, D, and E so that the Commission may perform its own calculations.

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The General Counsel appears to have included these smaller amounts because it erroneously aggregated debts and obligations for each vendor. Section 104.11(b), however, addresses single debts or obligations and makes no provision for aggregation by vendor. The General Counsel does not dispute that these amounts should be excluded, but states that the Committees have provided insufficient documentation to support the calculations. (G.C. Br. at 13-14.) The invoices are included in Exhibits C, D, and E to this response, so the Commission staff may perform its own calculations.

* * *

After eliminating invoices paid during the same reporting period as the date on the check authorization form and those for less than $500 paid in a timely manner, the disclosure of only the following amounts in debts and obligations remains at issue:

Primary Committee:	$ 518,090
General Committee:	$ 175,903
Compliance Committee:	$ 30,386

(*See* Davis Decl. at ¶¶ 23, 24, and 25.) The Committees respectfully submit that, at a minimum, the Commission should limit its consideration of any further action to these invoices.

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E. Even If the Commission Were To Find Probable Cause to Believe that the Committees Are in Violation of the Reporting Requirement in Section 104.11(b), No Civil Penalty Is Warranted.

As a final consideration, in assessing whether to take further action, the Commission should consider those factors that a district court uses to evaluate whether a civil sanction is warranted:

> "(1) the good or bad faith of the defendants; (2) the injury to the public; (3) the defendant's ability to pay; (4) the necessity of vindicating the authority of the responsible federal agency." *Federal Election Commission v. Furgatch*, 869 F.2d 1256, 1258 (9th Cir. 1989).

Applying these factors to the present case indicates that no sanction is warranted.

First, the Committees undertook substantial efforts to collect and report the information at issue. Indeed, there is no suggestion that the Committees acted in anything less than utmost good faith. The Committees' practice gave them no financial benefit or advantage over the opposition; all bills were paid, and all expenditures were reported. Further, in the interest of cooperation, but without conceding error, the Committees filed "amended reports which materially disclosed the debts and obligations" identified by the Commission during the post-election audit process. (G.C. Br. at 7 and 9.)

Second, the issue concerns only the timing of disclosure, not the failure to disclose, much less acceptance of illegal contributions or exceeding of expenditure limits.

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Put into perspective, the issues raised by the General Counsel do not warrant significant sanctions. To begin with, the Committees followed well-established practices reviewed and approved by the audit staff in prior audits. (*See* pp. 17-18 above; Davis Decl. ¶ 16-17.) Moreover, over 98 percent of the Primary Committee's total expenditures and over 99 percent of the General and Compliance Committees' expenditures either were not questioned during the post-election audit process or were reported as expenditures at least for the reporting period following the date of the invoice. (Davis Decl. at ¶ 11 and 13.) With respect to the invoices at issue, the majority were reported as expenditures during the reporting period immediately following the period in which the invoices were dated. (*Id.* at ¶ 13.)

It is also noteworthy that, since a substantial part of the invoices at issue were created and received after the last reporting period before the election at issue (*e.g.*, *id.* at ¶ 26), there was no intent or effect of depriving voters of information pertinent to their votes.

Third, imposition of a civil fine would require the Primary and Compliance Committees to engage in expensive and

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burdensome fundraising activities that could cost as much as the net amount raised. (*See* Davis Decl. at ¶ 27-28.)

Fourth, where, as here, the Committees have filed amended reports and responded to the requests of the Commission during the post-election audit, there is no further need to vindicate the authority of the Commission. Nor, given the five years that have passed and the withdrawal of President Bush and the Committees from the political process, is there any need for prospective relief.

This case is similar in important respects to that in *Federal Election Commission v. National Education Association*, 457 F. Supp. 1102 (D.D.C. 1978). In NEA, the organization had adopted a "reverse check-off" system for collecting political contributions from its members. Although the court held "that reverse check-off is a per se violation of [the federal election laws]," it nonetheless ordered the NEA only to return money to members that wanted a refund and declined the Commission's request to assess a civil penalty. The court explained that:

> "[the] violation is not in the nature of intentional disregard of the rights of its dissenting members through coercion, threats, and reprisals. Rather, it is indirect infringement of those rights through excessive zeal in trying to have a more efficient collection system." *Id.* at 1112.

Similarly, the Committees did not intentionally disregard their obligations. To the contrary, they established an efficient accounting system that, they believed, would meet

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the requirements of the federal election laws without imposing an undue burden on the campaign.

As a final consideration, the Commission's treatment of the non-presidential committees in the MURs cited by the General Counsel (at p. 12 n.8) further supports a decision to take no further action in this case. In MUR 2706, the Commission took no enforcement action against the committee for the failure to report the debts and obligations at issue. The Commission also took no action on the debts and obligations issue in MUR 3494 despite the existence of a written contract in May 1990 that was not reported until after the general election. In MUR 2304, the committee was alleged to have received $7,500 in illegal contributions and to have failed to report debts and obligations of $225,000. The Commission resolved both issues in the MUR by entering into a conciliation agreement with a civil penalty of only $1,500.

It would, we respectfully submit, be disproportionate and unfair for the Commission to seek substantial civil penalties against the Committees in light of their good faith efforts to report all expenditures and debts and obligations as required by law.

* * *

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For the reasons set forth above, the Commission should find that no violations have occurred and/or close the investigations.[12/]

Respectfully submitted,

Bobby R. Burchfield
Thomas O. Barnett

COVINGTON & BURLING
P.O. Box 7566
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-5000

Attorneys for Respondents

April 22, 1997

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12/ The Committees also request that the Commission take due consideration of the statute of limitations that would apply to any enforcement proceedings.

VERIFICATION

I DECLARE UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

J. Stanley Huckaby

Dated: April 22, 1997

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EXHIBIT A

ROBERT B. HOLT
OIL PROPERTIES
MIDLAND, TEXAS 79705
TEL. (915) 682-6822
FAX (915) 682-7999

STATEMENT BY ROBERT B. HOLT

1. My name is Robert B. Holt. From September 1991 through July 1992, I served as Finance Chairman of the Bush-Quayle '92 Primary Committee, Inc. During that period, I spent more than half my time fundraising for President George Bush's reelection campaign.

2. Immediately after resigning as Finance Chairman of the Bush-Quayle '92 Primary Committee, Inc., in late July 1992, I began fundraising with the Republican National Committee for its Victory '92 effort. From late July 1992 through the election on November 3, I spent more than half my time engaged in fundraising for Victory '92.

3. I have also been involved in fundraising for George Bush's previous campaigns and for the 1989 Presidential Inaugural. For years, I have done fundraising for the Republican National Committee and for its Eagles program. Recently, I have agreed to serve as Finance Chairman for George W. Bush's campaign for Governor of Texas.

4. I conduct my fundraising activities on a volunteer basis. When the federal election laws are applicable, and consistent with my understanding of them, I always seek payment for travel and telephone expenses from the entity on whose behalf these expenses are incurred. My assistant send invoices to that entity on letterhead bearing the name "Robert B. Holt", my business name. When I receive payment of the invoices, the proceeds are deposited into my checking account, and all expenses are paid out of that checking account. This account is used for all of my business and volunteer activity. Any reimbursement for business or volunteer activity flows through this account as in a normal commercial transaction.

I DECLARE UNDER PENALTY OF PERJURY under the laws of the United States of America that the foregoing is true and correct.

Executed on October 21, 1993

Robert B. Holt

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EXHIBIT 2

DECLARATION OF KEITH A. DAVIS

In accordance with 28 U.S.C. § 1746, I, Keith A. Davis, hereby declare as follows:

1. During the 1992 Presidential election campaign, I served as Assistant Treasurer to the Bush-Quayle '92 Primary Committee, Inc. ("the Primary Committee"), Bush-Quayle '92 General Committee, Inc. ("the General Committee"), and Bush-Quayle '92 Compliance Committee, Inc. ("the Compliance Committee") (collectively, the "Committees"). As part of my responsibilities, I was involved with virtually every aspect of the finances of the Committees. This declaration is based upon my personal knowledge.

2. I have more than 17 years of experience working with political committees in their efforts to comply with the federal election laws and have been involved with numerous post-election audits of political committees by the Commission. In 1988, for example, I served as Assistant Treasurer to the presidential primary and general election campaign committees for then-Vice President Bush and was the principal contact with the Commission during the post-election audits. Similarly, in 1996, I served as Treasurer to one presidential campaign committee and have been involved in the post-election audits of that committee as well as several other committees.

