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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

2000 SEP -7 A 10:25

September 7, 2000

## AGENDA ITEM

For Meeting of: 9-12-00

### MEMORANDUM

**TO:** THE COMMISSIONERS

**THROUGH:** JAMES A. PEHRKON  
STAFF DIRECTOR

ROBERT J. COSTA  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

**FROM:** RAY LISI  
DEPUTY ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

**SUBJECT:** 2000 GENERAL ELECTION ENTITLEMENT OF \$12,613,452 FOR  
PATRICK J. BUCHANAN AND EZOLA FOSTER

Attached is a report from the Audit Division regarding the eligibility of Patrick J. Buchanan and Ezola Foster to receive a general election entitlement of \$12,613,452. Attached to the report is a memorandum from the Office of General Counsel which concurs with the recommendation in the report that the Commission make an initial determination that Patrick J. Buchanan and Ezola Foster have satisfied the requirements to receive full general election funding as the Presidential and Vice Presidential candidates of the Reform Party.

This report is being circulated on a 24 hour tally vote basis. Should you have any questions regarding this matter, please contact Ray Lisi at ext. 1200.

Attachment as stated.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION  
ON THE  
2000 GENERAL ELECTION ENTITLEMENT  
FOR PATRICK J. BUCHANAN AND EZOLA FOSTER**

Section 9002(7) of Title 26 of the United States Code defines the term "minor party" to mean, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more but less than 25 percent, of the total number of popular votes received by all candidates for such office.

Candidate is defined at 26 U. S. C. §9002(2) as an individual who, with respect to any presidential election, has been nominated for election to the office of President of the United States or office of Vice President of the United States by a major party or has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more states.

Sections 9003(a),(c), and (e) of Title 26, United States Code, and 11CFR §§9003.1 and 9003.2(b) and (c) set forth a series of agreements and certifications which must be executed by a minor party Presidential and Vice Presidential Candidate in order to establish eligibility for general election public funding.

Based on the results of voting in the 1996 general election the Reform Party meets the definition of a minor party. On August 14, 2000, and August 18, 2000, Mr. Patrick J. Buchanan and Ms. Ezola Foster, identifying themselves as candidates of the Reform Party, submitted letters which contain the agreements and certifications specified at 26 U.S.C. §9003(a),(c), and (e) and 11 CFR §§9003.1 and 9003.2(b) and (c). The candidates also provided evidence to show that they qualify to appear on the general election ballot as the Reform Party candidates in ten or more states pursuant to 11 CFR §9002.2(a)(2). The letters and evidence provided by the candidates that they have qualified to have their names appear on the general election ballot in ten or more states have been reviewed by the Commission's Office of General Counsel. The opinion of that office regarding the completeness of the letters and the review of the evidence provided by the candidates appears at Attachment II. The Audit staff concurs with the Office of General Counsel's opinion.

Pursuant to 11 CFR §9004.2(a)(2) the aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

Section 9005.1(b) of Title 11 of the Code of Federal Regulations states that not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR §§9003.1, 9003.2, and 9004.2, the Commission will make an initial determination of the amount if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State.

Based on the formula prescribed in 11 CFR §9004.2(a)(2) the Audit Division has calculated that Mr. Buchanan and Ms. Foster are entitled to a payment from the Presidential Election Campaign Fund of \$12,613,452.

#### Recommendation

The Audit Division recommends that the Commission make an initial determination that Mr. Patrick J. Buchanan and Ms. Ezola Foster, the Reform Party Presidential and Vice Presidential candidates, respectively, have fulfilled the requirements set forth in 26 U.S.C. §9003(a),(c), and (e) and 11 CFR §§9003.1 and 9003.2(b) and (c) and have established eligibility to receive a payment in the amount of \$12,613,452 under 26 U.S.C. §9006(b) from the Presidential Election Campaign Fund. Proposed letters to the candidates advising them of the Commission's initial determination appear at Attachments III and IV.

