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April 21, 2006

VIA COURIER

J Cameron Thurber, Esq
Office of the General Counsel
Federal Election Commission
999 E Street, N W
Washington, DC 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2006 APR 21 P 2 52

Re MUR 5549
Stephen Adams

Dear Mr Thurber

Enclosed please find three (3) courtesy copies of the Response of Stephen Adams to the General Counsel's Brief Recommending a Finding of Probable Cause in MUR 5549 Ten copies of the Response have been filed with Mary W Dove, Secretary of the Federal Election Commission

Sincerely,

Brett G Kappel

Enclosures

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	
Stephen Adams	)	MUR 5549
	)	
	)	

RESPONSE OF STEPHEN ADAMS TO THE GENERAL COUNSEL'S BRIEF RECOMMENDING A FINDING OF PROBABLE CAUSE

This Response, including attachments, is submitted on behalf of Stephen Adams ("Mr Adams") in response to the General Counsel's Brief recommending that the Federal Election Commission ("FEC" or "the Commission") find probable cause to believe that Mr Adams violated 2 U S C §§ 434(g)(2)(A) and 441d(a)(3) For the reasons set forth below, the Federal Election Commission should find that, while Mr Adams inadvertently committed technical violations of 2 U S C §§ 434(g)(2)(a) and 441d(a)(3), the Commission should exercise its prosecutorial discretion to dispose of this matter without seeking to obtain a civil penalty

Summary of General Counsel's Brief

The General Counsel's Brief is indeed brief In three-and-one-quarter pages, the General Counsel provides a bare-bones description of the facts in this matter and presents its recommendation that the Commission find probable cause to believe that Mr Adams violated 2 U S C §§ 434(g)(2)(A) and 441d(a)(3) Unfortunately, the General Counsel's succinct summary of the case fails to provide the necessary context for the Commission to decide whether to continue to expend scarce resources to pursue this matter further

Noticeably absent from the General Counsel's Brief is any mention of the fact that Mr Adams sought and obtained legal counsel to advise him of the requirements of federal campaign

finance law prior to making his independent expenditure – legal counsel who provided Mr Adams with incorrect advice as to the disclaimer required by 2 U S C § 441d(a)(3) and no advice at all regarding the filing requirements of 2 U S C § 434(g)(2)(A) Those omitted facts go directly to Mr Adams' culpability for the violations in this matter

The General Counsel's Brief also devotes scant attention to the extensive and expensive mitigation efforts that Mr Adams took to remedy the effects of the violations in this matter – mitigation efforts that were taken on an expedited basis to ensure that the violations of 2 U S C §§ 434(g)(2)(A) and 441d(a)(3) were both rectified prior to the November 2, 2006 general election Both the actions that Mr Adams took to correct the violations and the timing of those actions are mitigating factors that the Commission should consider in exercising its prosecutorial discretion

A more fulsome statement of the facts in this matter appears below A complete reading of all of the facts in this matter shows that Mr Adams bears little, if any, culpability for the violations that occurred and that, upon obtaining correct legal advice from competent counsel, Mr Adams went to great lengths to mitigate the effects of those violations before the November 2, 2004 general election

Statement of Facts and Discussion of Authority

The billboards that are the focus of the complaint in MUR 5549 were paid for by Mr Adams as part of a multi-state outdoor advertising campaign paid for in its entirety by Mr Adams as an independent expenditure in support of the Bush-Cheney '04 campaign The outdoor advertising campaign paid for by Mr Adams used a number of different advertisements Each advertisement used a different catch phrase (e g , "Defending Our Nation," "It's About Our National Security," "Boots or Flip-Flops?") that appeared in white type on a blue background

immediately above the campaign slogan "BushCheney04" superimposed on the red and white stripes of the American flag See billboard mockups attached as Attachment 1

Stephen Adams went to great lengths to ensure that his independent expenditure in support of Bush-Cheney '04 met all the requirements of the Federal Election Campaign Act ("FECA") Mr Adams hired Adams Outdoor Advertising ("AOA") on or about June 1, 2004 to design and implement an outdoor advertising campaign as an independent expenditure in support of the re-election of President George W Bush Affidavit of Stephen Adams at ¶ 4 (attached as Attachment 2), Affidavit of Randall Romig at ¶ 3 (attached as Attachment 3)

Recognizing that the advertising campaign requested by Mr Adams required compliance with federal regulations, Randall Romig, the AOA employee who was principally responsible for the advertising campaign, sought legal advice from the outdoor advertising industry's trade association, the Outdoor Advertising Association of America, Inc ("OAAA") On or about June 4, 2004, Randall Romig contacted Nancy Fletcher, President of the OAAA, to seek guidance from her on the legal requirements applicable to an outdoor advertising company employed to design and implement an advertising campaign as an independent expenditure in support of a candidate for federal office Affidavit of Randall Romig at ¶ 4 Ms Fletcher forwarded Mr Romig's request to Eric Rubin, a partner in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L L P and general counsel to the OAAA Affidavit of Randall Romig at ¶ 5 On or about June 10, 2004, Mr Rubin sent a letter to Mr Romig providing general guidance on the legal restrictions applicable to an outdoor advertising company hired to design and implement an advertising campaign as an independent expenditure in support of a candidate for federal office Affidavit of Randall Romig at ¶ 6, Letter from Eric Rubin to Randall Romig (June 10, 2004)(attached as Attachment 4)

On or about June 19, 2004, Mr Romig forwarded Mr Rubin's letter to Mr Adams with a cover memorandum stating that, according to Mr Rubin, it was permissible for Mr Adams to proceed with the advertising campaign in support of the re-election of President George W Bush, provided that Mr Adams paid for the advertisements directly and without any involvement by the Bush campaign Affidavit of Randall Romig at ¶ 10, Memorandum from Randy Romig to Steve Adams (June 19, 2004)(see Attachment 4)

Mr Adams received and read the memorandum from Mr Romig and the letter from Mr Rubin on or about June 21, 2004 Affidavit of Stephen Adams at ¶¶ 6-9 Throughout the advertising campaign that is the subject of the complaint in MUR 5549, Mr Adams strictly followed Mr Rubin's advice regarding the legal requirements for making an independent expenditure in support of the Bush campaign Affidavit of Stephen Adams at ¶ 10, Affidavit of Randall Romig at ¶ 14