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3. Mr. Robert Holt provided fundraising services to the Primary Committee that were typical of the services that the Primary Committee, as well as other campaigns with which I have experience, purchased from commercial vendors. For example, he developed a fundraising strategy, contacted potential donors, recruited individuals to serve on the Finance Committee, gave speeches, and provided advice to the candidates. Mr. Holt devoted over half of his time to fundraising responsibilities during much of the 1992 primary campaign. It was the Primary Committee's understanding that Mr. Holt provided these services in the same manner he has provided similar services to other political and charitable organizations. For example, Mr. Holt provided similar services on the same basis to President Bush's 1988 primary campaign.

4. Although he chose to volunteer his time, Mr. Holt submitted invoices to the Primary Committee for his expenses as did other vendors. The Primary Committee paid and reported each invoice on a timely basis. Accordingly, the Primary Committee treated Mr. Holt as a commercial vendor, notwithstanding his choice to volunteer his time.

5. The Primary Committee had a cash balance of millions of dollars from the beginning of the primary campaign through early August 1992. The Commission states in its Analysis that the maximum outstanding balance owed to Mr. Holt was $12,598. The average outstanding balance was much lower, usually less than half that amount. Even at its maximum

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balance, and considering the period it was outstanding, this balance provided no, or at most a negligible, financial benefit to the Primary Committee.

6. Each of the Committees took extensive measures, and spent substantial resources, to ensure prompt payment and reporting of campaign expenditures and, where prompt payment was not made, to report outstanding debts and obligations. For example, the Primary and General Committees assigned field personnel to travel with the candidates and pay vendors during or immediately after each event. These expenditures were reported daily by facsimile to the Committees' national headquarters and included on the next expenditure disclosure report to the Commission. The purpose and intent of the Committees throughout the process was to report in good faith all expenditures and debts and obligations in the manner and time required by the statute and regulations.

7. Where expenses could not be paid immediately, the Primary and General Committees' standard practice for processing and paying invoices was as follows: (i) vendors were instructed to use a special mailing address, which was checked daily by the national headquarters, or risk forfeiting the right to payment; (ii) if, however, the vendor did not use the special mailing address, Committee personnel were instructed to forward invoices immediately to the national headquarters; (iii) upon receipt, Committee personnel would complete a check authorization form and submit the invoices, if approved, to the Accounting Department; and (iv) upon

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receipt, the Accounting Department would date stamp the invoice and process a payment check within a few days, and often within 24 hours. The Compliance Committee followed the same procedure, with the exception that its Accounting Department did not place a date stamp on the check authorization forms.

8. The Committees established this procedure not only to ensure prompt payment and reporting of expenditures, but also to ensure that fraudulent or otherwise invalid invoices were not paid and/or reported. A presidential campaign typically receives hundreds of thousands of dollars in invoices for expenses that either were never incurred or were not attributable to the presidential campaign. For example, the Primary and General Committees received numerous invalid invoices from state party events for which the Committees were not responsible. Reporting invalid invoices requires amendments to reports, which involves considerable administrative time and expense. Moreover, a report that includes invoices ultimately determined to be invalid is as misleading as a report that omits valid invoices.

9. The Committees consistently adhered to their procedure for paying invoices. Of the invoices identified by the audit staff during the post-election audit process as not timely reported as debts or obligations by the Committees, the vast majority were paid within the same reporting period in which the Accounting Department received the invoice (as indicated by the date stamp on the check authorization form)

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and were reported on the expenditure disclosure report for that period. The amounts for the Primary and General Committees are set forth below:

Committee	Invoices at Issue	Amount Paid in Same Period as Date Stamp
Primary	$1,767,548	$1,754,655
General	$1,052,098	$ 996,445

For the Compliance Committee, $205,201 of the $235,587 in invoices questioned by the Commission were paid within the same reporting period as the date indicated by the individual filling out the check authorization form. The remaining invoices amount to only $12,893 for the Primary Committee, $55,653 for the General Committee, and $30,386 for the Compliance Committee. These calculations (and all other calculations concerning the reporting of debts and obligations set forth herein) were performed by me or under my supervision using the documents included in Exhibits C, D, and E to the Committees' responsive brief.

10. In the relatively few instances in which the Accounting Department was unable promptly to process an invoice, the Committees reported the debt on the disclosure report for that period.

11. This system was extremely successful. Of the $38,870,000 in total expenditures by the Primary Committee and $5,042,000 by the Compliance Committee, the Commission has raised a question about the timing of the disclosure of less than 5 percent. Of the $55,239,000 in total expenditures by

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the General Committee, the Commission has raised a question about the timing of the disclosure of only 2 percent.

12. With respect to the invoices at issue, the Committees were successful in quickly processing, paying, and reporting the expenditures. There are three dates that track the progress of the invoices for the Primary and General Committees: (i) the date of the invoice, which presumably indicates when it was prepared by the vendor (although not necessarily the date it was sent to the Committee), (ii) the date on which the check authorization form was first filled out, which is the best indicator of the date on which it was received by the national headquarters, and (iii) the date stamp of the Accounting Department, which indicates when the invoice was approved by the Committee. The invoices for the Compliance Committee have only the first two dates.

13. As discussed above, virtually all of the invoices at issue were paid during the same reporting period as the Accounting Department date stamp. The large majority -- $1,192,843 for the Primary Committee and $848,639 for the General Committee -- was paid within the same reporting period as the date on the check authorization form. Similarly, a majority -- $1,313,457 for the Primary Committee and $623,299 for the General Committee -- was paid by the end of the reporting period immediately following the date of the invoice.

14. The Committees did not understand the 1990 amendment to the regulations to require a change to this

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longstanding accounting practice. Rather, the rules appeared to apply to "written" agreements that set forth a predetermined amount to be paid on a definite date, and to be applicable to committees settling debts for less than full value. All or virtually all of the debts and obligations at issue here were incurred without the benefit of such a written contract. Even to attempt to keep track of the thousands of expenditures made by hundreds of campaign personnel working across the country at any given time would create an administrative nightmare that would cripple a campaign.

15. The Primary Committee made over $38 million in expenditures in less than a year. The General Committee made over $50 million in expenditures in less than three months. It would be virtually impossible for the Treasurer to monitor expenses as they are incurred by each individual. Further, the Committees would have had no basis for estimating debts and obligations at the time they were incurred. To attempt to provide speculative estimates without any basis would not provide the Commission or the public with meaningful information and, if anything, would be highly misleading.

16. Based on my experience in working with campaign finance issues for political committees and with Commission audits of committee finances from 1980 through and including the 1996 election cycle, no political committee has ever been required to estimate outstanding debts and obligations at the time of their incurrence as proposed by the General Counsel. Rather, political committees routinely establish procedures

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for collecting, processing, paying, and reporting expenditures and outstanding debts similar to the procedures adopted by the Committees, and the Commission previously has accepted such procedures during its post-election audits.

17. To my personal knowledge, President Bush's 1988 primary and general campaign committees did not report debts and obligations for which invoices had not yet been received by their accounting departments. The 1988 campaign of President Bush -- like the 1992 campaign -- experienced difficulty in obtaining invoices concerning travel on government conveyances, including Air Force II. Many of these invoices were not received by the campaign -- and thus were not reported -- until weeks or months after the general election. Although the Commission auditors of the 1988 committees were fully aware of this practice, they raised no question concerning this method of reporting.

18. Consistent with this general practice, the Committees in 1992 did not treat invoices as outstanding debts and obligations within the meaning of 11 C.F.R. § 104.11(b) until they were received by the Accounting Department. Nevertheless, and without conceding error, the Committees submitted amended reports as requested by the Commission.

19. The Commission audit staff indicated during the post-election audits that it used the date of the invoices to infer the date on which they were received by the Committees. However, the date an invoice was prepared is not a proper indication of when it was received by the respective

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Committee. For example, vendors frequently prepare invoices days in advance of posting them in the mail. Delivery, especially from vendors outside the Washington, D.C. area, can take a week or more after posting. I specifically recall that many invoices were dated weeks or even months before the date on which they were delivered to the Committees. Further, sometimes an invoice was sent to the wrong address or simply not delivered. In other instances, the invoice was forwarded through a third party. Moreover, the invoice might have been sent to a field office before being forwarded to the Accounting Department.

20. The General Committee experienced particular difficulties in obtaining invoices for expenses related to travel on government conveyances, including Air Force I and Air Force II. John Allen, Budget Liaison Director for Presidential Travel for the General Committee, made repeated requests for the invoices. Despite his efforts, employees of the United States government took substantial time in preparing invoices, and the General Committee often received these invoices weeks or months after the date on the invoice. As the Commission has previously recognized, the General Committee did not, and could not, know the amount of the invoices prior to their receipt.

