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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2002 NOV 27 A 9:57

November 26, 2002

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JAMES A. PEHRKON
STAFF DIRECTOR

ROBERT J. COSTA
DEPUTY STAFF DIRECTOR

FROM: JOSEPH F. STOLTZ
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

ALEX BONIEWICZ
AUDIT MANAGER

PAULA KING
LEAD AUDITOR

SUBJECT: REPORT OF THE AUDIT DIVISION ON BUCHANAN FOSTER, INC. (BFI)

AGENDA ITEM
For Meeting of: 12-05-02

Attached for your approval is the subject Final Audit Report. Also attached is the legal analysis provided by the Office of General Counsel (Counsel) and a copy of BFI's response to the Preliminary Audit Report. The Audit staff has followed Counsel's recommendations.

Your attention is directed to Finding III.C., NOQCE Surplus Repayment, which calculates a surplus repayment of \$33,479. At the time of Counsel's analysis, the repayment was calculated to be \$218,059. This reduction resulted primarily from a \$201,009 increase in the Amount Due to Buchanan Reform, Inc. from \$60,959 at the time the Final Audit Report was forwarded to Counsel to the current \$261,968 figure presented at the NOQCE on page 10 of the report.

The \$201,009 increase in the Amount Due to Buchanan Reform, Inc. resulted primarily from the following:

- In accordance with Counsel's legal analysis of the Final Audit Report for Nader 2000 Primary Committee, Inc., the Audit staff treated similar expenses incurred and paid by Buchanan Reform, Inc. after its date of ineligibility as general election campaign expenses. These payments related primarily to ballot access and resulted in an increase in the Amount Due to Buchanan Reform, Inc. of \$151,277.

- Wind down costs incurred by Buchanan Reform, Inc. increase of \$47,837 as a result of documentation submitted in response to its Preliminary Audit Report showing the payments to be reimbursements to BFI for its portion of wind down costs incurred by BFI prior to December 7, 2000, the end of the expenditure report period. This caused the Amount Due Buchanan Reform, Inc. to be increased by a like amount.

Recommendation

The Audit staff recommends that the report be approved.

The Audit staff recommends that this report be placed on the agenda for the Open Meeting Session of December 5, 2002. Should you have any questions, please contact Paula King or Alex Boniewicz at 694-1200.

Attachments:

Report of the Audit Division on Buchanan Foster, Inc.
Legal Analysis, behind the times November 22, 2002
BFI's response to Preliminary Audit Report



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

***REPORT OF THE AUDIT DIVISION
ON
BUCHANAN FOSTER, INC.***

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Buchanan Foster, Inc. (BFI). The audit is mandated by Section 9007(a) of Title 26 of the United States Code. That section states "after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President." Also, Section 9009(b) of Title 26 of the United States Code states, in part, that the Commission may conduct other examinations and audits as it deems necessary to carry out the functions and duties imposed on it by this chapter.

In addition to examining the receipt and use of Federal funds, the audit seeks to determine if the campaign has materially complied with the limitations, prohibitions, and disclosure requirements of the Federal Election Campaign Act of 1971 (FECA), as amended.

B. AUDIT COVERAGE

The audit covered the period from BFI's first financial transaction, August 14, 2000, through December 31, 2001. BFI reported an opening cash balance of \$-0-; total receipts of \$13,496,168; total disbursements of \$13,475,936; and a closing cash balance of \$20,178. In addition, the Audit staff conducted limited reviews of reported activity through September 30, 2002.

C. CAMPAIGN ORGANIZATION

The Committee to Elect Patrick J. Buchanan registered with the Federal Election Commission (the Commission) on August 31, 2000, as the principal campaign committee for Patrick J. Buchanan. On November 29, 2000, an amended statement of organization was filed which indicated a name change to Buchanan Foster, Inc. Patrick J. Buchanan was a candidate for the Reform Party's nomination for the office of President of the United States. The Treasurer was and continues to be Angela M. Buchanan.

During the audit period, BFI maintained its headquarters in Vienna, Virginia and moved to McLean, Virginia in February of 2001. BFI maintained depositories in Vienna,

Virginia and Washington, D.C. To handle its financial activity, BFI used nine bank accounts. From these accounts, BFI made approximately 1,300 disbursements.

On September 13, 2000, the Commission determined that, based on the votes received by the Reform Party in the 1996 general election, Mr. Buchanan was eligible to receive pre-election funding from the Presidential Election Campaign Fund; BFI received \$12,613,452 from the United States Treasury on September 14, 2000. Additional receipts received through December 31, 2001, included \$535,675 in contributions from individuals; \$220,819 from vendor refunds and rebates; \$73,036 from interest and other income; and \$53,132 in transfers received from Buchanan Reform, Inc., the Candidate's primary campaign committee.

D. AUDIT SCOPE AND PROCEDURES

In addition to a review of expenditures made by BFI to determine if they were qualified or non-qualified campaign expenses, the audit covered the following general categories:

1. the receipt of contributions or loans in excess of the statutory limitations;
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.);
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
7. adequate recordkeeping for transactions (see Finding III.A.);
8. accuracy of the Statement of Net Outstanding Qualified Campaign Expenses (NOQCE Statement) disclosing its financial position (see Finding III.B.);¹
9. compliance with spending limitations; and,

¹ BFI did not file a Statement of Net Outstanding Qualified Campaign Expenses. The Audit staff generated the Statement of Net Outstanding Qualified Campaign Expenses presented at Finding III.B.

10. other audit procedures that were deemed necessary in the situation (see Findings III.C. & III.D.).

As part of the Commission's standard audit process, an inventory of records was conducted prior to the audit fieldwork to determine if BFI's records were materially complete and in an auditable state. The records were found to be materially complete and the audit fieldwork commenced immediately.

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue further any of the matters discussed in this report in an enforcement action.

II. AUDIT FINDING AND RECOMMENDATION – NON-REPAYMENT MATTER

ITEMIZATION OF RECEIPTS

Section 434(b)(3)(A) of Title 2 of the United States Code states, in part, that each report under this section shall disclose the identification of each person (other than a political committee) who makes a contribution to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year,² together with the date and amount of such contribution.

Section 104.18(f) of Title 11 of the Code of Federal Regulations states, in part, if a committee files an amendment to a report that was filed electronically, it shall also submit the amendment in an electronic format. The committee shall submit a complete version of the report as amended, rather than just those portions of the report that are being amended.