Stephen Adams Made a Good Faith Effort to Comply with 2 U.S.C. § 441d(a)(3) and, Upon Learning That the Disclaimers Were Deficient, Went to Extraordinary Lengths to Comply With FECA and All Applicable Regulations Before the November 2, 2004 General Election

The only claim in the complaint in MUR 5549 with any merit is the allegation that the disclaimers used on the advertisements in support of the Bush-Cheney '04 campaign did not comply completely with the requirements of 2 U S C § 441d(a)(3) FECA requires that whenever an individual makes an independent expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate, the communication must clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee 2 U S C § 441d(a)(3)

The disclaimer initially affixed to Mr Adams' advertisements in support of the Bush-Cheney '04 campaign read "Personal message paid for and sponsored by Stephen Adams " See billboard mockups attached as Attachment 1 While that disclaimer satisfies 2 U S C § 441d(a)(3)'s requirement that such communications disclose the name of the person who paid for the communication, it does not fully comply with the statute because it does not disclose that the communication was not authorized by any candidate or candidate's committee and it does not provide the reader with the information needed to contact the person who paid for the communication Mr Adams committed this technical violation of 2 U S C § 441d(a)(3) because he relied on erroneous legal advice from the general counsel of the Outdoor Advertising Association of America, Inc

When Mr Adams hired AOA to design and implement his independent advertising campaign in support of Bush-Cheney '04, he expected that AOA would ensure that the advertising campaign was run in full compliance with all federal, state and local laws governing campaign advertisements and outdoor advertising facilities Affidavit of Stephen Adams at ¶ 5 AOA sought to do just that by seeking legal advice from Eric Rubin, a partner in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L L P , and general counsel to the Outdoor Advertising Association of America, Inc When Mr Rubin initially advised Mr Romig on the FEC regulations governing independent expenditures, he did not provide any advice regarding the need to include a disclaimer on the advertisements supporting the re-election of President Bush Affidavit of Randall Romig at ¶ 9

On July 6, 2004, Mr Romig called Mr Rubin to ask him specifically whether the advertisements supporting the re-election of President Bush needed to include a disclaimer and, if so, what language need to be included Affidavit of Randall Romig at ¶ 11 Mr Rubin advised

Mr Romig that the advertisements did need to include a disclaimer and he recommended the following language "Personal Message Paid For and Sponsored by Stephen Adams" Affidavit of Randall Romig at ¶ 12 Mr Romig forwarded that language to the AOA employees responsible for producing the advertisements and instructed them to include that specific language on all of the advertisements Affidavit of Randall Romig at ¶ 13 See also Email from Randy Romig to Brian Haselton re disclaimer on Bush design (July 6, 2004)(attached as Attachment 5)

When Mr Romig received the complaint in MUR 5549 he was stunned to read the allegation that the disclaimer violated 2 U S C § 441d(a)(3), because the disclaimer language had been provided to him by Mr Rubin, general counsel to the OAAA and a recognized expert in advertising law Affidavit of Randall Romig at ¶ 23 Shortly after receiving the complaint in MUR 5549, Mr Romig contacted Mr Adams' personal lawyer, Robert T York, and together they sought experienced FEC counsel to represent both AOA and Mr Adams in MUR 5549 Affidavit of Randall Romig at ¶ 24, Affidavit of Stephen Adams at ¶ 14

Upon being informed by new counsel that the disclaimer did not, in fact, fully comply with the requirements of 2 U S C § 441 d(a)(3), Mr Adams immediately took steps to comply with FECA and all applicable FEC regulations prior to the November 2, 2004 general election Mr Adams immediately retained AOA to produce and install corrected disclaimers on all of the advertisements that had been posted in Michigan, Pennsylvania, South Carolina and Wisconsin as part of Mr Adams' independent advertising campaign in support of the re-election of President Bush Prior to the election, AOA employees installed the following disclaimer on every single advertisement in all four states "Paid for by Stephen Adams and not authorized by any candidate or candidate's committee Contact sadams@adamsoffice net"

The speed with which the billboards that triggered the complaint in MUR 5549 were corrected is particularly noteworthy The complaint in MUR 5549 alleged that billboards "in central and western Michigan" failed to comply with 2 U S C § 441d(a)(3) MUR 5549 Complaint at ¶ 1 Mr Adams retained AOA on October 18, 2004 to produce and install corrected disclaimers (referred to in the outdoor advertising trade as "snipes") on all of the advertisements that were part of his independent expenditure in support of the Bush campaign Affidavit of Stephen Adams at ¶¶ 15-17, Affidavit of Randall Romig at ¶¶ 25-28 On October 22, 2004 - less than 96 hours after being retained by Mr Adams - AOA printed and installed snipes on sixty-one (61) billboards in and around Lansing, Michigan An additional twenty-six (26) snipes were installed on billboards in and around Ann Arbor, Michigan by October 25, 2004 In less than a week, Mr Adams ensured that corrected disclaimers were installed on the specific billboards that were the subject of the complaint in MUR 5549 at a total cost to him of four thousand, three hundred and fifty dollars ($4,350 00)(See AOA invoices attached as Attachment 6)

Corrective snipes were installed on billboards in other jurisdictions contemporaneously with those installed on the billboards in and around Lansing and Ann Arbor, Michigan The total cost to Mr Adams of installing corrected disclaimers on all of the advertisements in all four states prior to November 2, 2004 was fourteen thousand, five hundred and forty-five dollars and twenty-seven cents ($14,545 27) Affidavit of Stephen Adams at ¶ 15-17, Affidavit of Randall Romig at ¶¶ 25-28 See also photographs of billboards bearing corrected disclaimers attached as Attachment 7

While Mr Adams initially failed to fully comply with 2 U S C § 441d(a)(3), the Commission should not seek to impose a civil penalty on Mr Adams for this technical violation Mr Adams made a good faith effort to comply with 2 U S C § 441d(a)(3) by seeking the advice

of counsel and then following that advice to the letter Mr Adams should not be penalized for following the advice of counsel who Mr Adams knew to be a recognized expert on the law of advertising Moreover, once Mr Adams was advised that the disclaimer was technically insufficient, he went to extraordinary lengths at significant personal cost to rectify the violation and to ensure that every single advertisement included a disclaimer fully compliant with 2 U S C § 441d(a)(3) before the November 2, 2004 general election To impose a monetary penalty on Mr Adams in this situation would be fundamentally unjust