21. The Commission appears to have adopted an erratic approach with respect to the reporting of outstanding debts and obligations of less than $500. With respect to the Primary Committee, the Commission appears to have typically

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excluded single debts for less than $500 from the calculation of the $1,767,548 at issue in the reporting of debts and obligations. Nonetheless, the total includes $56,615 in single debts for less than $500 that were paid within 60 days as required by Section 104.11(b). With respect to the General Committee, the Commission typically appears to have included single debts for less than $500 in its calculation of the amount at issue. The total of such debts included by the Commission for the General Committee is $27,556.

22. Some national vendors, such as AT&T, provided services to numerous Primary and General Committee field offices and issued separate invoices from the vendor's own regional offices.

23. After eliminating the invoices paid during the same reporting period as the date on the check authorization form as well as the expenses for less than $500 paid in a timely manner, the remaining invoices at issue for the Primary Committee amount to $518,090.

24. After eliminating the invoices paid during the same reporting period as the date on the check authorization form as well as the expenses for less than $500 paid in a timely manner, the remaining invoices at issue for the General Committee amount to $175,903.

25. After eliminating the invoices paid during the same reporting period as the date on the check authorization form, the remaining invoices at issue for the Compliance Committee amount to $30,386.

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26. Of the $203,459 in General Committee invoices that were not paid during the same reporting period as the date on the check authorization form, over 60 percent -- $128,099 -- are dated after October 14, 1992 and would not have been required to be disclosed prior to the general election even if the date on the invoice triggered a reporting requirement. Indeed, half of all of the General Committee invoices at issue -- $507,387 -- are dated after the last period for which reports were due to the Commission prior to the general election.

27. The Committees do not have funds available to pay any significant civil penalty. In order to raise such funds, the Primary and Compliance Committees would have to engage in time consuming and burdensome fundraising activities. (The General Committee is prohibited from engaging in any fundraising.) The only realistic method for raising any substantial funds would be a direct mail appeal to the Primary and Compliance Committee contributor lists.

28. The cost of raising funds during an election campaign typically amounts to about one third of the funds raised. To raise funds five years after an election, however, the cost would be substantially greater. Since many of the contributors on the Committees' mailing lists have already contributed substantial amounts to those Committees, raising additional funds would be more difficult and less reliable than during the 1992 Presidential election campaign. The difficulty in raising funds now for the 1992 campaign is

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increased further by the extensive fundraising efforts made by the 10 Republicans that sought the nomination for the 1996 Presidential election. As a result of these factors, I estimate that raising the funds necessary to pay a civil penalty could easily cost as much a the funds raised. These costs do not include the time and effort by volunteers helping with the fundraising efforts.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Alexandria, Virginia, on April 22, 1997.

Keith A. Davis

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	
Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer,	
Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer,	MURs 3664, 4171 and 4289
Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer	

EXHIBIT C

TO

RESPONSE OF 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

Primary Committee Invoices

(bound separately)

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BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of 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	MURs 3664, 4171 and 4289

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EXHIBIT D

TO

RESPONSE OF 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

General Committee Invoices

(bound separately)

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of	
Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer,	
Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer,	MURs 3664, 4171 and 4289
Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer	

EXHIBIT E

TO

RESPONSE OF 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

Compliance Committee Invoices

(bound separately)

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DUE TO THEIR SIZE, EXHIBITS C, D AND E OF THIS RESPONSE CAN BE FOUND IN THEIR ENTIRETY IN MUR 3664.

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BEFORE THE FEDERAL ELECTION COMMISSION

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

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On January 25, 1994, the Commission found reason to believe that the Bush-Quayle '92 General Committee, Inc. (the "GEC") and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report estimated debts and obligations incurred for campaign-related travel (MUR 3664).[1] On September 10, 1996, the Commission found reason to believe that the Bush-Quayle Primary Committee, Inc. (the "Primary Committee") and J. Stanley Huckaby, as treasurer, 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 (MUR 4171). On the same date, 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 Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Committee") and J. Stanley Huckaby, as treasurer, violated

[1] The Commission originally made the reason to believe findings in MUR 3664 on July 20, 1993. The subsequent findings were made following *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *petition for cert. dismissed for lack of jurisdiction*, 115 S.Ct. 537 (1994).

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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. The GEC responded to the reason to believe findings in MUR 3664 on October 23, 1993, and February 23, 1994, and the Committees responded to the reason to believe findings in MURs 4171 and 4289 on November 4, 1996.[2]

The Commission decided to enter into pre-probable cause to believe conciliation negotiations with the Committees on September 10, 1996. The Committees made a counteroffer on November 4, 1996 and negotiations ensued. However, negotiations were unsuccessful and on March 11, 1997, the Commission rejected the Committees' counteroffer and negotiations were terminated. On March 13, 1997, this Office sent the Committees a letter and brief notifying them that this Office was prepared to recommend that the Commission find probable cause to believe that the violations occurred. On April 22, 1997, the Committees filed their responsive brief. Attachment 1.

After reviewing the Committees' brief, this Office recommends that the Commission find probable cause to believe that: the Primary Committee violated 2 U.S.C. §§ 441a(f) and 434(b)(8) and 11 C.F.R. § 104.11(b); the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.11(b) and 9004.7; and the Compliance Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b). Moreover, this Office recommends that the Commission approve the attached conciliation agreement.

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[2] Throughout this Report, "Committees" refers to the GEC, the Primary Committee and the Compliance Committee. The "Act" and the "FECA" refer to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-55.

II. SUMMARY OF COMMITTEES' RESPONSE

The Committees' brief generally reiterates the same substantive arguments that the Committees have been making throughout the audit and enforcement processes.[3] First, the Primary Committee argues that the staff advances by Mr. Holt should be treated as extensions of credit by a commercial vendor under 11 C.F.R. § 116.3, despite the fact that he volunteered his fundraising services. Attachment 1 at 5-11. The Primary Committee contends that Mr. Holt was a commercial vendor who provided volunteer fundraising services but sought payment for associated travel and telephone expenses, based on his "standard business practice." *Id.* Moreover, the Primary Committee asserts that Mr. Holt had provided similar fundraising services to other political campaigns, charitable organizations and other entities, and did not treat the Primary Committee more favorably than these other organizations.[4] *Id.* The Primary Committee argues that Mr. Holt was in both the oil business and the fundraising business, and that he did not have to be exclusively a fundraiser to be a commercial vendor. *Id.* In addition, the Primary Committee states that it is irrelevant whether Mr. Holt earned money through his fundraising activities, because section 116.3 includes vendors who "provide" services. *Id.* Further, the Primary Committee contends that it received no significant financial benefit from Mr. Holt's advances.

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[3] The Committees submitted an affidavit from Keith Davis, Assistant Treasurer to the Committees. They also submitted a copy of the affidavit from Robert Holt which they had previously submitted, copies of conciliation agreements from other enforcement matters, and copies of invoices which had been previously reviewed by the Audit staff.

[4] Keith Davis states in his affidavit that Mr. Holt spent more than half of his time doing fundraising for the Primary Committee and provided fundraising services that were typical of those that commercial vendors provide to campaigns. Attachment 1 at 42. Mr. Davis further states that Mr. Holt provided his services in a similar manner to other organizations, such as the 1988 Bush primary campaign. *Id.*

The Committees also make a number of arguments concerning the reporting of debts and obligations. *Id.* at 11-37. The Committees contend that they used best efforts to report expenditures, debts and obligations systematically. *Id.* at 14-19. The Committees and Mr. Davis describe their internal procedures and assert that these procedures were intended to ensure prompt payment and reporting of expenditures and to prevent payment of invalid or fraudulent invoices. *Id.* at 14-19, 42-53. The Committees argue that reporting invalid invoices as debts would undermine the goal of accurate disclosure. Moreover, they contend that although they did not estimate the debts, they satisfied best efforts because of their extensive efforts to process invoices so that they could be reported as expenditures.

The Committees contend that the requirement to report the exact amount or an estimate of debts and obligations as of the date of incurrence is arbitrary and capricious. *Id.* at 19-25. The Committees argue that no campaign could meet this standard because reporting debts as of the date of incurrence is pragmatically impossible. *Id.* The Committees further assert that this Office's analysis deviates from the Commission's prior practice.[5] *Id.* They contend that the Commission has never strictly applied this standard but has "accepted reasonable efforts to report debts and obligations as soon as the accounting department in the campaign became aware of them." *Id.* at 21. For example, the Committees assert that the Commission did not object to the 1988 Bush presidential campaign's use of the same reporting procedures and that the Commission did not require that campaign or other previous presidential campaigns to report estimates of unbilled costs for travel on government aircraft. *Id.* at 19-26. In addition, the

[5] The Committees contend that enforcement matters cited in the General Counsel's Brief do not support this Office's position because the Commission took no further action in MURs 2706 and 3494, and the conciliation agreement for MUR 2304 had a civil penalty of only $1,500. Attachment 1 at 21-22, 37.