The Audit staff reviewed all contributions from individuals requiring itemization. Based upon this review, it was determined that 76 contributions from individuals totaling \$34,230 were not itemized on Schedule A-P (Itemized Receipts) as required. Forty-three of the errors totaling \$30,834 (90%) involved contributions in amounts greater than \$200. The Audit staff could not determine, nor could BFI representatives explain, why these contributions were not itemized.

At an exit conference held at the close of fieldwork, the Audit staff discussed this matter with BFI representatives and provided them with a schedule of those contributions from individuals that had not been itemized. BFI representatives indicated amended disclosure reports would be filed.

In the preliminary audit report, the Audit staff recommended that BFI file complete amended reports itemizing the contributions from individuals discussed above.

² This was changed to "election cycle" in the case of an authorized committee of a candidate for Federal office, effective for reporting periods beginning after December 31, 2000 [amended by section 641 of the Treasury and General Government Appropriations Act, 2000, Pub. Law No. 106-58, signed into law on September 29, 1999].

In response to the preliminary audit report, BFI filed complete amended reports as requested.

III. AUDIT FINDINGS AND RECOMMENDATIONS — AMOUNTS DUE TO THE UNITED STATES TREASURY

A. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES

Section 9002.11(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that *qualified campaign expense* means any expenditure incurred to further a candidate's campaign for election to the office of President or Vice President of the United States.

Section 9003.5(a) of Title 11 of the Code of Federal Regulations states, in part, that each candidate shall have the burden of proving that disbursements made by the candidate or his authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11.

Section 9007.2(b)(2)(i) of Title 11 of the Code of Federal Regulations states, in part, that if the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than to defray qualified campaign expenses, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

Section 9007.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that in the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total deposits, as of December 31 of the Presidential election year.

Section 9004.4(a)(5) of Title 11 of the Code of Federal Regulations states, in part, that monetary bonuses for committee employees and consultants in recognition for campaign-related activities or services shall be considered qualified campaign expenses, if provided for pursuant to a written contract made prior to the date of the election and are paid during the expenditure report period. Further Section 9002.12 of Title 11 of the Code of Federal Regulations states that the expenditure report period, in the case of a minor or new party, will be the same as that of the major party with the shortest expenditure report period. Therefore, BFI's expenditure report period would be August 16, 2000 through December 7, 2000.

The Audit staff conducted various reviews of BFI disbursements that resulted in the identification of the apparent non-qualified campaign expenses categorized below.

1. Purchase of Mailing List

The Audit staff noted that BFI purchased a mailing list (71,784 names) from the Primary Committee by check dated September 21, 2000, in the amount of \$197,496. To document this disbursement, BFI provided a memorandum from one of its direct mail vendors valuing the names on this list at \$2.75 per name. In a May 10, 2002, memorandum, the vendor states that:

“My recollection is that my recommendation of a \$2.75 per name purchase price by Buchanan Foster from Buchanan Reform of the latter’s donor list was based on the 1997 purchase, at \$3.00 per name, of the 1996 Buchanan campaign donor list by a private group of investors, headed by Richard Norman.

I believed that the private group, a disinterested group of businessmen intending to turn a profit on the list by renting it, had set a fair market price for the purchase of a donor list three years before the Buchanan Reform Buchanan Foster transaction. Wanting to make sure that this was a transparent transaction, I recommended a purchase price that was 25 cents per name less than the 1997 purchase.”

Absent additional details such as the size of that list and the basis for the \$3.00 valuation for each name by the private investors, the Audit staff is unable to assess the reasonableness of this valuation as a basis for pricing the list purchased from the Primary Committee. BFI also provided a written estimate dated January 5, 2001 from another direct mail vendor. The estimate addressed the potential rental income that could be derived from use of the list and estimated that income of \$156,780 could be earned over a period of 12 months. BFI later entered into an agreement with this vendor to market its mailing list. However, total income received by BFI from rental of the mailing list during 2001 was only about \$14,402. Prior to the estimate, both BFI and the Primary Committee utilized the services of this vendor bringing to question the independence of the valuation.

Reference materials are readily available to determine the market value for the use of a mailing list by another entity. For example, the Buchanan list is available for \$135 per thousand names.³ The sale of all rights to a mailing list is more difficult, such sales are not common among campaigns. Neither the publisher of the rental guide nor two firms who market mailing lists were able to suggest a source for such a valuation. Further, the Audit staff was unable to locate reference materials to independently calculate a value for the sale versus rental of the mailing list. However, an analogous situation was found with the

³ Rate is according to SRDS Street Marketing List Source, December 2001, Volume 35, Number 6 for a list offered by Precision Marketing entitled Buchanan Campaign 2000 Donors. Since there are several Buchanan lists, the Audit staff cannot state with certainty that this is the same list as the one purchased.

Quayle 2000, Inc. Primary committee where it purchased a mailing list from a political action committee. In order to establish fair market value, that committee obtained two independent valuations that valued the list at \$40,000 and \$50,000. The Audit staff notes that that 2000 Presidential campaign purchased the mailing list, which was of comparable size, for \$45,000; in this case, the apparent average of the two valuations.

As noted above, one valuation proffered to BFI was equivalent to 12 months rental. The Audit staff calculated the present value of the list based on an anticipated stream of rental income payments. The first month's rental income received by BFI was \$3,222, which was the largest monthly rental income payment received during 2001. The present value of monthly rental income payments of \$3,222 received for 12 months with an interest rate of 6%⁴ is \$27,000. Considering that BFI is not an ongoing entity and could be expected to terminate in about two years, increasing the time period during which rental payments would be received to 24 months results in an increased present value for the list of \$40,437.⁵ This present value analysis may be relevant, if BFI's intent was to market the list to recover the cost to purchase the list.

Therefore, it is the opinion of the Audit staff that BFI paid more than fair market value for the mailing list. Based upon the available information, we feel \$50,000, the highest appraisal value of a similar list, is a reasonable value for the list.

In the preliminary audit report, the Audit staff recommended that BFI provide documentation (such as appraisals from independent and qualified sources) or comments relative to the purchase of the mailing list. Absent such evidence, the Audit staff included an overpayment of \$147,496 in the NOQCE Statement as a receivable from the Primary Committee.