Stephen Adams Had No Way to Know that He, as an Individual, was Required to Comply with 2 U.S.C. § 434(g)(2)(A) and Report His Independent Expenditure to the Federal Election Commission, but, Upon Learning that He Was Required to File FEC Form 5, He Took Immediate Steps to Ensure that the Form Was Filed Before the November 2, 2004 General Election

Mr Adams had no idea that 2 U S C § 434(g)(2)(A) required him, as an individual, to file FEC Form 5 with the Commission within forty-eight hours of making an independent expenditure As the Commission has already recognized in the related matter of MUR 5559, Mr Adams sought advice from legal counsel as to the requirements of federal campaign finance law applicable to him when making an independent expenditure His former counsel failed him utterly, providing him with incorrect legal advice with regard to the proper disclaimer required by 2 U S C § 441d(a)(3) and no advice at all that Mr Adams was required by 2 U S C § 434(g)(2)(A) to report his independent expenditure to the Commission See Affidavit of Stephen Adams at ¶¶ 5-10, Affidavit of Randall Romig at ¶¶ 4-15, Attachments 4 & 5 [1]

It cannot be presumed that any individual, without competent legal counsel, would be aware of the reporting requirement of 2 U S C § 434(g)(2)(A) Section 434(g)(2)(A) is the only provision of the Federal Election Campaign Act that requires an individual person to file a

[1] Attachments 4 and 5 reflect the totality of the legal advice provided to Mr Adams by his former counsel, Eric M Rubin, Esq of the law firm Rubin, Winston, Diercks, Harris & Cooke, L L P

disclosure report with the Commission The Commission's own press releases indicate that extremely few individuals are aware of the reporting requirements of 2 U S C § 434(g)(2)(A) and that compliance remains the exception rather than the rule The Commission reported in February 2005 that "individuals, parties and other groups spent $192 4 million independently advocating the election or defeat of presidential candidates during the 2004 campaign This spending compares with $14 7 million in similar activity in 2000, and $1 4 million in independent expenditures in the 1996 presidential race "[2] Despite this vast increase in independent spending, in the two months prior to the 2004 general election, a total of only nine (9) individuals were reported to have filed FEC Form 5 with the Commission disclosing their personal independent expenditures [3]

It is simply inappropriate to hold Mr Adams culpable for the failure of his former counsel to provide adequate legal advice Moreover, it is important to note that, once Mr Adams was finally advised of the reporting requirement of 2 U S C § 434(g)(2)(A) by competent counsel, he took immediate steps to mitigate the effect of the violation by filing FEC Form 5 with the Commission as soon as possible – an effort that was frustrated by the fact the Commission's electronic filing software at that time did not allow an individual to electronically file FEC Form 5 Mr Adams' FEC Form 5 was hand-delivered to the Commission by counsel on October 28, 2004 (within an hour after it was delivered to counsel by overnight mail) and was posted on the

[2] Press Release, Federal Election Commission, 2004 Presidential Campaign Financial Activity Summarized (Feb 3, 2005)

[3] Press Release, Federal Election Commission, September Independent Expenditure Disclosure Summarized (Oct 5, 2004)(no individuals reported filing FEC Form 5), Press Release, Federal Election Commission (Oct 8, 2004)(no individuals reported filing FEC Form 5 in the first seven days of October 2004), Press Release, Federal Election Commission, Independent Expenditure Disclosure Summarized (Oct 20, 2004)(three individuals – George Soros, Lourdes M Chu and Yaffa Dermer – reported filing FEC Form 5 in the first 18 days of October 2004), Press Release, Federal Election Commission (Oct 25, 2004)(two individuals – Jonathan J Halperin and Eric A Barkan – reported filing FEC Form 5 between October 19, 2004 and October 24, 2004), Press Release, Federal Election Commission (Oct 29, 2004)(five individuals – George Soros, John R Bone, Fr Frank Pavone, H Seward Lawlor, and Jack E Robinson – reported filing FEC Form 5 between October 25, 2004 and October 28, 2004 There is no explanation why this list does not include Mr Adams, whose FEC Form 5 was filed on October 28, 2004)

Commission's web site within 24 hours Accordingly, both the Commission and the general public received notice of Mr Adams' independent expenditure prior to the 2004 general election

The fact situation in MUR 5549 appears to be *sui generis* As far as can be determined from publicly available records, the Commission has never obtained a civil penalty from any individual for a violation of 2 U S C § 434(g)(2)(A) or its predecessor statute, 2 U S C § 434(c)(1) Nor does there appear to be a single instance of the Commission obtaining a civil penalty from an individual for a violation of 2 U S C § 441d(a)(3) – even when the required disclaimer was missing entirely, rather than, as in MUR 5549, merely incomplete Indeed, even in cases where the Commission has found reason to believe that a political committee, rather than an individual, violated both 2 U S C § 441d(a) and 2 U S C § 434(c)(1), the Commission's typical response has been to send an admonishment letter and take no further action See, e g , MUR 5083 First General Counsel's Report at 6-7

There is, however, one closely analogous precedent that the Commission should consider prior to deciding whether to seek a civil penalty from Mr Adams In MUR 4313, the Commission found probable cause to believe that the Coalition for Good Government – a "person" within the meaning of 2 U S C § 431(11) – had violated both 2 U S C § 434(c) and 2 U S C § 441d by making an independent expenditure of one million, one hundred and fifty thousand dollars ($1,150,000) for a series of television advertisements that expressly advocated the election of Senator Richard Lugar The television advertisements did not contain the statement required by 2 U S C § 441d disclosing whether or not the advertisements had been authorized by the candidate or his authorized committee In addition, the Coalition for Good Government never reported the independent expenditure to the Commission as required by 2

U S C § 434(c) MUR 4313 was resolved by a conciliation agreement in which the Coalition for Good Government agreed to pay a civil penalty of nine thousand dollars ($9,000)