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Committees contend that this Office has simultaneously applied two different standards in calculating the amounts in violation because the amounts included in the matters generated by audit referrals, MURs 4171 and 4289, were calculated based on the dates the Committees received the invoices, but in MUR 3664 all the travel-related debts are included regardless of when the Committees received the invoices. *Id.* at 23-24. The Committees argue that this is arbitrary enforcement and make an analogy to cases applying the vagueness doctrine to criminal statutes. *Id.* at 24, *citing Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (Criminal loitering legislation void for vagueness because it failed to establish minimal guidelines to govern law enforcement and gave police virtually complete discretion); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (Vagrancy law void for vagueness because it failed to give fair notice that conduct is forbidden and encouraged arbitrary and erratic arrests, placing unfettered discretion in the hands of the police).

Moreover, the Committees contend that the invoices did not become reportable debts and obligations under 11 C.F.R. § 104.11(b) until the invoices were received, reviewed and payment had been approved by the Committees. *Id.* at 25-28. The Committees assert that the scope of 11 C.F.R. § 104.11(b) is limited to debts and obligations related to written agreements, based on the language of the regulation: "including a loan, written contract, written promise, or written agreement to make an expenditure."[6] *Id.* They argue that there was no written agreement for the debts at issue until the Committees received and approved the invoice for payment; thus, the expenditures did not become reportable debts and obligations until the invoices were received

[6] As in their previous responses, the Committees cite *Hawkeye Chemical Co. v. St. Paul Fire and Marine Ins. Co.*, 510 F.2d 322, 327 (7th Cir. 1975) to support their interpretation of the regulation. Moreover, they argue that *FEC v. Massachusetts Citizens for Life*, 769 F.2d 13, 17 (1st Cir. 1985) *aff'd*, 479 U.S. 238 (1986), cited by this Office, does not apply because the context of the word "includes" in the regulation indicates that the Commission intended to limit debts and obligations only to written debts and obligations.

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and approved by the Committees' Accounting Departments. *Id.* at 26. In addition, the Committees contend that the 1990 revision of the regulations that led to the current language in 11 C.F.R. § 104.11(b) was not intended to create a new burdensome reporting requirement for committees. *Id.*

Further, the Committees claim that the Commission has not properly calculated the amount of the debts and obligations.[7] *Id.* at 28-32. They argue that the Audit staff did not properly determine the date that the Committees received the invoices and that the date on the invoice is not a reliable indication of when it was received. *Id.* They also assert that the Audit staff incorrectly included debts of less than $500 that were paid and reported in a timely manner.[8] *Id.* Moreover, the Committees contend that invoices paid during the same reporting period in which the Committees received the invoices should not be included. *Id.*

Finally, the Committees contend that no civil penalty is warranted. *Id.* at 33-37. They argue that they acted in good faith, made efforts to collect and report the information, followed practices reviewed and approved by the auditors in prior cycles, received no financial benefit and filed amended reports. *Id.* In addition, they contend that the issue involves only the timing of disclosure, not failure to disclose. *Id.*

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[7] The Committees request detailed schedules explaining the staff advances by Mr. Holt and the debts and obligations that were not properly reported. This information was provided to the Committees during the audit process and is detailed in schedules attached to the audit reports.

[8] The Committees provided copies of these invoices as attachments to the response. These invoices had previously been available for the Audit staff to review. However, the Committees did not provide any spreadsheets or other documentation explaining how they made their calculations.

III. ANALYSIS

The Commission has previously considered and rejected the bulk of the Committees' substantive arguments, and the Committees have not offered any new compelling arguments or information to support their contentions. Contrary to the Committees' arguments, the evidence supports a finding of probable cause to believe that the Primary Committee violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions in the form of staff advances from Robert Holt. Moreover, there is probable cause to believe that the Primary Committee, GEC and Compliance Committee violated 2 U.S.C. § 434(b)(8) by failing to properly report their debts and obligations.[9]

A. STAFF ADVANCES

Robert Holt provided fundraising services to the Primary Committee on a volunteer basis and made advances of at least $11,598 in excess of the $1,000 individual contribution limitation in payments for travel, subsistence and campaign-related goods and services.[10] 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. § 116.5. 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); 116.3; 116.5(b). Even if Mr. Holt was a commercial vendor of fundraising services, the value of his services would have been an in-kind contribution to the Primary Committee because the Primary Committee has not provided evidence that the services he provided without charge to the Primary Committee were provided in the ordinary course of his business.

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[9] We incorporate by reference the General Counsel's Brief dated March 13, 1997.

[10] This amount has been adjusted from the previous figure of $12,598 in consultation with the Audit staff in order to allow for a $1,000 volunteer travel exemption consistent with other audits. *See* 11 C.F.R. § 100.7(b)(8).

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Based on the limited available evidence, it appears that Mr. Holt was in the oil business. While a commercial vendor may be involved in more than one type of business, there is insufficient evidence that Mr. Holt was also a commercial vendor of fundraising services. The Primary Committee's contentions that Mr. Holt provided services similar to those provided by commercial vendors and that he provided the same services to other campaigns and entities do not prove that he provided his services as a commercial vendor rather than as an individual volunteer in his personal capacity.

Moreover, the affidavits of Mr. Holt and Mr. Davis are insufficient to demonstrate that Mr. Holt was a commercial vendor of fundraising services. The Primary Committee has failed to provide other documentation sufficient to support its arguments. For example, the Primary Committee has provided no documentation of Mr. Holt's fundraising work for other campaigns and organizations, such as contemporaneous written memoranda, agreements for services, or other evidence to demonstrate that he was a commercial vendor and that his services for the Primary Committee were in the ordinary course of his business.

Contrary to the Primary Committee's contention, it is relevant whether Mr. Holt ever earned money through his fundraising activities. It is difficult to see how Mr. Holt could provide all of his services without any charge in the ordinary course of his business.[11] If, as the Primary Committee contends, Mr. Holt treated all other campaigns and organizations on equally favorable terms, and provided fundraising services to all of them without charge, he would never

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[11] The Primary Committee also contends that it violates their First Amendment rights for the Commission to treat individual commercial vendors differently from individuals who are volunteers. This argument is flawed. Nothing in the regulations prevents individuals who are commercial vendors from volunteering for campaigns in their personal capacity. However, like other campaign staff and volunteers, advances by these individuals would come under 11 C.F.R. § 116.5, not § 116.3.

realize any income or profit, and his fundraising services would not appear to be commercial in nature.[12]

While any individual can volunteer his or her services to a campaign in his or her personal capacity, 2 U.S.C. § 431(8)(B)(i), 26 U.S.C. § 9032(4)(E)(i), a commercial business cannot generally provide free goods or services to a campaign without making an in-kind contribution. *See* Advisory Opinion 1996-4 (Commission held that providing free on-line accounts to candidates would be a prohibited in-kind contribution, and stated that while vendors may provide discounts in the ordinary course of business, "valuable goods and services" may not be provided "without any charge to, or payment by, a Federal candidate or political committee," quoting Advisory Opinion 1988-25.) It appears that Mr. Holt was a volunteer who made staff advances in his personal capacity, not as a commercial vendor; thus, 11 C.F.R. § 116.5 applies.[13]

Since Mr. Holt's advances do not meet the regulatory exemptions to 11 C.F.R. § 116.5 because the expenses were not solely for his travel and subsistence expenses and reimbursed in a timely manner, the advances were in-kind contributions from Mr. Holt to the Primary Committee which exceeded the individual contribution limitation by $11,598. 2 U.S.C. § 441a(a)(1)(A).

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[12] Indeed, the plain meanings of the terms "commercial" and "vendor" imply commerce and the sale of goods and services. "Commercial" is defined as related to business or commerce, and "vendor" is a merchant or seller of goods and services. BLACK'S LAW DICTIONARY, 270, 1555 (6th ed. 1990). Conversely, a volunteer provides his services without remuneration. *Id.* at 1576. Volunteering one's services without charge is antithetical to the notion of commercial activity. In the analogous context of taxation law, a *bona fide* volunteer has been defined as one who receives no compensation, 26 U.S.C. § 457(e)(11)(B)(i), or "does not have a profit motive," 26 C.F.R. § 1.132-5(r)(3).