In response to the preliminary audit report, Counsel reiterates many of the facts already detailed above. Counsel offers additional information from BFI's Treasurer regarding the value of the list. Counsel states "Ms. Buchanan estimates that the Committee raised a net of almost \$400,000 from direct mail, more than defraying the cost of the list and further supporting the Committee's estimate of the list's value to the Committee."

In addition, Counsel contends that since the Audit staff conceded that it was unable to "locate reference materials" to calculate a fair market value, it is unreasonable for the Audit staff to substitute their valuation of \$50,000 for the Committee's valuation. Counsel states that as a general rule, the Commission has not examined the prices paid by a committee for goods and services, unless the price paid by the committee appeared to be too low. However, Counsel did not provide any documentation or examples to support this statement.

⁴ The average monthly prime interest rate for the period January 2001 through July 2002, the same time frame the mailing list was available for rent.

⁵ Increasing the expected number of monthly payments or the monthly rental rate would result in an increased present valuation, as would a decrease in the interest rate.

The Audit staff, however, contends that the burden of proof regarding the value paid for goods or services rests with BFI. BFI is responsible for documenting that expenditures meet the definition of a "usual and normal charge" for goods and services, i.e., meaning the price of those goods in the market from which they ordinarily would have been purchased. As discussed above, another 2000 Presidential campaign purchased a comparable size mailing list for \$45,000. That campaign established fair market value by obtaining two independent valuations that valued the list at \$40,000 and \$50,000. The Audit staff agreed that campaign had provided sufficient documentation to support the value paid for the list.

The Audit staff does not support the view that a value for a list should be established based upon how much income was raised using that list. Thus far, BFI has not provided sufficient documentation to support the value paid for its list. As such, the Audit staff's position remains unchanged and \$50,000, the highest appraisal value of a similar list, is a reasonable value for the list.

As noted above, the Audit staff included an overpayment of \$147,496 in the NOQCE Statement as a receivable from the Primary Committee. Therefore, no pro-rata repayment to the United States Treasury is warranted.

2. Bonuses

BFI paid \$70,000 in bonuses to six employees on November 2, 2000. An internal memorandum dated October 20, 2000, which listed the six recipients and the amounts they were to receive, refers to these payments as "general election bonuses." However, BFI was unable to document that the bonuses were provided for pursuant to a written contract with the recipients made prior to the date of the election (November 7, 2000). The Audit staff is of the opinion that, absent written contracts providing for the bonuses, these payments are non-qualified campaign expenses and subject to pro-rata repayment to the United States Treasury.

At the exit conference held at the close of fieldwork, the Audit staff discussed this matter with BFI representatives and provided them a schedule of the \$70,000 in bonuses. BFI representatives indicated they would provide additional documentation.

In the preliminary audit report, the Audit staff recommended that BFI submit documentation to demonstrate that the bonuses were provided for in written contracts with the recipients made prior to the date of the election. Absent such evidence, the Audit staff would recommend that the Commission make a determination that BFI make a pro-rata repayment of \$67,463 ($\$70,000 \times .963751^6$) to the United States Treasury.

In response to the preliminary audit report, Counsel for BFI (Counsel) refers to these payments as "salary adjustments" and not bonuses. Counsel offers the explanation that BFI decided to continue its six top employees at their Buchanan Reform, Inc.

⁶ This figure (.963751) represents BFI's repayment ratio as calculated pursuant to 11 CFR §9007.2(b)(2)(iii).

(the Primary Committee) salary levels rather than raise their salaries to a level commensurate with their increased responsibilities in the general election campaign. He further explains that BFI promised these employees an increase in their compensation through a lump sum payment if federal funds became available and provides a written declaration from BFI's Treasurer to support this statement. Counsel also references the October 20th internal memorandum (as mentioned above) as support for the compensation adjustments.

Counsel contends that the Audit staff's reliance on 11 CFR §9004.4(a)(5) is misplaced. Counsel states "The Commission created 9004.4(a)(5) to ensure that committees do not give out, simply because they have surplus, public funds at the end of the campaign. Section 9004.4(a)(5) does not apply to adjustments to salary that are paid before the date of the election. Payments made prior to the date of the election are not subject to this provision. Only payments made after the date of the election. Campaign committees are free to adjust the salaries of their employees prior to the election."

Based upon the documentation presented, it remains the opinion of the Audit staff that the payments are bonuses. BFI provided no documentation to support the employees' increased responsibilities. In addition, the Audit staff was not provided with sufficient documentation to support that the payments were "salary adjustments." The October 20, 2000, internal memorandum referenced by the Audit staff and Counsel refers to these payments as "general election bonuses" not salary adjustments. Therefore, the preliminary audit report correctly cited 11 CFR §9004.4(a)(5) as the relevant regulatory provision. This regulation states that bonuses shall be considered qualified campaign expenses provided that two criteria are met: 1) the bonuses are provided for pursuant to a written contract made prior to the date of the election and 2) the bonuses are paid during the expenditure report period. BFI met the second criteria since the payments were made on November 2, 2000. However, the Audit staff contends that BFI has not met the first criteria by providing a written contract made prior to the date of the election. Absent the requisite written contracts, the bonuses are non-qualified campaign expenses subject to pro-rata repayment to the United States Treasury.

Recommendation #1

The Audit staff recommends that the Commission make a determination that BFI make a pro-rata repayment of \$67,463 ($\$70,000 \times .963751^7$) to the United States Treasury.

B. DETERMINATION OF NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES

Section 9004.9(b) of Title 11 of the Code of Federal Regulations requires that, within 30 calendar days after the end of the expenditure reporting period, the candidate shall submit a statement of net outstanding qualified campaign expenses. The statement shall contain all outstanding obligations for qualified campaign expenses as of the date of the election; an estimate of the winding down costs and any campaign expenses that will be

⁷

See Footnote 6.

incurred by the end of the expenditure report period; and, the amount of cash on hand, assets and receivables as of the last day of the expenditure report period.

BFI did not file a Statement of Net Outstanding Qualified Campaign Expenses. As a result, the Audit staff prepared the NOQCE Statement presented below. The NOQCE Statement is as of December 7, 2000, the end of the expenditure report period, and is based on a review of BFI's financial activity through December 31, 2001, and a limited review of reported activity through September 30, 2002.