The factual similarities between MUR 4313 and MUR 5549 are striking In addition to the amount of the independent expenditure, the First General Counsel's Report in MUR 4313 indicates that the funds for the independent expenditure came from one individual The Coalition for Good Government was a subchapter S corporation established by Paul Tudor Jones II for the sole purpose of running the television advertisements First General Counsel's Report at 20 Mr Jones testified that the entire one million, one hundred and fifty thousand dollars ($1,150,000) used to pay for the independent expenditure came from his own personal funds Id

More importantly, it appears that Mr Jones – like Mr Adams in MUR 5549 – was the victim of bad legal advice Mr Jones testified that he had obtained legal advice that the advertisements could be run by a subchapter S corporation that he could fund and control while being protected from personal liability Id Mr Jones also apparently received erroneous legal advice that the advertisements in question would not be regarded as being in connection with a federal election MUR 4313 Conciliation Agreement at Section VII 3

Finally, it appears that the television advertisements in MUR 4313 – like the billboards in MUR 5549 – contained disclaimers that contained some, but not all, of the information required by 2 U S C § 441d The television advertisements in MUR 4341 were required by 2 U S C § 441d(a)(3) to disclose the name of the person who paid for the communication and state whether or not the communication was paid for by any candidate or candidate's committee 2 U S C § 441d(a)(3) (1996) It is difficult to tell from the heavily redacted version of the First General Counsel's Report in MUR 4313, but it appears that the

television advertisements did contain a disclaimer indicating that they had been paid for by the Coalition for Good Government, but failed to state whether or not the advertisements had been authorized by a candidate or his authorized committee MUR 4313 Conciliation Agreement at Section IV 12

Similarly, the Commission has concluded that Mr Adams partially complied with 2 U S C § 441d(a)(3) Section 441d(a)(3) requires that disclaimers on communications paid for by independent expenditures must state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and that the communication was not authorized by any candidate or committee 2 U S C § 441d(a)(3) (2004) The Commission's factual and legal analysis concluded that the advertisements in MUR 5549 originally disclosed the fact that they had been paid for by Mr Adams, but that they did not disclose that they had not been authorized by Bush-Cheney '04 and that they did not contain Mr Adams' personal e-mail address MUR 5549 Factual and Legal Analysis at 2

MUR 4313 is a powerful precedent for how the Commission should resolve MUR 5549 Clearly, the Commission in MUR 4313 recognized that the Coalition for Good Government's violations of 2 U S C §§ 434(c) and 441d(a)(3) were largely, if not entirely, due to incorrect legal advice provided by counsel and that the Committee bore little, if any, culpability for those violations MUR 5549 is no different

Moreover, there are additional mitigating facts in MUR 5549 that argue against the imposition of even the minimal civil penalty assessed in MUR 4313 The Commission has said that, in the exercise of its prosecutorial discretion, it can decide not to pursue a particular violation due to mitigating circumstances The factors the Commission may consider in making that decision include, among others, "actions taken to correct the violation, the timing of those

actions, and whether the matter involves an ambiguous area of the law or a provision of the Act which has not been previously interpreted by the Commission "[4] All three of these factors are present in MUR 5549 and argue against the imposition of a civil penalty

Unlike the Coalition for Good Government in MUR 4313, Mr Adams took immediate and expensive steps to mitigate the violations of 2 U S C §§ 441d(a)(3) and 434(g)(2)(A) as soon as he was advised by competent counsel how to do so The Commission has already recognized that Mr Adams took immediate steps to mitigate the effect of the Section 441d(a)(3) violation by hiring Adams Outdoor Advertising to post corrected disclaimers on all of the outdoor advertisements in MUR 5549 MUR 5549 Factual and Legal Analysis at 3 Adams Outdoor Advertising began posting corrected disclaimers on the outdoor advertisements very shortly after they received the correct language for the disclaimers from competent counsel on October 18, 2004 Every single outdoor advertisement bore a corrected disclaimer before the general election was held on November 2, 2004 Mr Adams paid American Outdoor Advertising a total of fourteen thousand, five hundred forty-five dollars and twenty-seven cents ($14,545 27) to post corrected disclaimers on all of the outdoor advertisements in MUR 5549 Id This cost was over and above the fee paid by Mr Adams to American Outdoor Advertising for the original outdoor advertisements In essence, Mr Adams has already paid a fifteen thousand dollar ($15,000) penalty to correct the Section 441d(a)(3) violation that was caused by the incorrect legal advice provided by his original counsel

Similarly, Mr Adams took immediate steps to correct the Section 434(g)(2)(A) violation as soon as he was made aware of the reporting requirement by competent counsel The fact that the Commission's electronic filing software at the time did not support electronic filing

[4] Lawrence H Norton, Federal Election Commission, Federal Election Commission Enforcement (2004), *reprinted in* Corporate Political Activities 2004 Complying with Campaign Finance, Lobbying & Ethics Laws 734-35 (C Nielsen, J Baran & K Gross eds , PLI, 2004)

of FEC Form 5 by an individual delayed Mr Adams' filing of the form for several days as he exchanged hard copies of FEC Form 5 with counsel via overnight mail As previously noted, Mr Adams' FEC Form 5 was hand-delivered to the Commission by counsel on October 28, 2004 (within an hour after it was delivered to counsel by overnight mail) and was posted on the Commission's web site within 24 hours Accordingly, both the Commission and the general public were made aware of Mr Adams' independent expenditure prior to the 2004 general election

The grossly inadequate legal advice provided by Mr Adams' former counsel and the substantial steps that Mr Adams took to mitigate the effects of the violations prior to the 2004 general election make MUR 5549 a poor case for the Commission to use to make its first interpretation of 2 U S C § 434(g)(2)(A) since it was enacted in its current form in 2002 As noted previously, all of the available evidence suggests that extremely few individuals are aware that they must personally file a disclosure report with the Commission when they pay for a communication that expressly advocates the election of a candidate for federal office Mr Adams was one of only ten (10) individuals who filed FEC Form 5 with the Commission in the two months prior to the 2004 general election Imposing a civil penalty on him for filing the form late – due entirely to the failure of his former counsel to advise him of the filing requirements of 2 U S C § 434(g)(2)(A) - when it is readily apparent that many other individuals failed to file at all does little to encourage compliance and would appear merely punitive to the general public

