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MEMORANDUM

MAR 13 2003

**SENSITIVE**

TO: The Commission

FROM: Lawrence H. Norton  
General Counsel

BY: Gregory R. Baker *GRB for LKN*  
Acting Associate General Counsel

SUBJECT: MUR 5199 – First General Counsel's Report,  
dated March 10, 2003

This Office is submitting the attached documents for association with the First General Counsel's Report in MUR 5199, dated March 10, 2003. Please substitute these attachments for the ones circulated with the Report on March 11, 2003. Additionally, please note that the list of attachments appearing on pp. 13-14 of the Report should be revised as follows:

1. Factual and Legal Analysis
2. Response to the Complaint
3. Public Citizen Press Release, August 1, 2002
4. Associated Press article, December 29, 2001
5. Letter of Candidate Agreements and Certifications
6. Conciliation Agreement

Attachments

Staff Assigned: Tracey L. Ligon



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Aug. 1, 2002

## Thousands of Errors and Omissions Plague Bush-Cheney Recount Fund Disclosure Forms

*Recount Fund May Face \$850,000 in Fines*

WASHINGTON, D.C. - The Bush-Cheney recount fund, which evaded soft money disclosure laws for 18 months, filed disclosure reports with the Internal Revenue Service (IRS) containing thousands of errors and omissions and could be fined \$850,000, Public Citizen has determined.

The Bush-Cheney 2000, Inc.-Recount Fund, a 527 political group created after the November 2000 election, filed disclosure reports with the IRS on July 15, 2002. The reports were submitted at 3:25 p.m. on the last day of an IRS amnesty program that allowed out-of-compliance groups to turn in reports and avoid millions of dollars in potential fines.

But the Bush-Cheney recount fund disclosure reports are incomplete, and the group could be subject to IRS fines in the thousands of cases where it did not disclose the employer and occupation of individual contributors and recipients of expenditures. Also, the recount fund apparently did not disclose to the IRS more than 600 donors that it listed on the Bush campaign's Web site. In a letter to IRS Commissioner Charles O. Rossotti, Public Citizen urged the IRS to "use the Bush-Cheney recount fund as an example to send a strong signal to other 527 groups that violations of the law will not be tolerated." Click here to view the letter, which was sent today.

"It is unacceptable for the Bush-Cheney recount fund to dodge disclosure for 18 months and then arrogantly suggest, as did the fund's lawyer when speaking recently to reporters, that the law does not apply to them," said Joan Claybrook, president of Public Citizen. "They must take responsibility for the tardy filings and they owe the public an apology, not lame excuses."

Findings from Public Citizen's examination of the disclosure reports include:

- The Bush-Cheney recount fund did not list the employer and

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occupation for 2,456 contributors who gave more than \$200, as required by law. This information is critical to understanding which special interests were attempting to influence the election process and curry favor with Bush. These omissions totaled \$2 million; the IRS can fine the fund 35 percent of these disclosure failures. Potential IRS fines for these omissions total \$711,000.

- The fund's disclosure reports filed with the IRS show 6,806 contributors who gave more than \$200. But a database of contributors provided on the Bush-Cheney campaign Web site lists 7,421 contributors who gave more than \$200. If the Web site is accurate, this leaves a disparity of 615 contributors that the fund apparently did not report to the IRS. The IRS can assess fines of 35 percent for these undisclosed contributors; this fine could reach \$43,000 if each contributor gave the \$200 minimum.
- The Bush-Cheney recount fund did not list the employer and occupation for individual recipients of 143 expenditures greater than \$500 and totaling \$272,050 - as required by the IRS. The IRS can levy fines of 35 percent on these disclosure omissions, which could total \$95,000.
- The Bush-Cheney recount fund failed to file five disclosure reports during the 18-month period. Ultimately, the fund reported \$10.2 million in contributions and \$13.8 million in expenditures. Fines for 527 groups that do not comply with the disclosure law can total 35 percent of a group's total contributions and expenditures. Based on that percentage, fines of \$8.47 million could have been assessed against the group had it not filed with the IRS on the last day of the amnesty program.
- The public can see how the recount fund spent \$13.8 million in the battle over Florida's 25 electoral votes ([click here](#)). These expenditures include money to Enron (\$28,281), Halliburton (\$2,407) and Reliant Energy (\$1,724) for use of their private jets. All three companies are under investigation by the Securities and Exchange Commission for cooking their books.

The fund continues to brazenly dismiss the disclosure rules. Benjamin Ginsberg, a lawyer for the fund, told *The Washington Post* on July 27, 2002, "We don't think we have an obligation to file this. We still think we are exempt, but the truth is: Why not take the issue off the table."