BUCHANAN FOSTER, INC.
STATEMENT OF NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES
 As of December 7, 2000
 As Determined at September 30, 2002

ASSETS

Cash in Bank	\$587,298	
Accounts Receivable	174,209	
Amounts Due from Buchanan Reform, Inc.	350,097 (a)	
Capital Assets	<u>12,203</u>	
Total Assets		\$1,123,807

OBLIGATIONS

Accounts Payable	\$378,449 (b)	
Amounts Due to Buchanan Reform, Inc.	261,968 (c)	
Interest Payable to U.S. Treasury (see Finding III.D.)	24,554	
Winding Down Costs:		
Dec. 8, 2000 to September 30, 2002: Actual	393,298	
Oct. 1, 2002 to Dec. 31, 2004: Estimated	<u>30,800</u>	
Total Obligations		<u>1,089,069</u>
Net Outstanding Qualified Campaign Expenses – SURPLUS		<u>\$ 34,738</u>

FOOTNOTES TO NOQCE

- (a) This amount includes \$196,178 for half of the winding down costs paid by BFI for the period December 8, 2000, through September 30, 2002. In addition, the Audit staff has included an apparent overpayment (\$147,496) for the purchase of a mailing list, as discussed in Finding III.A.1. above, and an overpayment (\$6,423) for equipment and health insurance.
- (b) This figure represents disbursements paid during the period December 8, 2000, through September 30, 2002, for goods and/or services received prior to December 8, 2000. This figure also includes \$60 for estimated taxes on net income earned in 2002. BFI's 2002 reports did not disclose any additional outstanding payables.
- (c) This amount includes half of the winding down costs paid by the Primary Committee for the period December 8, 2000, through September 30, 2002, or \$15,410, and all of the winding down costs (\$95,281) paid by the Primary Committee for the period August 12, 2000, through December 7, 2000. In addition, this amount includes \$151,277 for general election expenses paid by the Primary Committee after August 11, 2000.

C. NOQCE SURPLUS REPAYMENT

Section 9007.2(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that if the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, the candidate shall pay the United States Treasury that portion of surplus funds.

Section 9007.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that in the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total deposits, as of December 31 of the Presidential election year. In the preliminary audit report, the Audit staff calculated that BFI had a surplus of \$239,171 and recommended that BFI provide evidence that it was not in a surplus position.

In response to the preliminary audit report, BFI provided documentation supporting that expenses totaling \$38,658 related to payables as of December 7, 2000, not winding down costs. Winding down costs are allocated equally between BFI and the Primary Committee while accounts payable are solely obligations of BFI. The Audit staff reviewed the documentation, agreed with this assessment and the NOQCE Statement was adjusted accordingly. In addition, the Audit staff reviewed reported activity through September 30, 2002, in order to update the NOQCE Statement. Finally, as a result of the Primary Committee's response to its audit report, the Amounts Due to Buchanan Reform, Inc. figure on the NOQCE Statement increased \$151,277 for general election expenses (primarily ballot access payments) paid by the Primary Committee and by \$47,837 for additional wind down expenses the Primary Committee could not incur during the expenditure report period. As a result, the NOQCE Statement reflects a surplus of \$34,738 of which \$33,479 ($\$34,738 \times .963751$) is repayable to the United States Treasury.

Recommendation #2

The Audit staff recommends that the Commission make a determination that BFI make a pro-rata repayment of \$33,479 ($\$34,738 \times .963751$) to the United States Treasury.

D. INCOME RECEIVED

Section 9004.5 of Title 11 of the Code of Federal Regulations states, in part, that investment of public funds or any use of public funds that results in income is permissible, provided that an amount equal to all net income derived from such use, less Federal, State and local taxes paid on such income, shall be paid to the United States Treasury.

Section 9007.2(b)(4) of Title 11 of the Code of Federal Regulations states that if the Commission determines a candidate received any income as a result of an investment or other use of payments from the fund pursuant to 11 CFR 9004.5, it shall so notify the

candidate, and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

Section 9007.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states, in part, that in the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total deposits, as of December 31 of the Presidential election year.

From its inception through December 31, 2001, BFI earned interest totaling \$41,638 from funds deposited into its bank and investment accounts. Documentation was provided indicating that federal and state taxes of \$16,332 had been paid. Therefore, BFI earned net income of \$25,306 (\$41,638 - \$16,332).

At an exit conference held at the close of fieldwork, the Audit staff discussed this matter with BFI representatives.

In the preliminary audit report, the Audit staff indicated that absent any additional documentation or comments submitted by BFI, the Audit staff would recommend that the Commission make a determination that BFI make a pro-rata repayment of \$24,389 ($\$25,306 \times .963751$) to the United States Treasury.

In response to the preliminary audit report, Counsel contends that the requirement that net interest earned on deposits be refunded to the Treasury was intended to apply only to the campaigns of the major parties, which are prohibited from spending more money than they receive from the Presidential Election Campaign Fund. Since Mr. Buchanan did not receive the full federal payment, Counsel argues that BFI has the right to raise funds from other sources, and should have the right to retain interest on funds deposited in financial institutions.

The Audit staff's position is that the Code of Federal Regulations as cited above related to investment of public funds does not distinguish between fully funded and partially funded general election campaigns. In addition, relative to 11 CFR §9007.2, the Explanations and Justifications for Federal Election Commission Regulations dated June 16, 1995, states in part, "This amendment clarifies that receiving income from investment or any other use of payments from the Fund is a basis for requiring payment to the Treasury. The Commission will require the committee to pay any such income received, less taxes paid, to the Treasury. The revisions to sections 9004.5 and 9007.2 ensure that any income received through the use of public funds benefits the public financing system." Based upon the regulations as cited above, the opinion of the Audit staff remains unchanged.

As a result of our review of reported activity through September 30, 2002, net income of \$171 ($\$231 - \60) was identified. Therefore, BFI earned net income of \$25,478 ($\$41,870 - \$16,392$).

Recommendation #3

The Audit staff recommends that the Commission make a determination that BFI make a pro-rata repayment of \$24,554 ($\$25,478 \times .963751$) to the United States Treasury.