[13] The advisory opinions cited by the Primary Committee are not persuasive. Advisory Opinions 1980-42 and 1982-4 were written prior to the revision of the debt settlement regulations in 1990. Moreover, these opinions reiterate the general rule that individuals may volunteer their services to a committee without making a contribution, but that related expenses must be paid by the committee. In Advisory Opinion 1991-37 the Commission permitted a political action committee to purchase accounting services from an accounting firm and provide the services to political committees as in-kind contributions. The Commission also stated that the accounting firm or the PAC could charge the political committees for associated expenses such as travel. This opinion does not support the Primary Committee's arguments because it involves in-kind contributions rather than individual volunteer activity.

It is irrelevant whether the Primary Committee had available funds or received a significant financial benefit from those contributions. The Primary Committee received the excessive in-kind contributions when Mr. Holt made the advances. Therefore, the Office of General Counsel recommends that the Commission find there is probable cause to believe that the Primary Committee violated 2 U.S.C. § 441a(f) by knowingly accepting excessive in-kind contributions from Robert Holt.

B. REPORTING OF DEBTS AND OBLIGATIONS

The Committees failed to report properly: Primary Committee debts totaling $1,767,548; GEC travel-related debts totaling $1,048,190 and other GEC debts and obligations totaling $737,908; and Compliance Committee debts in the amount of $235,587. The Committees failed to report the debts and obligations as of the date they were incurred. 11 C.F.R. § 104.11(b). Under the Committees' procedures for processing debts and obligations, a debt was not reported until the invoice had been received and payment of the invoice was approved. Thus, the Committees' procedures created a significant delay between the date that a debt was incurred and the public disclosure of that debt. Each of the Committees filed amended reports that materially disclosed their actual debts and obligations in September 1994.

The Committees misinterpret the reporting requirements of 11 C.F.R. § 104.11(b). That section explicitly requires committees to report debts as of the time of incurrence, not the date of the invoice or check authorization form, and to estimate the amount of the debt or obligation if they are unable to verify the correct amount. 11 C.F.R. § 104.11(b). Since the Committees did not report the correct amount or an estimate of debts when they were incurred, their disclosure reports did not accurately reflect the Committees' actual debts, and the goal of immediate and complete disclosure was undermined. *Id.*

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Contrary to their contentions, the Committees did not make best efforts to report their debts and obligations. The Committees' procedures do not comport with the regulations and do not release them from the reporting requirements of 11 C.F.R. § 104.11(b) or satisfy best efforts. *See* 2 U.S.C. § 432(i); 11 C.F.R. § 104.7. Far from making best efforts to report their debts and obligations, the Committees did not attempt to estimate any of their debts and obligations on their disclosure reports or to report any debts where the amount incurred was known before the invoice was received. 11 C.F.R. § 104.11(b). The Committees' contention that reporting invalid debts would lead to inaccurate disclosure ignores the fact that failing to report numerous valid debts to avoid reporting a few possibly invalid ones is far less accurate and distorts the public record. Whether the Committees' procedures helped them to report expenditures and avoid payment of invalid invoices is irrelevant to the question of whether they made best efforts to report their debts properly. The regulations require reporting, not immediate payment, of debts and obligations. 11 C.F.R. § 104.11. If a committee properly reports the exact amount or a reasonable estimate of a debt when it is incurred, the committee may revise the report later if any portion of the debt proves to be incorrect. 11 C.F.R. § 104.11(b).

This Office has not applied arbitrary or capricious standards in calculating the amount of debts that were not properly reported. The Audit staff referred violations involving debts totaling $1,052,098 for the GEC, $1,767,548 for the Primary Committee and $235,587 for the Compliance Committee. MUR 3664 involves an additional $734,000 in travel-related debts that were not included in the audit referrals. While the debts and obligations at issue in MURs 4171 and 4289 arose from the audit referrals and were subject to internal audit thresholds and calculation policies, the audit thresholds did not apply to the calculation of the travel-related debts at issue in MUR 3664 because it was a complaint-generated matter. Rather, the calculation

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in MUR 3664 was based on the date of travel, which constitutes the date the debt was incurred under the regulations.

The Committees confuse the legal reporting requirements that are clearly delineated in the regulation with the Commission's application of internal thresholds and considerations of prosecutorial discretion to previous enforcement matters and audits. These precedents do not undermine the plain meaning of the regulation.[15] The Commission has broad prosecutorial discretion to decide whether or not to pursue an enforcement matter. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("An agency decision not to enforce often involves a complicated balancing of a number of factors" and "an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion."). The Commission's decision to apply an internal threshold, take no further action or accept a lower civil penalty in an enforcement matter because of lack of resources, administrative convenience, or other factors of prosecutorial discretion does not mean that no violation occurred.[16] Nor does it impair the Commission's ability to pursue the Committees' violations, nor imply tacit approval of the Committees' incorrect reporting procedures.

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[15] The Committees contend that the enforcement matters cited in the General Counsel's Brief, MURs 2304, 2706 and 3494, do not support this Office's analysis because of the disposition of these cases. Again, considerations of prosecutorial discretion, not the absence of violations, led the Commission to take these actions. Further, the Committees' argument that the Commission did not pursue previous presidential campaigns, particularly the 1988 Bush campaign, for failing to properly estimate unbilled travel on government aircraft does not take into account the fact that the regulations prior to 1990 did not explicitly require estimation of debts, although this was Commission policy. *See* Advisory Opinion 1980-38.

[16] Indeed, if there is evidence that no violation occurred, the Commission could find no probable cause to believe a violation occurred. 11 C.F.R. §§ 111.16, 111.17.

Moreover, the Commission has pursued other committees for failing to estimate or report the exact amount of debts and obligations as of the time they were incurred. *Cf. FEC v. AFSCME-PQ*, No. 88-3208 (D.C. Cir. July 10, 1990)(Court granted FEC motion for summary judgment against a political action committee for failing to disclose in-kind contributions at the time they were made and services were provided to the candidate rather than when it later paid the bills for the services). In addition to the matters cited in the General Counsel's Brief, MURS 2304, 2706 and 3494, the Commission found reason to believe that the Friends of John Glenn and Lyn Glenn as treasurer, formerly the John Glenn Presidential Committee, violated 2 U.S.C. § 434(b)(8) by failing to report over $700,000 in interest on loans as an outstanding debt as of the date of incurrence. MUR 3418. The respondent committee in MUR 3418 paid a civil penalty of $65,000.

Further, the Committees' analogy to cases applying the void for vagueness doctrine is not apt. The void for vagueness doctrine requires that a penal statute define an offense so that "ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972). An important aspect of the doctrine is the establishment of "minimal guidelines to govern law enforcement." 461 U.S. at 357-358. Statutes affecting First Amendment free speech rights and statutes prescribing criminal penalties "have consistently faced a considerably higher level of scrutiny" on a void for vagueness challenge than "ordinary civil law." *Exxon Corp. v. Georgia Ass'n of Petroleum Retailers*, 484 F. Supp. 1008, 1013-1014 (N.D.Ga., 1979), *aff'd* 644 F.2d 1030 (5th Cir. 1981), *cert. denied* 454 U.S. 932, (Oct 13, 1981). An "ordinary civil statute is void for vagueness only where it exacts obedience to a rule that is so vague and indefinite as really to be no rule or

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standard at all" not where it can "reasonably be interpreted and limited by judicial construction." *Id.* at 1014-1016 (citations omitted).

Even if the strict scrutiny applicable to criminal statutes were applied to 11 C.F.R. § 104.11(b), there is no basis for the Committee's argument because the reporting requirements are clearly delineated and specific. The regulation clearly describes the specific requirements that a reporting committee must affirmatively meet: debts and obligations "shall be reported as of the date on which the debt or obligation is incurred," and where the exact amount of a debt is not known, "the report shall state that the amount reported is an estimate." 11 C.F.R. § 104.11(b). The regulation explicitly requires a committee to report either the exact amount of each debt or an estimate to avoid violating the law. By creating internal procedures and thresholds, the Commission has created guidelines for enforcement that are consistently applied to committees. For example, the Audit staff applied consistent procedures and thresholds to each 1992 presidential election campaign.