Conclusion

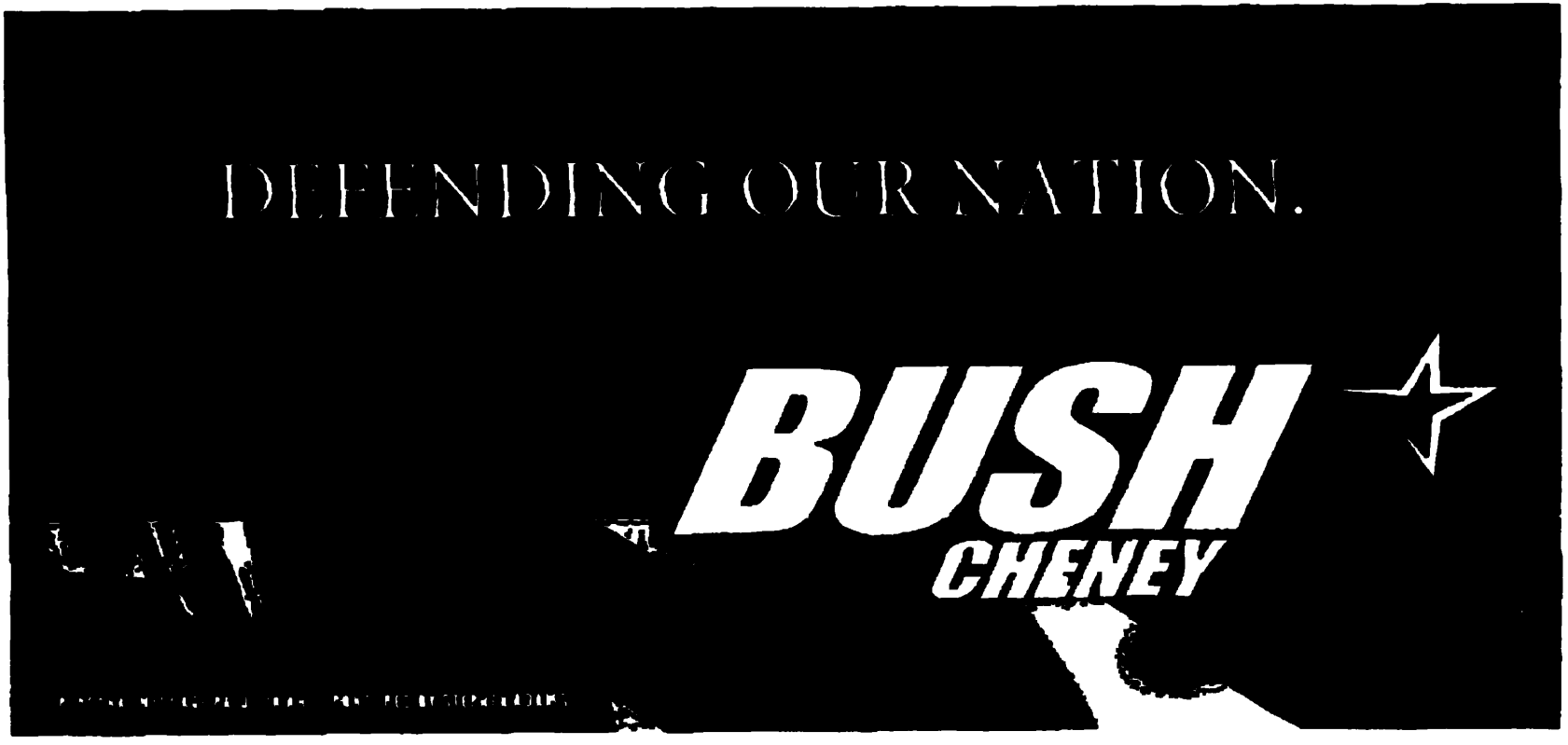
The Commission should exercise its prosecutorial discretion and dispose of this matter without seeking to obtain a civil penalty The foregoing statement of all of the facts in this

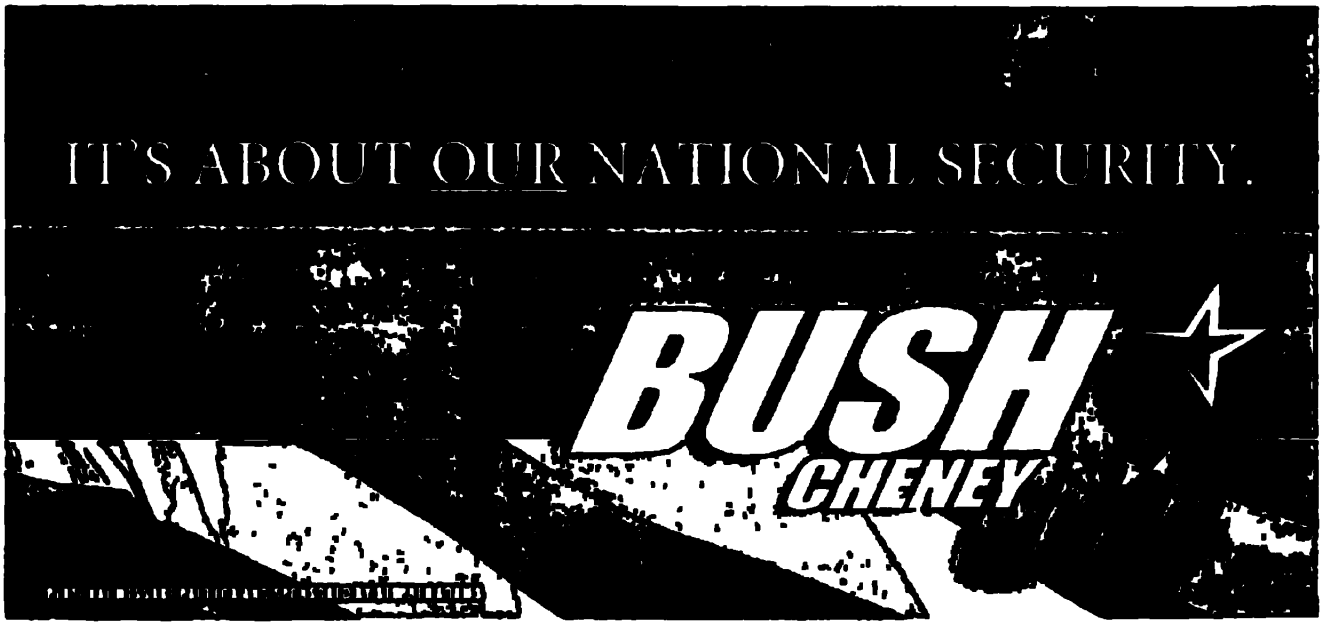
matter shows that, due to the egregiously inadequate legal advice provided by his former counsel, Mr Adams bears little, if any, culpability for the violations that occurred and that, upon obtaining correct legal advice from competent counsel, Mr Adams went to great lengths to mitigate the effects of those violations before the November 2, 2004 general election The Commission's prior enforcement actions with regard to violations of 2 U S C § 441d(a)(3) and 2 U S C § 434(g)(2)(A) (and its predecessor statute, 2 U S C § 434(c)(1)), simply do not support a civil penalty in MUR 5549 The most closely analogous case, MUR 4313, is very much to the contrary and shows that the Commission recognizes the fundamental injustice of penalizing a respondent for relying to his detriment on bad legal advice provided by counsel Mr Adams is willing, however, to accept responsibility for the violations and will readily agree to cease and desist from any further violations of 2 U S C §§ 441d(a)(3) and 434(g)(2)(A)