IV. SUMMARY OF AMOUNTS DUE TO THE UNITED STATES TREASURY

Finding III.A.	Apparent Non-Qualified Campaign Expenses	\$ 67,463
Finding III.C.	NOQCE Surplus Repayment	33,479
Finding III.D.	Income Received	<u>24,554</u>
	Total Due United States Treasury	<u>\$125,496</u>



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

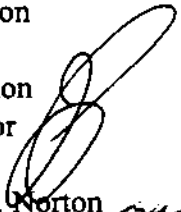
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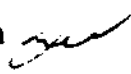
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November 21, 2002

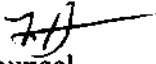
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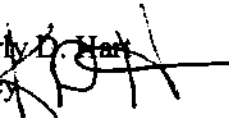
TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: James Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

Gregory R. Baker 
Acting Associate General Counsel

Lorenzo Holloway 
Assistant General Counsel

Kimberly D. Hart 
Attorney

SUBJECT: Proposed Audit Report on Buchanan/Foster Inc. (LRA #596)

I. INTRODUCTION

The Office of the General Counsel reviewed the proposed Audit Report ("Proposed Report") on Buchanan/Foster, Inc. ("General Committee") submitted to this Office on October 23, 2002. The following memorandum summarizes our comments on the Proposed Report.¹ Generally, we concur with the findings in the Proposed Report, and have provided additional legal analysis on three of the findings contained in the Proposed Report. We concur with any finding not specifically discussed in this memorandum. If you have any questions concerning our comments, please contact Kimberly D. Hart, the attorney assigned to this audit.

¹ The Office of the General Counsel recommends that the Commission consider this document in open session since the Proposed Report does not include matters exempt from public disclosure. 11 C.F.R. § 9007.1(e); 11 C.F.R. § 2.4.

II. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES (Finding III.A.)

Monetary bonuses for committee employees and consultants, given in recognition for campaign-related activities and services, are considered as qualified campaign expenses if they are provided for by written contract entered into prior to the date of the election and are paid during the expenditure report period. 11 C.F.R. § 9004.5(a)(5). The General Committee paid six employees a total of \$70,000 prior to the date of the election. However, the General Committee did not demonstrate that it entered into written contracts with the recipients of the bonuses prior to the date of the election.

The General Committee contends that the payments were not bonuses. Rather, the General Committee argues that the \$70,000 actually represents "salary adjustments" granted to those employees once the General Committee became eligible for funds for its general election campaign. The General Committee states that it hired many of the employees who worked for the Buchanan Reform, Inc. Primary Committee ("Primary Committee"). The General Committee made the decision to "continue its six top employees at the salary level they had while working with the Primary Committee because of the General Committee's uncertainty concerning the availability of federal funds for the general election campaign." The General Committee contends that these employees had increased responsibilities in working with the Committee and the General Committee "promised to increase their compensation through a lump sum payment if federal funds became available." The General Committee argues that the internal memorandum, drafted on October 20, 2000, was intended to memorialize the General Committee's intent to make the salary adjustments. The Committee also takes the position that 11 C.F.R. § 9004.4(a)(5) does not apply to salary adjustments.

We believe that the \$70,000 paid to six General Committee employees constitutes bonuses subject to the requirements of section 9004.5(a)(5). Although the General Committee contends that the payments were salary adjustments, it has not provided any documentation to demonstrate that these payments should be viewed as such, except for the internal memorandum. However, this is the same document that the General Committee argued, at the preliminary audit report stage, demonstrated that there were written contracts for bonuses entered into prior to the date of the election. In fact, the internal memorandum that purports to demonstrate that the payments were salary adjustments specifically designates the payments as bonuses and not salary adjustments. Furthermore, the General Committee did not submit any documentation to demonstrate that the duties and responsibilities of those staff employees increased when they went to work for the General Committee. Therefore, this Office concurs with the Audit staff's position that the payments constitute bonuses that are subject to the requirements of 11 C.F.R. § 9004.5(a)(5).

III. DETERMINATION OF NET OUTSTANDING QUALIFIED CAMPAIGN EXPENSES (Finding III.B.1.)

The Proposed Report recommends that the General Committee make a pro-rata repayment of \$218,059 for surplus funds. The surplus repayment is based on the Statement of

Net Outstanding Qualified Campaign Expenses ("NOQCE statement"). The NOQCE Statement includes an accounts receivable of \$147,496 from the Primary Committee. The Audit staff contends that the General Committee overpaid the Primary Committee \$147,496 when it purchased a mailing list from the Primary Committee. The Proposed Report concludes that the General Committee paid more than fair market value for the mailing list. The auditors believe the value of the list is \$50,000.

The General Committee states that its treasurer estimates that the "Committee raised a net of almost \$400,000 from direct mail, more than defraying the cost of the list and further supporting the Committee's estimate of the list's value to the Committee." The General Committee argues that it submitted two valuations from direct mail vendors to support its contention that the price paid for the mailing list was fair market value. The first valuation, dated May 10, 2002, valued the mailing list of 71,784 names at \$2.75 per name.² The second appraisal valuation, dated January 5, 2001, addresses the potential rental income that could be derived from the use of the mailing list and estimates that income of \$156,780 could be earned over a period of 12 months by the General Committee.

The Audit staff compared the General Committee's mailing list to another 2000 Presidential campaign mailing list of comparable size purchased from a political action committee.³ The Audit staff noted that the Quayle Committee obtained two independent valuations, valuing the mailing list respectively at \$40,000 and \$50,000. The Quayle Committee subsequently purchased the mailing list for \$45,000, the apparent average of the two valuations. Based on the General Committee's second appraisal, the Audit staff calculated the present value of the mailing list based on an anticipated stream of rental income payments for a 12 month time period.⁴ This rental calculation is relevant if the General Committee attempted to rent the list to recover the purchase price. The auditors use this information to conclude that a reasonable value for the General Committee's mailing list was \$50,000. Therefore, the Audit staff concluded that the General Committee paid more than fair market value for the mailing list. It is our

² The \$2.75 per name valuation was based on the 1996 Buchanan Committee's sale of its mailing list at \$3.00 per name. The vendor discounted the \$3.00 per name value to \$2.75 based on the differences in the time period. The General Committee also provided a valuation that was based on rental income from the mailing list.

³ The Proposed Report notes that the Audit staff compared the General Committee's mailing list to another 2000 Presidential campaign mailing list. However, the name of the committee is not specified. It is our understanding that a mailing list from the Quayle 2000 Primary Committee ("Quayle Committee") was used for comparison purposes. The Office of General Counsel recommends that the Audit staff specify the Quayle Committee mailing list as the mailing list used by the Audit staff for comparison purposes in its cover memorandum. This will ensure that the Commission is fully informed of the specific mailing list used for comparison purposes.