The Committees' arguments that it is pragmatically impossible for any campaign to report debts as of the date of incurrence and that the regulation creates a new and burdensome reporting requirement are also unconvincing.[17] Publicly-financed campaigns must adhere to an expenditure limit, 2 U.S.C. § 441a(b), and should be aware of the amount of their debts and

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[17] The requirement to report as of the date that a debt is incurred is not a new requirement. 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). Since 1990, the regulation has stated that committees must report debts "as of the date on which the obligation was incurred." 11 C.F.R. § 104.11(b) (1995). However, new language explicitly requiring estimation of debts was added in 1990. The Explanation and Justification for 11 C.F.R. § 104.11(b) (1990) discusses situations where reporting and estimation for debts not yet billed is required and states that "new language is also included which follows the current policy that if the 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) (affirming Commission policy set forth in Advisory Opinion 1980-38). In addition, the Commission has previously rejected arguments that debts over $500 must be reported from a date other than "the date on which the debt was incurred." *See* MURs 2304, 2706, 3418, 3494.

obligations when they are incurred. Campaign officials must keep track of obligations simply to know how much money is available for future expenditures. If it is impossible to ascertain the exact amount of a debt, the regulation permits a committee to report a reasonable estimate of the debt until the correct amount can be verified. 11 C.F.R. § 104.11(b). At the very least, campaign officials have enough available information to make a reasonable estimate of their debts. The estimation requirement makes the regulation less burdensome, not more so, because it allows Committees to make an estimate of debts rather than requiring them to report an exact amount.[18]

Further, the Committees' argument that the invoices did not become reportable debts until they were reviewed and approved for payment has no basis in logic or the language of the regulation. A debt exists independent of the invoice that is evidence of it. *See* 11 C.F.R. § 104.11. The Committees seek to create the legal fiction that a debt does not exist until they recognize it and authorize payment. This is contrary to the explicit language of the regulation. Moreover, this interpretation would permit campaigns to ignore large debts indefinitely, without requiring disclosure and would allow individuals and entities to loan large sums to campaigns with impunity.

The Committees' contention that 11 C.F.R. § 104.11(b) only applies to debts and obligations related to written agreements is incorrect.[19] The Committees' argument is not supported by the language of the regulation, which states: "[a] debt or obligation, *including* a

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[18] The Committees also claim that their First Amendment rights were violated, but their brief and conclusory statement does not explain that claim.

[19] The Committees assert that this interpretation is supported by settled rules of statutory construction, 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. "*Expressio unius*" does not apply in this situation because it would contradict the express language and clear purpose of the regulation.

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loan . . . ." 11 C.F.R. § 104.11(b) (emphasis added). Reading this language in context reveals that the terms "debts" and "obligations" include but are not limited to the specifically enumerated sources.[20] Contrary to the Committee's contention, there is no evidence, in the context of the regulation or elsewhere, that the Commission intended to limit the scope of this provision to written debts and obligations.[21] As a matter of policy, restricting the scope of the regulation to written agreements would allow campaigns to avoid reporting large debts and obligations that were based on oral agreements. This would undermine a primary objective of federal campaign finance law: complete, accurate and timely disclosure.

Finally, the Committees' argument that the Audit staff has not properly calculated the amount of the debts and obligations is not correct. While the Committees provided copies of their invoices, they did not provide a spreadsheet or other document detailing how they made their calculations. It appears that the Committees' calculations are based on the Committees' flawed interpretation of the regulations, and they erroneously rely upon the dates that they received the invoices, and the dates that they authorized payment of the expenditures.

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[20] This conclusion is consistent with previous interpretations of the word "includes" in the FECA. *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, "It 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)).

[21] Moreover, the interpretation of a statute by the agency charged with administering it is entitled to deference, and the Commission is "precisely the type of agency" to which such deference should be given. *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 31-32, 37 (1981). It is not necessary for the agency's interpretation to be the only reasonable one. *Id.* at 39. Thus the Commission's construction of a statute, if reasonable, must ordinarily be honored. *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 843 (1984); *Common Cause v. FEC*, 842 F.2d 436, 439-40 (D.C.Cir. 1988). The Commission is entitled to even more deference in its interpretation of its own regulations. *See Udall v. Tallman*, 380 U.S. 1, 16 (1965); *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C.Cir. 1992).

Nevertheless, the date of incurrence, not the date that the Committees received the invoice or issued a check authorization form, is the controlling date for reporting of the debt. 11 C.F.R. §104.11(b). Nor have the Committees demonstrated how the Audit staff's calculations are inaccurate. The auditors properly applied the applicable regulations to the debts, based on consistently applied audit procedures, to determine whether they were reported in a timely manner.

Therefore, the Office of General Counsel recommends that the Commission find probable cause to believe that the Primary Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to disclose properly its debts and obligations totaling $1,767,548. Moreover, this Office recommends that the Commission find probable cause to believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report properly $1,048,190 in travel-related debts and obligations. This Office further recommends that the Commission find probable cause to believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report properly non-travel related debts and obligations totaling $737,908. Finally, this Office recommends that the Commission find probable cause to believe that the Compliance Committee violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to disclose properly $235,587 in debts and obligations.

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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V. RECOMMENDATIONS

1. Find probable cause 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;

2. Find probable cause 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 properly debts and obligations;

3. Find probable cause 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 properly non-travel related debts and obligations;

4. Find probable cause to believe that the Bush-Quayle '92 General Committee, Inc., and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8), 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report properly travel-related debts and obligations;

5. Find probable cause 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 properly debts and obligations; c

6. Approve the attached conciliation agreement; and

7. Approve the appropriate letter.

6/12/97
Date

Lawrence M. Noble
General Counsel

Attachments:
1. Respondents' brief, dated April 22, 1997 (attaciments C, D, and E omitted)
2. Conciliation agreement

Staff assigned: Delanie DeWitt Painter

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FEDERAL ELECTION COMMISSION
WASHINGTON D.C. 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE
GENERAL COUNSEL

FROM: MARJORIE W. EMMONS /LISA R. DAVIS
COMMISSION SECRETARY

DATE: JUNE 19, 1997

SUBJECT: MURs 3664, 4171, and 4296 - GENERAL COUNSEL'S REPORT DATED JUNE 12, 1997.

The above-captioned document was circulated to the Commission on MONDAY, JUNE 16, 1997 at 11:00 a.m.

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	

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BEFORE THE FEDERAL ELECTION COMMISSION

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

CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on June 19, 1997, the Commission decided by a vote of 4-1 to take the following actions in MURs 3664, 4171, and 4289:

1. Find probable cause 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.

2. Find probable cause 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 properly debts and obligations.

3. Find probable cause 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 properly non-travel related debts and obligations.

(continued)

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4. Find probable cause 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) and 9004.7 by failing to report properly travel-related debts and obligations.

5. Find probable cause 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 properly debts and obligations.

6. Approve the conciliation agreement, as recommended in the General Counsel's Report dated June 12, 1997.

7. Approve the appropriate letter, as recommended in the General Counsel's Report dated June 12, 1997.

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

Attest:

6-20-94
Date

Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Fri., June 13, 1997 12:22 p.m.
Circulated to the Commission: Mon., June 16, 1997 11:00 a.m.
Deadline for vote: Thurs., June 19, 1997 4:00 p.m.

bjr

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 24, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

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

RE: MURs 3664, 4171, 4289
Bush-Quayle '92 Committees

Dear Mr. Burchfield:

On June 19, 1997, the Federal Election Commission found that there is probable cause to believe that your clients, 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 and 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report properly debts and obligations (MUR 4171). Moreover the Commission found probable cause to believe that your clients, 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 properly non-travel related debts and obligations (MUR 4289); and violated 2 U.S.C. § 434(b)(8), 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report properly travel-related debts and obligations (MUR 3664). Further, the Commission found probable cause to believe that your clients, 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 properly debts and obligations (MUR 4289).

The Commission has a duty to attempt to correct such violations for a period of 30 to 90 days by informal methods of conference, conciliation, and persuasion, and by entering into a conciliation agreement with respondents. If we are unable to reach an agreement during that period, the Commission may institute a civil suit in United States District Court and seek payment of a civil penalty.

Enclosed is a global conciliation agreement that the Commission has approved in settlement of these matters with a civil penalty. If you agree with the provisions of the enclosed agreement, please sign and return it, along with the civil penalty, to the Commission within ten days. I will then recommend that the Commission accept the

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agreement. Please make your check for the civil penalty payable to the Federal Election Commission.

If you have any questions or suggestions for changes in the enclosed conciliation agreement, or if you wish to arrange a meeting in connection with a mutually satisfactory conciliation agreement, please contact Delanie DeWitt Painter, the attorney assigned to this matter, at (202) 219-3690.

Sincerely,

Lawrence M. Noble
General Counsel

Enclosure
Conciliation Agreement

28043825297

FEDERAL ELECTION COMMISSION

BEFORE THE FEDERAL ELECTION COMMISSION

Nov 26 2 ... '97

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

SENSITIVE

DEC 2 1997

EXECUTIVE SESSION

GENERAL COUNSEL'S REPORT

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I. BACKGROUND

On June 19, 1997, the Commission found probable cause to believe that the Bush-Quayle '92 Primary Committee, Inc. (the "Primary Committee"), and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Robert B. Holt and 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to report properly debts and obligations (MUR 4171). The Commission also found probable cause to believe that the Bush-Quayle '92 General Committee, Inc. (the "GEC"), 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 properly non-travel related debts and obligations (MUR 4289); and violated 2 U.S.C. § 434(b)(8), 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to report properly travel-related debts and obligations (MUR 3664). Further, the Commission found probable cause to believe that the Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Committee"), 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 properly debts and obligations (MUR 4289). On the same date, the Commission approved a global conciliation

agreement in settlement of these matters with a civil penalty The ninety-day maximum negotiation period expired on September 25, 1997 without resolution. *See* 2 U.S.C. § 437g(a)(4)(A)(i).