In fact, the 527 group disclosure rules are clear: The Bush-Cheney recount fund was required to file disclosure reports with the IRS. The law clearly states that a 527 political organization must file if it was created "primarily for the purpose of directly or indirectly accepting contributions or making expenditures . . . to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office . . . or the election of Presidential or Vice-Presidential electors" [26 U.S.C. 527(e)(1) & (2)].

Despite more than a thousand disclosure errors, it is possible the IRS will not penalize the Bush-Cheney recount fund for the compliance

failures. The IRS has yet to create a compliance program for 527 groups and may not be equipped to investigate or fine any 527s, including those affiliated with a presidential campaign.

"The Bush-Cheney campaign had 18 months to comply with the law, and the IRS has had two years to create a compliance program," said Frank Clemente, director of Public Citizen's Congress Watch. "Neither has met its obligation to the law and the public."

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## Bush-Cheney recount fund shifts \$270,000 to GOP in parting gift

By Scott Lindlaw / Associated Press

CRAWFORD, Texas -- The Bush-Cheney Recount Fund, which raised \$9 million toward legal costs in last year's election deadlock, is shutting down and has given the GOP a parting gift: \$270,000 in surplus funds.

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The recount fund's original plea for donations had promised contributors that "any monies not expended for this purpose will be returned on a pro rata basis."

The transfer to the Republican National Committee was recorded Nov. 30, almost a year after Democrat Al Gore conceded the race to George W. Bush, in a document that the RNC files monthly with the Federal Election Commission.

"In the process of winding down and closing the Bush-Cheney recount committee, excess money was transferred to the RNC in accordance with the law," RNC spokesman Mark Miner said. He said he did not know why the fund decided to give the RNC the money rather than refund it.

Several White House officials declined to comment on the transfer, and Ben Ginsberg, a top Bush recount lawyer, did not return phone calls Thursday and Friday seeking comment.

Don Evans, who made the early appeal for contributions, is now Commerce Secretary. Evans declined to comment, a Commerce spokesman said.

The RNC was a natural recipient of the surplus. It worked closely with the recount fund from the fund's inception, providing e-mail lists of likely donors as Bush sought to pay lawyers fighting for him.

Moreover, its mission is to bolster Republicans from the president on down. The RNC now runs the former Bush-Cheney 2000 campaign Internet site.

The money that donors gave the recount fund was not subject to strict federal rules governing contributions to individual candidates. That meant the recount fund could not give it to Bush's re-election committee.

Democratic National Committee spokeswoman Jennifer Palmieri said she

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believed the Gore-Lieberman Recount Fund is no longer operating. It has given no money to the DNC, she said.

Palmieri said Democrats were troubled by the \$270,000 transfer to the RNC because the Bush-Cheney recount organization did not reveal contributors to any government body. "It raises lots of questions about who donated that money," she said. The Gore-Lieberman fund disclosed its donors to the Internal Revenue Service, she said.

The Bush-Cheney recount committee was not required by federal law to disclose its donors to the government, and there is no public record of the source of the money.

The recount fund did post some, but not all, donors on the Bush-Cheney Web site, but the site lists no donors today.

According to the nonpartisan Center for Responsive Politics, the donors included Kenneth Lay, chairman and chief executive of collapsed energy firm Enron. Four days after Evans' plea for money, Lay and his wife, Linda, gave \$5,000 each, the maximum accepted by the Bush-Cheney recount fund. The center continues to post the donors on its Web site.

The RNC is required by law to reveal who gives it money. For the \$270,000, it simply listed the recount committee as the donor. Ian Stirton, a spokesman for the FEC, said that was sufficient disclosure.

Bush and Gore advisers realized immediately after the November 2000 election that the legal battle for the presidency would be expensive. Both camps aimed to raise \$3 million. Bush's fund raised \$9 million, Gore far less.

**On the Net:**

Center for Responsive Politics index of recount fund donors:  
<http://www.opensecrets.org/2000elect/other/bush/recountdonorsform.asp>  
Bush-Cheney campaign: <http://www.georgewbush.com/>

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AUG 4 9 00 AM '00

August 3, 2000

The Honorable Darryl R. Wold  
Chairman  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Mister Chairman:

Pursuant to 26 U.S.C. § 9003 and 11 C.F.R. § 9003.1, this letter certifies that we, as the nominees of the Republican Party for President and Vice President of the United States, and our authorized campaign committee(s), will comply with the conditions set forth in 11 C.F.R. § 9003.1 (b) as to eligibility for payments from the Presidential Election Campaign Fund ("Fund") as enumerated below. Thus, our authorized committee(s) and we (herein after collectively "we") agree that:

1. We have the burden of proving that disbursements made by us or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 C.F.R. § 9002.11;
2. We shall comply with the documentation requirements set forth at 11 C.F.R. § 9003.5;
3. We shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by us or our authorized committee(s) and the campaign, if requested by the Commission;
4. We will keep and furnish to the Commission all documentation relating to receipts and disbursements, including any books, records (including bank records for all accounts), all documentation required to be maintained by the Commission's regulations (including documentation required to be maintained under 11 C.F.R. § 9003.5), and other information that the Commission may request. To the extent we maintain or use computerized information containing any of the categories of data listed in 11 C.F.R. § 9003.6(a), our committee(s) will provide computerized magnetic media (such as magnetic tapes or magnetic diskettes) containing this computerized information that meet the requirements of

11 C.F.R. § 9003.6(b) at the times specified in 11 C.F.R. § 9007.1(b)(1). Upon request of the Commission, we agree to provide documentation explaining our computer system's software capabilities and such personnel as are necessary to explain the operation of the system's software and computerized information prepared or maintained by our committee(s);

5. We shall obtain and furnish to the Commission upon request all documentation relating to the funds received and disbursements made on our behalf by other political committee(s) and organization(s) affiliated with us;

6. We shall permit an audit and examination pursuant to 11 C.F.R. part 9007 of all receipts and disbursements, including those made by us, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of us or our authorized committee(s). We shall facilitate the audit by making available in one central location office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 C.F.R. part 9007.

7. The name and mailing address of the person who is entitled to receive payments from the Fund on our behalf is:

James R. Graham  
Assistant Treasurer  
P.O. Box 684828  
Austin, TX 78768

The name and address of the depository designated by us as required by 11 C.F.R. part 103 and 11 C.F.R. § 9005.2 is:

Bank of America  
515 Congress Avenue  
Austin, TX 78701

Payments from the fund are to be made to the account at Bank of America under the name of Bush for President General Election Committee, Inc. The account representative is Cathy Babineaux.

Any change in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by us or the Treasurers of our authorized committee(s).

8. We agree that we shall comply with the applicable requirements of 2 U.S.C. § 431 et seq., 26 U.S.C. § 9001 et seq., and the Commission's regulations at 11 C.F.R. parts 101-116 and 9001-9012;

9. We agree that we shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. § 437g against us or any agent thereof.



The Honorable Darryl R. Wold  
August 3, 2000  
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10. We agree that any television commercial prepared or distributed by us or our authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval; and

11. We agree that we and our authorized committee(s) shall file all reports with the Commission in an electronic format that meets the requirements of 11 C.F.R. § 104.18 if we or our authorized committee(s) maintain or use computerized information containing any of the information described in 11 C.F.R. § 104.3.

Additionally, pursuant to 26 U.S.C. § 9003 and 11 C.F.R. § 9003.2, and under penalty of perjury, we and our authorized campaign committee(s) hereby certify the following:

1. We certify that neither of us, nor our authorized committee(s), have incurred nor will incur qualified campaign expenses in excess of the aggregate payments to which we will be entitled under 11 C.F.R. part 9004;

2. We certify that no contributions have been or will be accepted by us or by our authorized committee(s); except as contributions specifically solicited for, and deposited to, our legal and accounting compliance fund established under 11 C.F.R. § 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Presidential Election Campaign Fund due to the application of 11 C.F.R. § 9005.2(b); and

3. We certify that we will not knowingly make expenditures from our personal funds, or from the personal funds of our immediate families, in connection with our campaign for the Offices of President and Vice President of the United States in excess of \$50,000 in the aggregate, as explained at 11 C.F.R. § 9003.2(c)(3).

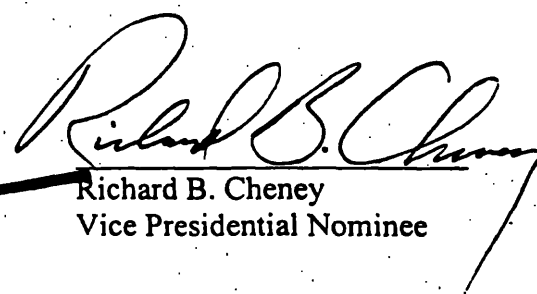
In light of the above, we ask that you certify to the Secretary of the Treasury our eligibility for the payments to which we are entitled under 26 U.S.C. § 9001 et seq. and 11 C.F.R. parts 9001-9005 et seq.

Please notify us if you require any further information in this matter.

Sincerely,



Governor George W. Bush  
Presidential Nominee



Richard B. Cheney  
Vice Presidential Nominee

cc: The Honorable Danny Lee McDonald, Vice Chairman  
The Honorable David M. Mason, Commissioner  
The Honorable Karl J. Sandstrom, Commissioner  
The Honorable Bradley A. Smith, Commissioner  
The Honorable Scott E. Thomas, Commissioner