⁴ The Proposed Report states that "reference materials are readily available to determine the market value for the use of a mailing list by another entity. For example, the Buchanan list is available for \$135 per thousand names." It is our understanding that the source of this information, SRDS Street Marketing List Source, contains several mailing lists and the one referred to in the Proposed Report is titled "Buchanan Campaign 2000 Donors." However, the Audit staff cannot state with certainty that this is the same mailing list as the one at issue in the Proposed Report without comparing the names on both lists. Therefore, the Office of General Counsel recommends that the Proposed Report be revised to include clarifying language on this point.

understanding that the Audit staff believes that the \$400,000 raised by the General Committee from direct mail solicitations at a later date is not necessarily indicative of the value of the mailing list at the time of purchase. The Proposed Report notes that the General Committee's two appraisal valuations do not demonstrate that fair market value was paid by the General Committee for the mailing list because of the Audit staff's inability to assess the reasonableness of the May 10, 2002 valuation and the lack of independence of the January 5, 2001 appraisal valuation.⁵

We agree that there are some problems with the General Committee's valuation. However, in the alternative, the auditors provide their own valuation of the list based on a suggestion that the General Committee's list is comparable to the Quayle Committee's list and based on the rental value supported by the assumption that the General Committee would market the list to recover the purchase price. We have some concerns with the Audit Division's valuation. It is our understanding that the Quayle Committee list is similar in size. However, the Audit Division's comparison assumes that the value for each name on the Committee's list is the same as the Quayle Committee list. Furthermore, there is no indication that the General Committee intended to market the list to recover the purchase price.

The value of the mailing list drives the surplus repayment determination. However, this repayment determination is subject to judicial review. 26 U.S.C. § 9011(a). Therefore, it is imperative that the Audit Division's valuation is not arbitrary and capricious. We believe that an opinion from a professional independent appraiser in the mailing list industry would show that the valuation is not arbitrary and capricious.⁶ As a condition to receiving public financing, the General Committee agreed to provide all documentation relating to receipts and disbursements and *other* information that the Commission may request. 11 C.F.R § 9003.1(b)(3)(emphasis added). Therefore, upon the Commission's request, the General Committee is obligated to provide the information.

In the Preliminary Audit Report, the Commission requested an independent appraisal, and the General Committee failed to provide this information. However, since this is a repayment matter, the General Committee could still submit the information as a part of its written materials at the administrative review stage. 11 C.F.R § 9007.2(c)(2)(i). Nevertheless, this approach requires the Commission to first use a specific amount on the NOQCE Statement for the value of the mailing list to actually notify the General Committee that there is a repayment. Given the limited options at this point, we believe that the Commission may use the Audit Division's valuation.

⁵ The Audit staff also questioned the independence of the appraisal valuation due to the fact that the General Committee and the Primary Committee had previously utilized services of the vendor and the General Committee later entered into an agreement with this vendor to market this particular mailing list.

⁶ The auditors attempted to obtain an independent appraisal prior to the issuance of the Preliminary Audit Report. However, the auditors were unsuccessful in obtaining the appraisal.

When a committee does not submit documentation in support of its expenditures, the Audit Division may estimate the expenditures. *See John Glenn Presidential Committee v. FEC*, 822 F.2d 1097, 1103 (D.C. Cir. 1987) (Commission may estimate allocation of expenses to state expenditure limitations in the absence of documentation of the exact allocation). However, the committee must have the burden of producing the documentation.⁷ A publicly-financed committee has the burden of demonstrating, with supporting documentation, that its disbursements are qualified campaign expenses. 11 C.F.R. § 9003.5(a).

The General Committee's disbursement for the mailing list is not addressed in the Proposed Report as an issue of whether it is a qualified campaign expense. The Proposed Report addresses the issue as a reimbursement from the Primary Committee to the General Committee. However, this issue is about a disbursement for a qualified campaign expense. Any amount that a committee overpays for goods and services is non-qualified campaign expense. *See Fulani v. FEC*, 147 F.3d 924 (D.C. Cir. 1998). The auditors contend that the General Committee overpaid the Primary Committee for the mailing list. Therefore, we recommend that the Audit Division revise the Proposed Report to address the mailing list payment as a General Committee's non-qualified campaign expense. If the Proposed Report is revised in this manner, the General Committee will have the burden of demonstrating that its disbursement to the Primary Committee for the mailing list was a qualified campaign expense.⁸ If the General Committee fails to submit documentation (independent appraisal) supporting this disbursement as a qualified campaign expense during the administrative review, then the Commission is justified in using the Audit Division's valuation. *See John Glenn Presidential Committee v. FEC*, 822 F.2d 1097, 1103 (D.C. Cir. 1987).

IV. INCOME RECEIVED (Finding III.B.2.)

The Preliminary Audit Report identified \$41,638 in interest earned by the General Committee from funds deposited into its bank and investment accounts. The General Committee provided documentation indicating that federal and state taxes of \$16,332 had been paid leaving a net income of \$25,306 (\$41,638 - \$16,332). The Preliminary Audit Report recommended that the Commission make a determination that the General Committee should make a pro-rata repayment of \$24,389 to the United States Treasury.

⁷ In *John Glenn Presidential Committee v. FEC*, the John Glenn Presidential Committee exceeded two state expenditure limitations. The court noted that the amount in excess of the state expenditure limitation was a non-qualified campaign expense. *John Glenn Presidential Committee* at 1099. Therefore, the John Glenn Presidential Committee had the burden of demonstrating that it had not incurred non-qualified campaign expenses in excess of the state expenditure limitations. 11 C.F.R. § 9033.11(a)(1984).

⁸ As a non-qualified campaign expense, the remedy is not necessarily a repayment to the United States Treasury. The Audit Division may maintain the Primary Committee's reimbursement to the General Committee as the General Committee's cure for its payment of a non-qualified campaign expense. *See Bush-Quayle '92 Primary Committee v. FEC*, 104 F.3d 448, 451 (D.C. Cir. 1997)(General election committee and compliance fund have standing with primary election committee to challenge repayment determination although compliance fund could reimburse the general election committee to eliminate a repayment).