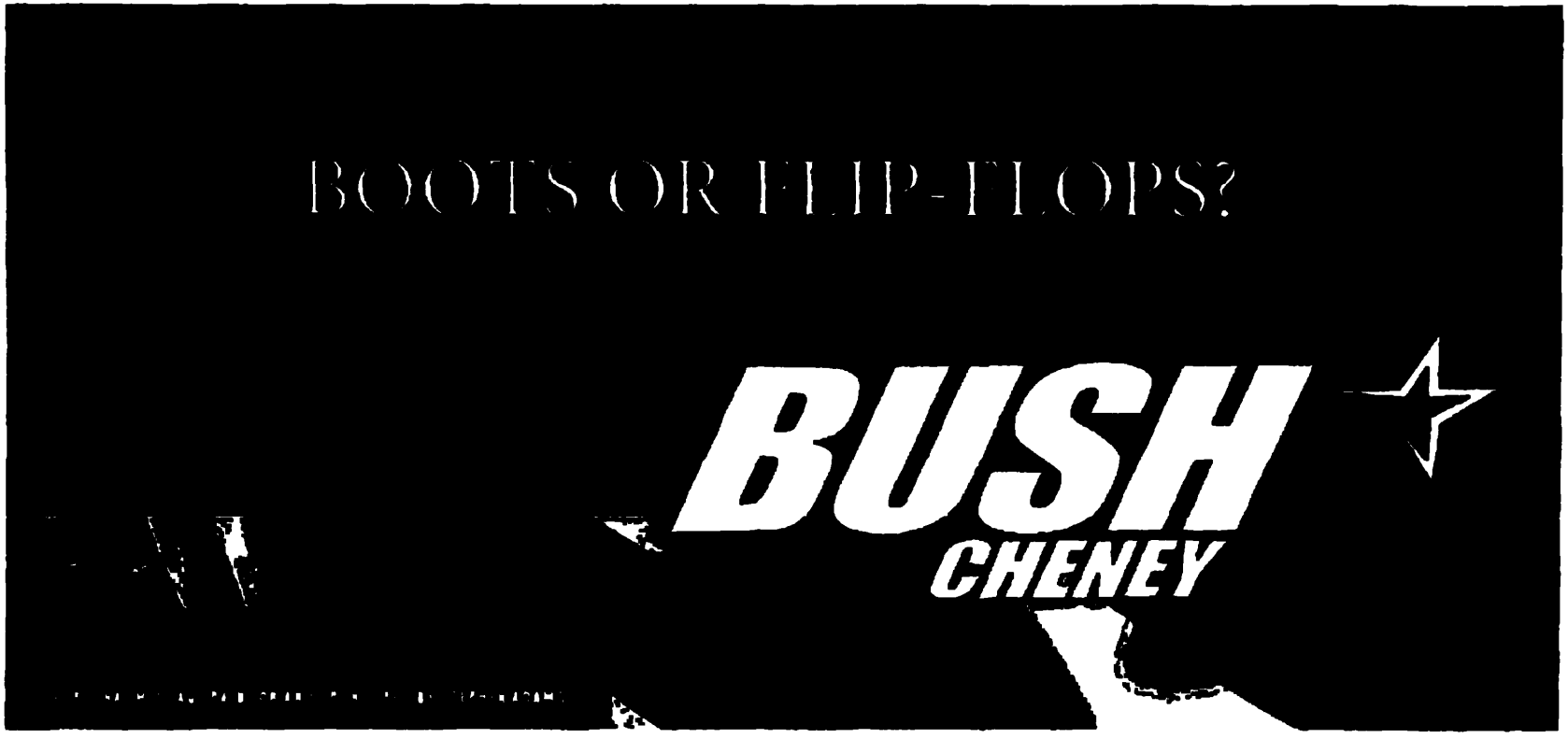
Respectfully submitted,

Brett G Kappel
Vorys, Sater, Seymour and Pease LLP
Counsel for Stephen Adams

ATTACHMENT 1






BOOTS OR FLIP-FLOPS?
BUSH
CHENEY

ATTACHMENT 2

ATTACHMENT 3

ATTACHMENT 4

contributions to the candidate for the same election, as long as the overall $5 000 limit is not exceeded

Contributions to Other Committees

In addition to contributing directly to candidate committees, an SSF may support other committees that contribute to candidates, such as *party committees* An SSF contribution to another *political committee* may take any of the forms described in this section

A contribution to a committee that supports more than one candidate is subject to a yearly contribution limit of $5,000 The contribution does not count against the limit for a particular candidate unless the SSF

- Gives to an *unauthorized single candidate committee* (i e a political committee that supports only one candidate),
- Knows that a substantial portion of its contribution will be given to or spent on behalf of a particular candidate or
- Retains control over the funds after making the contribution