August 11, 2000

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Commissioners:

Pursuant to 11 CFR § 9003.1, Patrick J. Buchanan, Presidential candidate of the Reform Party of the United States of America ("Reform Party"), and Ezola Foster, Vice Presidential candidate of the Reform Party, agree that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR § 9003.1(b). Specifically, Mr. Buchanan and Ms. Foster agree that:

1. They have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.
2. They and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.
3. They and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.
4. They and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter (including those required to be maintained under 11 CFR 9003.5), and other information that the Commission may request. If the candidates or the candidates' authorized committee(s) maintain or use computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee(s)

- will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information that meets the requirements of 11 CFR 9003.6(b) at the times specified in 11 CFR 9007.1(b)(1). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee(s) shall also be made available.
5. They and their authorized committee(s) shall obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidates' behalf by other political committees and organizations associated with the candidates.
  6. They and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR part 9007 of all receipts and disbursements including those made by the candidates, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidates or committee(s). The candidates and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR part 9007.
  7. They and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR parts 100-116, and 9001-9012.
  8. They and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.


9. Any television commercial prepared or distributed by the candidates or the candidates' authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

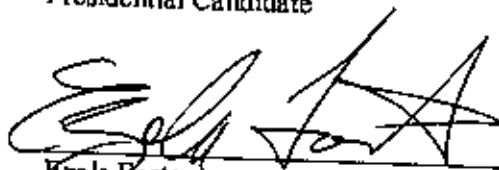
10. They and their authorized committee(s) shall file all reports with the Commission in an electronic format that meets the requirements of 11 CFR 104.18 if the candidates or the candidates' authorized committee(s) maintain or use computerized information containing any of the information described in 11 CFR 104.3.

11. The name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidate is Angela M. Buchanan, 8233 Old Courthouse Road, Suite 200, Vienna, VA 22182.

12. The name and address of the depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9005.2 is ~~First United~~ SEQUOIA BANK, 1629 K STREET, WASHINGTON, D.C. 20006

13. The name under which each account is held at the depository at which the payments from the Fund are to be deposited is ~~First United~~ BUCHANAN FOSTER COMMITTEE

  
Patrick J. Buchanan  
Presidential Candidate

  
Ezola Foster  
Vice Presidential Candidate

Date: 8/13/00

PRESIDENTIAL AND VICE PRESIDENTIAL  
CANDIDATES CERTIFICATION


Pursuant to 11 CFR § 9003.2(b), we, Patrick J. Buchanan and Ezola Foster, candidates of the Reform Party of the United States of America for the offices of President and Vice President, respectively, make the following certification under penalty of perjury.


- 1. We and our authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR part 9004.

No contributions to defray qualified campaign expenses have been or will be accepted by us and our authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by us from the Fund under 11 CFR 9004.2.

- 3. We will not knowingly make expenditures from our personal funds, or the personal funds of our immediate families, in connection with the campaign for the offices of President and Vice President in excess of \$50,000 in the aggregate.

We declare under penalty of perjury that the foregoing is true and correct. Executed on August 19 000.

  
 \_\_\_\_\_  
 Patrick J. Buchanan

  
 \_\_\_\_\_  
 Ezola Foster



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

September 6, 2000

**MEMORANDUM**

**TO:** Robert J. Costa  
Assistant Staff Director  
Audit Division

**THROUGH:** James A. Pehrkon  
Staff Director

**FROM:** Lawrence M. Noble  
General Counsel

Kim Leslie Bright  
Associate General Counsel

**SUBJECT:** Letter of Candidate Agreements and Certifications  
Received from Patrick Buchanan and Ezola Foster  
(LRA #596)

**I. INTRODUCTION**

On August 29, 2000, Patrick Buchanan and Ezola Foster submitted an application for pre-election funding under the Presidential Election Campaign Fund Act ("the Fund Act"), 26 U.S.C. §§ 9001-9013, as Reform Party candidates. Since Mr. Buchanan and Ms. Foster have applied for funding as the nominees of a minor party, the Commission should determine whether Reform Party candidates qualify for pre-election funding and whether Patrick Buchanan and Ezola Foster have qualified for pre-election funding as Reform Party candidates. If the Commission decides both questions in the affirmative, the Commission must determine the amount to which the candidates are entitled to receive.

In the following memorandum, the Office of General Counsel concludes that: (1) Reform Party candidates are entitled to pre-election funding; (2) the letters of candidate agreement and certification, along with documents demonstrating Reform Party ballot access in at least ten states, submitted by Mr. Buchanan and Ms. Foster meet the applicable requirements of the Fund Act and the Commission's regulations; and (3) the Commission should make an initial determination that Mr. Buchanan and Ms. Foster are entitled to \$12,613,452 in pre-election public funding.