In its response to the Preliminary Audit Report, the General Committee argues that:

the requirement that the net interest earned on deposits be refunded to the Treasury was intended to apply, however, only to the campaigns of the major parties which are prohibited by the Presidential Election Campaign Fund Act from spending more money than they receive from the Presidential Election Campaign Fund. ... As a candidate of a minor party, however, Mr. Buchanan did not receive full federal payment and, consequently, he had the right to raise funds from other sources, and should have the right to retain interest on funds deposited in financial institutions.

The Proposed Report concludes that 11 C.F.R. §§ 9004.5, 9007.2(b)(4), and 9007.2(b)(2)(iii) does not distinguish between fully funded and partially funded general election campaigns. The Office of General Counsel concurs with the Audit staff's conclusion that the applicable regulatory provisions on repayment of interest income received by committees does not distinguish between fully funded and partially funded general election campaigns. Furthermore, as a minor party candidate, Buchanan could accept contributions to defray qualified campaign expenses. 26 U.S.C. § 9003(c)(2). However, Buchanan's receipt of contributions as a minor party candidate does not entitle the candidate to the gains from the use of public funds. Requiring a repayment of gains on the investment of public funds "ensure that any income received through the use of public funds benefits the public financing system." Explanation and Justification for 11 C.F.R. § 9007.2 at 60 Fed. Reg. 31864 (June 16, 1995).

John J. Duffy
202.429.8020
jduffy@stepto.com

September 19, 2002

Via Hand Delivery

Mr. David Mason
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Buchanan Foster, Inc.

Dear Mr. Mason:

Buchanan Foster, Inc. (the "Committee"), by its attorneys, hereby submits this response to the Preliminary Report of the Audit Division.

III. Audit Findings And Recommendations – Amounts Due to the United States Treasury

A. Apparent Non-Qualified Campaign Expenses

1. Salary Adjustment

The Committee hired many of the employees who had worked for Buchanan Reform, Inc. ("Buchanan Reform"), the candidate's primary committee. Because of its initial uncertainty concerning the availability of federal funds for the general election campaign, the Committee decided to continue its six top employees at their salary levels at Buchanan Reform rather than raise their salaries to a level commensurate with their increased responsibilities in the general election campaign. The Committee promised these employees, however, that if the Federal Election Commission decided that the Committee was eligible for federal funds, the Committee would increase their compensation through a lump sum payment. See Declaration of Angela M. Buchanan (Attachment 1).

After the Federal Election Commission released federal funds to the Committee, the Committee decided in the first week of October to raise the salaries of these employees. On October 20, 2000, Ms. Buchanan, the Campaign Chairman, sent Tim Haley, the Campaign Manager, a memorandum which identified the six employees whose compensation was to be adjusted with a lump sum payment and the amount of the authorized adjustment. (Attachment 2) The compensation adjustments were paid in full on November 2, 2000, five days prior to the date of the election.

The Audit Staff states that "absent written contracts providing for the bonuses, these payments are non-qualified campaign expenses and subject to pro-rata repayment to the United States Treasury." In reaching this conclusion, the Audit Staff relied (Rept. at 4) on 11 CFR § 9004.4(a)(5), which provides, in relevant part, that "monetary bonuses for committee employees and consultants in recognition for campaign-related activities or services shall be considered qualified campaign expenses, if provided for pursuant to a written contract made prior to the date of the election." Section 9004.4(a)(5) also requires that bonuses be "paid during the expenditure report period."

The Audit Staff's reliance on § 9004.4(a)(5) is misplaced. Section 9004.4(a)(5) was designed to address a particular problem. Before this restriction was created, several committees that had found themselves in a surplus position decided, long after the date of the election, to pay large bonuses to their employees and consultants rather than return the surplus funds to the federal government. The Commission created § 9004.4(a)(5) "to ensure that committees do not give out, simply because they have surplus, public funds at the end of the campaign." 59 FR 51006, Oct. 6, 1994. Section 9004.4(a)(5) bars the payment of bonuses after the date of the election, unless a legal obligation (i.e., a written contract to pay those bonuses) was created before the date of the election. Section 9004.4(a)(5) does not apply to adjustments to salary that are paid before the date of the election. Payments made prior to the date of the election are not subject to this provision. Only payments made after the date of the election. Campaign committees are free to adjust the salaries of their employees prior to the election. The Committee's payment of the adjustment to compensation prior to the date of the election makes the creation of a written contract providing for such payment unnecessary.

2. Purchase of Mailing List

At the start of the general election campaign, the Committee purchased a mailing list from Buchanan Reform. The list contained 71,784 names, and the Committee paid \$197,406 for the list, based on Ms. Buchanan's determination that the names had a value of \$2.75 per name. To value the list, Ms. Buchanan solicited, and relied upon, the opinion of Phil Alexander, the Committee's direct mail consultant. Mr. Alexander has had extensive experience with the valuation of mailing lists and has many contacts with other people in the industry with experience in the valuation of such lists. Mr. Alexander stated that the names on the list should be worth \$2.75 a name and that the list in total had a fair market value of \$197,406. (Attachment 3). The Committee submits that Ms. Buchanan's reliance on Mr. Alexander's opinion was reasonable and, consequently, the Audit Staff has no justification for calculating a "fair market value" on its own and recommending that the Commission substitute the Audit Staff's "fair market value" for that of the Committee.¹

In addition, Mr. Alexander's opinion of the fair market value of the list is supported by a subsequent estimate of the expected rental value of the list from Precision Lists. On January 5, 2001, after the date of the election, Precision Lists sent the Committee a proposal soliciting the right to broker the list. (Attachment 4). Precision List estimated that the list could generate \$156,780 in rental income in twelve months. Using the two year life span for the Committee assumed by the Audit Staff (Rept. at 6), the list would generate more than \$300,000 for the Committee in list rental income alone. Obviously, if the list could be expected to generate more than \$300,000 in income with no additional cost to the Committee, a purchase price for the list of \$197,000 would be reasonable.

The Audit Staff, however, ignores this confirming evidence of Mr. Alexander's opinion of the list's fair market value, because "prior to the estimate, both BRI and the Primary

¹ When considering the question of in-kind contributions, the Audit Staff may not calculate the "fair market value" of a good or service purchased or sold by a committee and substitute its judgment for the judgment of a committee, unless the committee has failed to make a good faith effort to determine its fair market value. Any other approach would place every campaign at risk for every purchasing decision made.