110 1(h) 110 2(h)

Supporting Nonfederal Candidates

SSFs may contribute to nonfederal candidates using money they have raised for federal elections Donations to nonfederal candidates are subject to state and local laws not the Federal Election Campaign Act but the SSF must still disclose the disbursements in its FEC reports AOs 1988–27 and 1991–18

SSFs active in both federal and nonfederal elections should also consult Appendix A

2. Independent Expenditures

In addition to making contributions, an SSF may support (or oppose) candidates by making *independent expenditures* Independent expenditures are not contributions and are not subject to limits (However, contributions made to a committee or to another person making independent expenditures are subject to limits, as explained below) See AOs 1999-37, 1999-17 and 1999-22

What Is an Independent Expenditure

An independent expenditure is an expenditure for a communication, such as a Web site newspaper, TV or *direct mail* advertisement that

- *Expressly advocates* the election or defeat of *a clearly identified candidate*; and
- Is not made in consultation or cooperation with, or at the request or suggestion of a candidate candidate's committee party committee or their agents 100 23 and 109 1(a) See *"What Constitutes Coordination"* below

When Is a Candidate "Clearly Identified"

A candidate is 'clearly identified' if the candidate's name, nickname photograph or drawing appears, or the identity of the candidate is otherwise apparent Examples include 'the President," "your Congressman," 'the Democratic presidential nominee," 'the Republican candidate for Senate in the State of Georgia " 100 17

What Is "*Express Advocacy* (Candidate Advocacy)"

Express advocacy (candidate advocacy)' means that the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s)

There are two ways that a communication can be considered *express advocacy* (candidate advocacy) by use of certain "explicit words of advocacy of election or defeat" and by the "only reasonable interpretation' test 100 22

"Explicit words of advocacy of election or defeat"

The following words convey a message of *express advocacy* (candidate advocacy)

- "Vote for the President," "re-elect your Congressman " "support the Democratic nominee, "cast your ballot for the Republican challenger for the U S Senate in Georgia," "Smith for Congress," 'Bill McKay in 98",
- Words urging action with respect to candidates associated with a particular issue, e g , "vote Pro-Life" "vote Pro-Choice," when accompanied by names or photographs of candidates identified as either supporting or opposing the issue,
- Defeat' accompanied by a photograph of the opposed candidate, or the opposed candidate's name or "reject the incumbent", and
- Campaign slogan(s) or word(s), e g , on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example Nixon's the One," "Carter '76," "Reagan/Bush" 100 22(a)

"Only Reasonable Interpretation" Test

In the absence of such "explicit words of advocacy of election or defeat " *express advocacy* (candidate advocacy) is found in a communication that, when taken as a whole and with limited reference to external events, such as the proximity to the election can only be interpreted by a "reasonable person" as advocating the election or defeat of one or more clearly identified candidate(s) 100 22(b)(1) and (2) [4]

This test requires advocacy of a candidate that is unmistakable unambiguous and suggestive of only one meaning (that being the election or defeat of a candidate) 100 22(b)(2)

Note that the author's intent is irrelevant The test is how a "reasonable' receiver of the communication objectively interprets the message If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is *express advocacy* (candidate advocacy) regardless of what the author intended

Multiple page communications or multiple inserts in the same envelope in a direct mail piece are to be read all together as a whole *MCFL*, 479 U S at 249

What Is Not an Independent Expenditure

When an expenditure is made under the circumstances described below, it results in an *in-kind contribution* to a candidate rather than an independent expenditure and therefore counts against the SSF's contribution limit for that candidate 109 1(c)

3 *Referred to in previous Campaign Guides as "magic words"*

4 *Four federal courts have found invalid 11 CFR 100 22(b), the FEC regulation containing the "only reasonable interpretation" test* Maine Right to Life Committee v FEC *(1st Circuit Court of Appeals, 1998)* Right to Life of Dutchess County v FEC *(NY district court, 1998)*, FEC v Christian Action Network *(4th Circuit Court of Appeals 1998), and* the Virginia Society for Human Life Inc v FEC *(VA district court 2000)* See also Iowa Right to Life Comm Inc v Williams *(8th Circuit Court of Appeals 1999) The regulation (100.22(b)) was based on the 1987 9th Circuit Court of Appeals decision,* FEC v Furgatch *The split in the circuits remains unresolved*

Solicitations on Behalf of a Candidate
An expenditure by an SSF for a communication that solicits the public for contributions on behalf of a candidate is an in kind contribution if the SSF collects and forwards the money to the candidate's committee See AO 1980-46 See also Appendix D "Earmarked Contributions"

Candidate-Prepared Material
Any expenditure to distribute or republish campaign material (print or broadcast) produced or prepared by a candidate s campaign is an in-kind contribution, not an independent expenditure 109 1(d)

Coordination with Candidate's Campaign
Any expenditure that is a *coordinated general public political communication* is an in-kind contribution, not an independent expenditure See below
109 1(b)(4) and 100 23

Coordinated General Public Political Communication
A communication is a Coordinated General Public Political Communication and is considered an in kind contribution and not an independent expenditure if it

- Is intended for an audience of over 100 people and is made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a Web site
- Is Coordinated with the candidate, party or their agents (see below),
- Mentions a Clearly Identified Federal Candidate (see below), and
- Is paid for by a person other than a candidate, a party or their agents

What Constitutes Coordination
Coordination with the candidate, the party or their agents occurs when the communication is created produced or distributed

- At the request or suggestion of the candidate or party,
- After the candidate or party has exercised control or decision-making authority over the details of the communication (see below) or
- After substantial discussion or negotiation, resulting in collaboration or agreement between the communicator (e g , the creator, producer, distributor or the person paying for the communication) and the candidate or party concerning the details of the communication (see below)

Details of the Communication
Details of the communication include the content timing, location mode, intended audience, volume of distribution or the frequency of placement of that communication

Exception: Candidate's Response to Inquiry
A candidate's or party s response to an inquiry regarding their position on legislation or policy does not alone constitute coordination