Memorandum to Robert J. Costa  
 Letter of Candidate Agreements --  
 Patrick Buchanan and Ezola Foster (LRA #596)  
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## II. PROCEDURE

Unlike with the major party candidates, the Commission must make an initial determination regarding the amount of a minor party candidate's entitlement pursuant to 11 C.F.R. § 9005.1(b). Under 11 C.F.R. § 9005.1(b), not later than ten days after a minor or new party candidate has met all of the applicable conditions for eligibility to receive payments, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each state. 11 C.F.R. § 9005.1(b)(1). In notifying the candidate, the Commission will provide the legal and factual reasons for its initial determination and advise the candidate of the evidence on which the determination is based.<sup>1</sup> 11 C.F.R. § 9005.1(b)(1). Within 15 days after the Commission's initial determination, the candidate may submit written legal or factual materials to demonstrate that a redetermination is appropriate. 11 C.F.R. § 9005.1(b)(2). The Commission will consider any written legal and factual materials timely submitted by the candidate in making its final determination. 11 C.F.R. § 9005.1(b)(3). A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action.<sup>2</sup> 11 C.F.R. § 9005.1(b)(3).

## III. ELIGIBILITY FOR PRE-ELECTION FUNDING

### A. Pre-Election Funding for Reform Party Candidates

The Fund Act provides that the eligible candidates of a minor party in a presidential election shall be entitled to pre-election funding. See 26 U.S.C. § 9004(a)(2)(A); 11 C.F.R. § 9004.2(b). In the 1996 Presidential election, the Reform Party candidate received 8.4% of the general election vote, thereby achieving minor party status. 26 U.S.C. § 9002(7); 11 C.F.R. § 9002.7. As a result of the Reform Party receiving over 5% of the popular vote in 1996, a Reform Party Presidential candidate is eligible for pre-election funding if he or she meets the other requirements for eligibility under the Fund Act.<sup>3</sup> Accordingly, pursuant to 26 U.S.C. § 9004(a)(2)(A), this Office believes that the candidates of the Reform Party qualify for pre-election funding.

<sup>1</sup> The Audit Division's eligibility report and this memorandum include the bases for the Commission's decision. Therefore, the provision of the Audit Division's eligibility report to the candidates, along with this memorandum, will satisfy the requirement that the candidate be provided with the legal and factual bases for the initial determination.

<sup>2</sup> This Office will prepare the draft final determination and statement of reasons for Commission approval once the candidates submit their response to the initial determination.

<sup>3</sup> On November 22, 1999, the Commission certified \$2,468,291 to the Reform Party 2000 Convention Committee. Subsequent to this certification, party unrest led to a conflict over the convention funds. On April 3, 2000, United States District Judge Norman K. Moon issued an order awarding the Reform Party's convention funds to a group headed by Convention Committee Chair/Treasurer Gerald Moan. See *Reform Party of the United States v. Gargan*, 89 F.Supp. 2d 751 (W.D. Va. 2000).

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## **B. Buchanan/Foster Application for Pre-Election Funding**

The Fund Act defines a "candidate" as an individual who has qualified to have his or her name on the election ballot as the candidate of a political party in ten or more states. 26 U.S.C. § 9002(2)(B); 11 C.F.R. § 9002.2. Under the Commission's regulations, minor party or new party candidates have 14 days after they have qualified to appear on the general election ballot in ten or more states to submit a candidate letter of agreements and certifications.<sup>4</sup> 26 U.S.C. § 9003(c); 11 C.F.R. § 9003.1. On August 14 and 18, 2000, Mr. Buchanan and Ms. Foster submitted letters of candidate agreements and certifications. In a letter dated August 24, 2000, the Commission requested that the candidates provide evidence demonstrating that they had qualified to appear on the general election ballot in ten or more states as nominees of the Reform Party and outlined the requirements for such documentation. Subsequently, on August 25, 28 and 29, 2000, the candidates submitted documentation indicating that they have qualified to appear on the general election ballots as the nominees of the Reform Party in at least ten states. See 11 C.F.R. § 9003.1(a)(2); see also 11 C.F.R. § 9002.2(a)(2). These states include Alaska, Idaho, Maryland, Utah, South Dakota, West Virginia, Missouri, Iowa, North Carolina, Oklahoma, Rhode Island and Delaware.<sup>5</sup> It appears that Mr. Buchanan and Ms. Foster met the applicable conditions to receive payments on August 29, 2000. 11 C.F.R. § 9005.1(b). Thus, based upon our review of the letters and supporting documentation, this Office concurs with the Audit Division that Patrick Buchanan and Ezola Foster have established their eligibility to receive pre-election payments under 26 U.S.C. § 9006.