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II. ANALYSIS

This Office recommends that the Commission authorize this Office to file a civil suit for relief in MUR 3664 and MUR 4289.

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Although the five-year statute of limitations has run on some of the amounts in violation, sufficient amounts remain to make the Commission's pursuit of these matters through litigation viable. *See* 28 U.S.C. § 2462; *FEC v. Williams*, No. 95-55320 (9th Cir. filed Dec. 26, 1996); *FEC v. National Republican Senatorial Committee*, 877 F. Supp. 15 (D.D.C. 1995). According to this Office's calculations, through December 2, 1997, $950,043 of the amount in violation in these matters is not yet barred by the statute of limitations. Therefore, this Office recommends that the Commission authorize the filing of a civil suit for relief against the Committees to resolve these matters.

Conversely, all of the violations in MUR 4171, involving the Primary Committee, occurred more than five years ago and are barred by the statute of limitations. Thus, pursuing this matter through litigation is not feasible. Therefore, this Office recommends that the Commission take no further action in MUR 4171.

III. RECOMMENDATIONS

1. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against the Bush-Quayle '92 General Committee, Inc., and the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer of each;

2. Take no further action against the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, and close MUR 4171; and

3. Approve the appropriate letter.

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11/26/97
Date

Lawrence M. Noble
General Counsel

Staff assigned: Delanie DeWitt Painter

Attachments
1. Letter from Bobby R. Burchfield dated November 17, 1997
2. Letter from Bobby R. Burchfield dated November 25, 1997

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 3664, 4171, and 4289
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	)	

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CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 2, 1997, do hereby certify that the Commission failed in a vote of 3-2 to pass a motion to take the following actions with respect to MURs 3664, 4171, and 4289:

1. Authorize the Office of the General Counsel to file a civil suit for relief in United States District Court against the Bush-Quayle '92 General Committee, Inc., and the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer of each;

2. Take no further action against the Bush-Quayle '92 Primary Committee, Inc., and J. Stanley Huckaby, as treasurer, and close MUR 4171; and

(continued)

3. Approve the appropriate letter as recommended in the General Counsel's November 26, 1997 report.

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

Attest:

12-3-97
Date

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

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MURs 3664, 4171, and 4289
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	)	

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CERTIFICATION

I, Marjorie W. Emmons, recording secretary for the Federal Election Commission executive session on December 9, 1997, do hereby certify that the Commission decided by a vote of 5-0 to accept the conciliation agreement signed by the respondents and containing a civil penalty in the amount of Twenty-Five Thousand Dollars ($25,000).

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

Attest:

12-9-97
Date

Marjorie W. Emmons
Secretary of the Commission

BEFORE THE FEDERAL ELECTION COMMISSION

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

Dec 1. 3 . . . '5

SENSITIVE

GENERAL COUNSEL'S REPORT

On December 9, 1997, the Commission voted to accept a conciliation agreement signed by the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc. and the Bush-Quayle '92 Compliance Committee, Inc. (collectively, the "Committees") and J. Stanley Huckaby, as treasurer of each, in settlement of MURs 3664, 4171, and 4289. However, the Commission did not vote to approve the appropriate letters or to close the files in these matters. The Commission's acceptance of the Committees' agreement resolves all of the outstanding respondents and violations in these matters. Therefore, the Office of General Counsel recommends that the Commission close the files in MURs 3664, 4171, and 4289 and approve the appropriate letters.

RECOMMENDATIONS

1. Close the files in MURs 3664, 4171, and 4289; and

2. Approve the appropriate letters

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12/11/97
Date

Lawrence M. Noble
General Counsel

Staff assigned: Delanie DeWitt Painter

28043825306

BEFORE THE FEDERAL ELECTION COMMISSION

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

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CERTIFICATION

I, Marjorie W. Emmons, Secretary of the Federal Election Commission, do hereby certify that on December 16, 1997, the Commission decided by a vote of 5-0 to take the following actions in MURs 3664, 4171, and 4289:

1. Close the files in MURs 3664, 4171, and 4289.

2. Approve the appropriate letters, as recommended in the General Counsel's Report dated December 11, 1997.

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

Attest:

December 16, 1997
Date

Mar 21. Dove
for Marjorie W. Emmons
Secretary of the Commission

Received in the Secretariat: Thurs., Dec. 11, 1997 3:49 p.m.
Circulated to the Commission: Fri., Dec. 12, 1997 11:00 a.m.
Deadline for vote: Tues., Dec. 30, 1997 4:00 p.m.

lrd

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 23, 1997

CERTIFIED MAIL RETURN RECEIPT REQUESTED

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

RE: MURs 3664, 4171, 4289
Bush-Quayle '92 Committees

Dear Mr. Burchfield:

On December 9, 1997, the Federal Election Commission accepted the signed conciliation agreement submitted on behalf of your clients, the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc., the Bush-Quayle '92 Compliance Committee, Inc., and J. Stanley Huckaby, as treasurer of each, in settlement of violations of 2 U.S.C. §§ 441a(f) and 434(b)(8), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 104.11(b) and 9004.7 (MURs 3664, 4171, and 4289). Accordingly, the files in MURs 3664, 4171, and 4289 were closed on December 16, 1997.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. In addition, although the complete file must be placed on the public record within 30 days, this could occur at any time following certification of the Commission's vote. If you wish to submit any factual or legal materials to appear on the public record, please do so as soon as possible. While the file may be placed on the public record before receiving your additional materials, any permissible submissions will be added to the public record upon receipt.

Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B). The enclosed conciliation agreement, however, will become a part of the public record.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that under the terms of the conciliation agreement, the first installment of the

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civil penalty is due within 30 days of your receipt of the agreement. If you have any questions, please contact me at (202) 219-3690.

Sincerely,

Dolcie DeWitt Painter
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

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

CONCILIATION AGREEMENT

MUR 3664 was initiated by the Federal Election Commission (the "Commission") pursuant to a signed, sworn, and notarized complaint filed by the Democratic National Committee. MURs 4171 and 4289 were initiated by the Commission pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities under the Federal Election Campaign Act of 1971, as amended (the "Act").

In MUR 3664, the Commission found probable cause to believe that the Bush-Quayle '92 General Committee (the "GEC") and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.11(b) and 9004.7. In MUR 4171, the Commission found probable cause to believe that the Bush-Quayle '92 Primary Committee Inc., (the "Primary Committee") and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b)(8) and 11 C.F.R. § 104.11(b). In MUR 4289, the Commission found probable cause to believe that the GEC violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) and that the Bush-Quayle '92 Compliance Committee,

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Inc. (the "Compliance Committee") and J. Stanley Huckaby, as treasurer, violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b). (Collectively, the Primary Committee, GEC and Compliance Committee are "Respondents").

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

II. Respondents had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in these matters are as follows:

1. President George Bush was the nominee of the Republican Party for the Office of President of the United States for the election held November 1992. The Primary Committee was his authorized committee and, as such, was authorized to receive contributions on behalf of President Bush. The GEC was the general election committee of President Bush and Vice President Dan Quayle. The Compliance Committee was the authorized legal and accounting compliance fund and, as such, was authorized to receive contributions on behalf of President Bush and Vice President Quayle.

2. J. Stanley Huckaby was the treasurer of the Primary Committee, the GEC, and the Compliance Committee.

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Staff Advance

3. Pursuant to 2 U.S.C. § 441a(a)(1)(A), individuals are prohibited from making contributions to any candidate in excess of $1,000 with respect to any election. Pursuant to 2 U.S.C. § 441a(f), no candidate or political committee, or officer or employee of a political committee shall knowingly accept any contribution which exceeds the contribution limitations.

4. Pursuant to 11 C.F.R. § 116.5(b), expenditures made on behalf of a political committee by an individual from his or her personal funds, or advances, are contributions.

5. Pursuant to 11 C.F.R. § 116.5(b), 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. This exemption applies only 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).