Internet Independent Expenditures

Recent AOs have addressed cases involving independent expenditures over the Internet In AO 1999-22 the Commission advised that a Web site containing express advocacy of a Federal candidate would be considered an independent expenditure only if the activity was completely independent of the campaign If the activity was done in cooperation, consent or concert with a campaign, it would be an in-kind contribution and, thus, would be reportable by the campaign

In AO 1999-37 a PAC generated express advocacy communications for electronic distribution through downloads and e-mail Costs of registering and maintaining the Web site or of computer hardware and software did not count as independent expenditures unless they were directly attributed to specific express advocacy communications such as maintaining a separate Web site for or against specific candidates On the other hand the expenses of initially distributing an express advocacy communication through e mail was considered an independent expenditure The PAC was not required to collect information on those individuals who downloaded the PAC's advertisements and used them for their own political activity See 100 1(e)(1)

Disclaimer Notice Required

A communication representing an independent expenditure must display a disclaimer notice See Section 4 for more information

Allocation Among Candidates

When an independent expenditure is made on behalf of more than one clearly identified candidate, the SSF must allocate the expenditure among the candidates in proportion to the benefit that each is expected to receive For example, in the case of a published or broadcast communication, the attribution should be determined by the proportion of space or time devoted to each candidate in comparison with the total space or time devoted to all the candidates
104 10, 106 1(a)

Contributing to Committees That Make Independent Expenditures

A contribution by an SSF to a committee that makes independent expenditures is subject to the SSF's limit for that committee

A contribution to a committee that supports only one candidate however, is subject to the SSF's per candidate, per election limit 110 1(h).

Prohibitions Apply

Note that the same persons prohibited from making contributions to candidates and political committees are also prohibited from making expenditures, including independent expenditures, in connection with federal elections Thus, independent expenditures by corporations, labor organizations, federal government contractors and foreign nationals are prohibited

3. Independent Expenditures by Qualified Nonprofit Corporations

Although corporations and labor organizations are prohibited under the Act from making contributions or expenditures in connection with federal elections, a limited exception allows certain *Qualified Nonprofit Corporations* (QNCs) to make independent expenditures (but not contributions) If a QNC makes a reportable (see Filing Reports, page 33) independent expenditure, it must demonstrate its eligibility for QNC status The following paragraphs explain these issues in greater detail

ATTACHMENT 5

ATTACHMENT 6

ATTACHMENT 7

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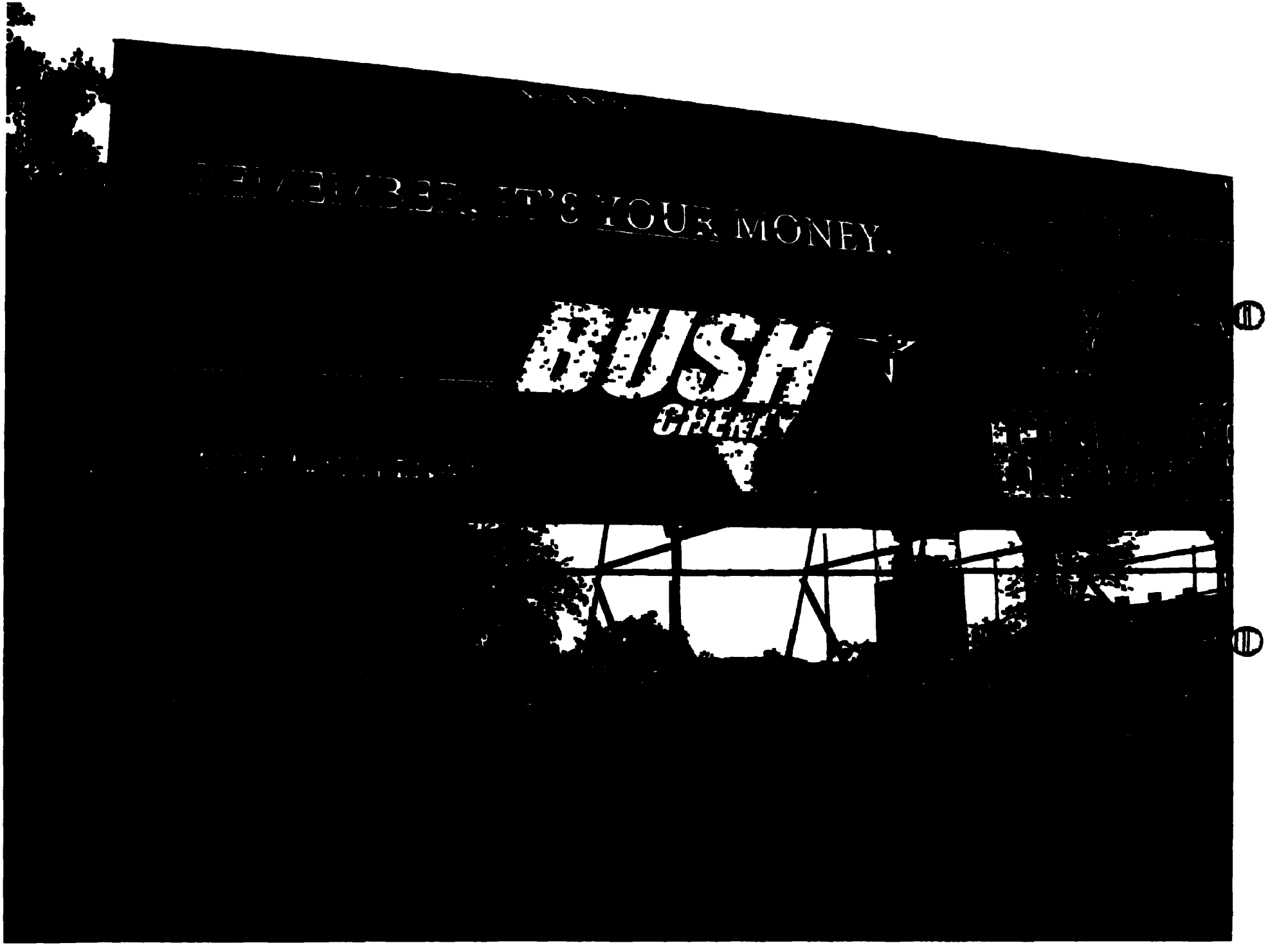

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