Committee utilized the sources of [Precision List], bringing to question the independence of the valuation." (Rept. at 6) (emphasis added). The Audit Staff's assumption of "bias" here is unreasonable. Precision List's estimate of expected revenue was volunteered to the Committee in an attempt to induce the Committee to allow Precision List to broker the list. The Committee did not solicit this estimate at the time Ms. Buchanan made her initial determination, or at the time the Audit Staff questioned the amount paid by Buchanan Reform for the list. Precision List volunteered this estimate to the Committee on its own initiative in an effort to solicit the right to broker the list in January, 2001. Precision List's prior relationship as a vendor with the Committee or with Buchanan Reform provides no basis to ignore Precision List's estimate produced, and submitted to the Committee, entirely for Precision List's own purposes.

Finally, the Committee was the campaign committee of a candidate of a minor party and, consequently, had the right to raise by direct mail funds in addition to the funds it received from the federal government. Ms. Buchanan estimates that the Committee raised a net of almost \$400,000 from direct mail, more than defraying the cost of the list and further supporting the Committee's estimate of the list's value to the Committee. See Declaration of Angela M. Buchanan. (Attachment 1).

The Audit Staff's recommendation that the Commission adopt its post hoc evaluation of the "fair market value" of the mailing list and then require the Committee to repay an alleged "overpayment" would be more understandable -- although no more justified -- if the Audit Staff had irrefutable evidence of a clear and specific fair market value for the list. The Audit Staff concedes, however, that it could find no basis for determining the fair market value of the sale of a mailing list. The Audit Staff states that

"Reference materials are readily available to determine the market value for the use of a mailing list by another entity. . . . The sale of all rights to a mailing list is more difficult, such sales are not common among campaigns. Neither the publisher of the rental guide nor two firms who market mailing lists were able to suggest a source for such a valuation. Further, the Audit staff was unable to locate reference materials to independently calculate a value for the sale versus rental of the mailing list."

The Audit Staff's concession that it was unable to "locate reference materials" to calculate a fair market value for the mailing list renders incomprehensible its suggestion that the Commission reject the Committee's valuation and substitute the Audit Staff's valuation. Surely

the Commission should not reject the Committee's valuation without strong evidence that the Committee's valuation is clearly wrong and that another valuation is clearly right. Neither of these premises are fulfilled here.

As a general rule, the Commission has not examined the prices paid by a committee for goods and services, unless the price paid by the committee appeared to be too low. The Commission has assumed that an active campaign seeks to acquire goods and services at the lowest possible cost to allow it to maximize the effective use of its resources. The Commission should make the same reasonable assumption here and reject the Audit Staff's recommendation.

3. **Interest**

The Audit Staff asserts that the Committee must pay to the Treasury the net interest (interest minus taxes) earned on monies received from the federal Treasury and deposited by the Committee in interest bearing accounts. The requirement that the net interest earned on deposits be refunded to the Treasury was intended to apply, however, only to the campaigns of the major parties, which are prohibited by the Presidential Election Campaign Fund Act from spending more money than they receive from the Presidential Election Campaign Fund. If such campaigns were to retain and spend the interest on federal funds for qualified campaign expenses, then total qualified campaign expenditures would exceed the amount allowed by law. As the candidate of a minor party, however, Mr. Buchanan did not receive the full federal payment and, consequently, he had the right to raise funds from other sources, and should have the right to retain interest on funds deposited in financial institutions.

If you have any questions concerning this matter, please don't hesitate to contact the undersigned.

Sincerely,

John J. Duffy



Mr. David Mason
September 19, 2002
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cc: ✓ Mr. Joseph F. Stoltz, Audit Division
Mr. Terry O'Brien, Audit Division
Mr. Alex Boniewicz, Audit Division
Ms. Angela M. Buchanan

DECLARATION OF ANGELA M. BUCHANAN

I, Angela M. Buchanan, hereby state that :

1. Shortly after the Reform Party Convention, I promised employees of Buchanan Foster, Inc. (the "Committee") that if the Federal Election Commission decided that the Committee was eligible for federal funds, the Committee would increase their salary through a lump sum payment.

2. I estimate that the Committee raised a net of almost \$400,000 by direct mail using the Buchanan Reform, Inc. list .

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 19, 2002.


Angela M. Buchanan

Memorandum

To: Tim 
From: Bay 
Re: Campaign Bonuses

October 20, 2000

I wish to formalize our discussion of two weeks ago concerning general election bonuses. These are in lieu of raises for the senior staff and will be paid on or around November 1, 2000. I have approved the following amounts:

Tim Haley	\$25,000
Bay Buchanan	20,000*
Kara Hopkins	10,000
Brian Dougherty	5,000
Shelly Uscinsky	5,000
Joanne Hansen	5,000

*This has been approved by Pat, at a meeting at his home.

September 15, 2000

Memorandum

To: Bay Buchanan

Fr: Phil Alexander

Re: Purchase of Buchanan Reform & Buchanan 2000 donor lists
by Buchanan Foster

There are 40,378 \$5+ contributors to Buchanan 2000 and 31,406 \$5+ contributors to Buchanan Reform.

I believe that a fair market value price for these names, that Buchanan Foster is currently soliciting for funds and that the campaign will use for other purposes, is \$2.75 per name. The purchase price of all Buchanan 2000 and Buchanan Reform \$5+ contributors would be, therefore, \$197,406.

5653 Columbia Pike
 Falls Church, VA 22041
 703 931 9481 phone
 703 931 9473 fax
 Rgarber22@aol.com

Precision Lists

January 5, 2001

TO: Phil Alexander
 FROM: Rosann Garber
 RE: Buchanan list rental

Over 12-months you could realize \$ 156,780 in list rental income for the Buchanan lists. This is based on 30,000 \$15+ GOP names and 30,000 \$15+ Reform names. The mailing climate for 2001 is unknown at this point, and this could be low.

Political

60,000 X \$135/M =	\$ 8,100
less 30% broker/manager commission	-\$ 2,430
less 5% fulfillment cost	-\$ <u>405</u>
net per full run	\$ 5,265
 24 full runs per year	 \$ 126,360

Charitable

60,000 X \$65/M =	\$ 3,900
less 30% broker/manager commission	-\$ 1,170
less 5% fulfillment cost	-\$ <u>195</u>
net per full run	\$ 2,535
 12 full runs per year	 \$ 30,420

A key to higher bottom line numbers is fast list rental approval.

Please call me with any questions. Thank you.