6. The Commission found probable cause to believe the Primary Committee accepted $11,598 in in-kind contributions in the form of staff advances from an individual named Robert B. Holt, and that the staff advances do not meet the regulatory exemptions to 11 C.F.R. § 116.5 because they

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were not solely for Mr. Holt's own travel and subsistence expenses. The staff advances were outstanding for approximately 33 days.

7. The Primary Committee treated Mr. Holt as a commercial vendor and reimbursed his expenses in accordance with 11 C.F.R. § 116.3(a).

Debts and Obligations

8. Pursuant to 2 U.S.C. § 434(b)(8), political committees are required to disclose on periodic reports to the Commission all outstanding debts and obligations owed by or to the Committees.

9. Pursuant to 11 C.F.R. § 104.11(b), a political committee owing a debt or obligation, including a loan, written contract, written promise, or written agreement to make an expenditure over $500 must report that debt or obligation as of the date on which it is incurred, except that any obligation incurred for rent, salary or other regularly recurring administrative expenses shall not be reported as a debt before the payment due date.

10. Pursuant to 11 C.F.R. § 9004.7, all campaign-related travel by publicly-funded candidates is a qualified campaign expense that must be reported as expenditures.

MUR 4171

11. The Commission found probable cause to believe that the Primary Committee did not report $1,767,548 in debts and obligations in accordance with the Act and the

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Commission's regulations. The Primary Committee believes that it made a good faith effort to comply with (and did comply with) Commission regulations by establishing a procedure for promptly collecting, reviewing, paying, and reporting invoices that was consistent with the accounting practices of prior and subsequent campaign committees. In contrast, the Commission found in its probable cause determination that the Primary Committee did not report the debts as of the date those debts were incurred.

MUR 3664

12. The Commission found probable cause to believe that the GEC did not report $1,048,190 in travel-related debts and obligations in accordance with the Act and the Commission's regulations. The GEC believes that it made a good faith effort to comply with (and did comply with) Commission regulations by establishing a procedure for promptly collecting, reviewing, paying, and reporting invoices that was consistent with the accounting practices of prior and subsequent campaign committees. In contrast, the Commission found in its probable cause determination that the GEC did not report the debts as of the date those debts were incurred.

MUR 4289

13. The Commission found probable cause to believe that the GEC did not report $737,908 in non-travel related debts and obligations in accordance with the Act and the Commission's regulations. The GEC believes that it made a

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good faith effort to comply with (and did comply with) Commission regulations by establishing a procedure for promptly collecting, reviewing, paying, and reporting invoices that was consistent with the accounting practices of prior and subsequent campaign committees. In contrast, the Commission found in its probable cause determination that the GEC did not report the debts as of the date those debts were incurred.

14. The Commission found probable cause to believe that the Compliance Committee did not report $235,587 in debts and obligations in accordance with the Act and the Commission's regulations. The Compliance Committee believes that it made a good faith effort to comply with Commission regulations by establishing a procedure for promptly collecting, reviewing, paying, and reporting invoices that was consistent with the accounting practices of prior and subsequent campaign committees. In contrast, the Commission found in its probable cause determination that the Compliance Committee did not report the debts or estimates of the debts as of the date those debts were incurred, but rather after an invoice was received and approved for payment.

15. Respondents and the Commission have agreed to conciliate the matter pursuant to 2 U.S.C. § 437g(a)(5)(A).

V. 1. The Primary Committee will not contest that it violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions, but does not concede that such a violation was proved by the record in this matter.

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2. The Primary Committee will not contest that it violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to properly report $1,767,548 in debts and obligations, but does not concede that such a violation was proved by the record in this matter.

3. The GEC will not contest that it violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.11(b) and 9004.7 by failing to properly report $1,048,190 in travel-related debts, but does not concede that such a violation was proved by the record in this matter.

4. The GEC will not contest that it violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to properly report $737,908 in non-travel related debts and obligations, but does not concede that such a violation was proved by the record in this matter.

5. The Compliance Committee will not contest that it violated 2 U.S.C. § 434(b)(8) and 11 C.F.R. § 104.11(b) by failing to properly report $235,587 in debts and obligations, but does not concede that such a violation was proved by the record in this matter.

VI. Pursuant to 2 U.S.C. § 437g(a)(5)(A), Respondents will pay a civil penalty to the Federal Election Commission in the amount of twenty-five thousand dollars ($25,000), as follows:

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1. The first installment of $5,000 will be paid within thirty (30) days of the Committees' receipt a copy of this agreement executed by the Commission;

2. The second installment of $10,000 will be paid within thirty (30) days after the first installment;

3. The third installment of $10,000 will be paid within thirty (30) days after the second installment.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondents shall have the time set forth in Section VI to comply with and implement the requirements contained in this agreement and to so notify the Commission.

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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence M. Noble
General Counsel

12/23/97
Date

FOR THE RESPONDENTS:

Bobby R. Burchfield

Nov. 25, 1997
Date

28043825318

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

THIS IS THE END OF MUR # 4239

DATE FILMED 1/23/98 CAMERA NO. 2

CAMERAMAN EES

28043825319

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Date: 6/15/98

✓ Microfilm

_____ Press

THE ATTACHED MATERIAL IS BEING ADDED TO CLOSED MUR 4289

98043885314

BUSH 92 QUAYLE

June 11, 1998

Ms. Delanie Painter
Office of the General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Dear Ms. Painter:

Enclosed please find checks for the remaining $ 10,000 payment due from Bush-Quayle '92. We apologize that this final installment is late, and we appreciate the courtesy of your calling to remind us.

Sincerely:

Keith A. Davis, Assistant Treasurer
Bush-Quayle '92

encls.

98043885315

RECEIVED
FEDERAL ELECTION
COMMISSION
ACCOUNTING OFFICE
Jun 12 11 56 AM '98

Paid for by Bush - Quayle '92 Primary Committee, Inc.

93051

BUSH - QUAYLE '92
COMPLIANCE COMMITTEE
OPERATING ACCOUNT
228 S. WASHINGTON STREET, SUITE 200
ALEXANDRIA, VA 22314

FRANKLIN NATIONAL BANK
1722 EYE STREET, N.W.
WASHINGTON, D.C.

15-154/540

June 11 19 98

PAY ------Five Thousand and NO/100---------- DOLLARS $ *5,000.00

TO THE ORDER OF
U.S. Treasury
999 E Street, N.W.
Washington, DC 20463

James E. Reed
Keith A. Harris

⑈093051⑈ ⑆054001547⑆ 20065749⑈12

Bush Quayle '92 Campaign Committee
Non-Federal
228 S. Washington Street
Suite 200
Alexandria, VA 22314

003

15-154/540

DATE 6/11/98

PAY TO THE ORDER OF U.S. Treasury $*5,000.00

-----Five Thousand and NO/100----------

DOLLARS

FRANKLIN NATIONAL BANK
1722 EYE STREET, N.W.
WASHINGTON, D.C.

FOR Per FEC Conciliation Agreement

James E. Reed
Keith A. Harris

⑆054001547⑆ 300008046⑈

9804388553116

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Jun 15 10 20 AM '98

June 15, 1998

TWO WAY MEMORANDUM

TO: OGC Docket

FROM: Rosa E. Swinton RES
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from **Bush-Quayle '92 Campaign Committee,** check number **003,** dated **June 11, 1998,** for the amount of , **5,000.00.** A copy of the check and any correspondence is being forwarded. Please indicate below which a account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of $ 5000.00 the MUR/Case number is 3641971 9289 and in the name of Bush-Quayle '92 Campaign Committee. Place this deposit in the account indicated below:

___ Budget Clearing Account (OGC), 95F3875.16

✓ Civil Penalties Account, 95-1099.160

___ Other: _____

Kim C. Henderson
Signature

6-15-98
Date

9804388531 7

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

June 15, 1998

TWO WAY MEMORANDUM

TO: OGC Docket

FROM: Rosa E. Swinton RES
Accounting Technician

SUBJECT: Account Determination for Funds Received

We recently received a check from **Bush-Quayle '92 Compliance Committee Operating Account,** check number **93051,** dated **June 11, 1998,** for the amount of , **5,000.00.** A copy of the check and any correspondence is being forwarded. **Please** indicate below which a account the funds should be deposited and give the MUR/Case number and name associated with the deposit.

TO: Rosa E. Swinton
Accounting Technician

FROM: OGC Docket

SUBJECT: Disposition of Funds Received

In reference to the above check in the amount of $5000.00, the MUR/Case number is 3664/4171/4287 and in the name of Bush-Quayle '92 Campaign Cmte. Place this deposit in the account indicated below:

___ Budget Clearing Account (OGC), 95F3875.16

✓ Civil Penalties Account, 95-1099.160

___ Other: _____

Signature

6-15-98
Date

9804388553118