## **IV. INITIAL DETERMINATION REGARDING THE AMOUNT OF THE ENTITLEMENT**

Under 26 U.S.C. § 9004(a)(2), the amount of the Reform Party candidates' entitlement would be the proportionate amount of the funding available for major party general election candidates, based on the ratio of the total popular votes received by the Reform Party 1996, compared to the average of the total popular votes received by the major party candidates for President in that election. See 26 U.S.C. § 9004(a)(2); 11 C.F.R. § 9004.2(b). By limiting the entitlement to an aggregate amount, 26 U.S.C. § 9004(a)(2)(A) establishes one sum of money for

<sup>4</sup> September 15, 2000 appears to be the last date by which a state requires candidates to be certified by their parties or by petition for placement on the general election ballot.

<sup>5</sup> The candidates submitted documentation from four other states that was unofficial, incorrect or incomplete. Specifically, Mr. Buchanan provided a letter from the Arizona State Election Director which was addressed to supporters of Mr. Hagelin rejecting his identification as the Reform Party candidate rather than a confirmation of Mr. Buchanan as the candidate. The letter from the state of Delaware indicated that Mr. Buchanan and Ms. Foster would be placed on the state general election ballot as the Reform Party candidates provided that a signature requirement was met; however, no confirmation of meeting this requirement was included. The certification from the state of New Jersey certified the name of Howard Walsh rather than Ezola Foster as the Reform Party Vice Presidential candidate. Counsel for Mr. Buchanan and Ms. Foster stated that the document submitted for New Mexico was a copy of a web page, but such documentation lacked certification by any state official. Mr. Buchanan's submission from North Dakota merely states that the Reform Party has obtained state general election ballot access.

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the candidates of a minor party. Using this formula, the Reform Party's ratio of popular votes received as compared to those received by the major party candidates is approximately .1867 (or 18.67%). Applying this ratio toward the amounts to which the major party candidates are entitled (.1867 x \$67,560,000), the Reform Party Presidential candidate's entitlement will be \$12,613,452.

## V. ADDITIONAL ISSUES

As a result of a competing application for Reform Party pre-election funding and various news reports, several issues have been raised regarding the Commission's certification of the public funds for the Reform Party candidates.<sup>6</sup> First, in addition to Mr. Buchanan and Ms. Foster, John Hagelin and Nat Goldhaber also have submitted candidate agreement and certification letters pursuant to 26 U.S.C. § 9003.<sup>7</sup> However, Mr. Hagelin and Mr. Goldhaber have not provided documentation that demonstrates their access to ten or more state general election ballots as the Presidential and Vice Presidential candidates for the Reform Party, nor does the Commission possess evidence of such access. See 26 U.S.C. § 9002(2)(B); 11 C.F.R. § 9002.2(a)(2).<sup>8</sup>

Second, concerns exist about the validity of state ballot access procedures and Reform Party rules as they pertain to selecting a Reform Party nominee. The Fund Act's definition of "candidate" explicitly requires the Commission to rely on the states' determinations of who appears on the general election ballot for each party. See 26 U.S.C. § 9002(2)(B); 11 C.F.R. § 9002.2(a)(2). In our view, the Commission should not entangle itself in the complexities of party rules or procedures as the Fund Act does not define eligibility in terms of a political party's actions. Thus, the Commission should not substitute its own judgment for that of a state with regard to who should appear on a state ballot as a party nominee.

Next, in light of competing factions of the party, a question has arisen as to whether a Reform Party exists, and if it does, which faction is the "true" Reform Party. The Commission's regulations indicate that a "political party" is an association that nominates or selects an individual for federal office whose name appears on the general election ballot as the candidate for that association. See 11 C.F.R. § 9002.15. As Mr. Buchanan and Ms. Foster have submitted documentation demonstrating that they have qualified to appear on numerous general election ballots as Reform Party candidates, the Reform Party, under whose designation they run, meets

<sup>6</sup> The Commission has received three challenges to Mr. Buchanan and Ms. Foster's application for public funds. One challenge filed by Mr. Hagelin on August 10, 2000 was subsequently withdrawn on August 17, 2000. This Office will address these challenges in separate memoranda.

<sup>7</sup> Additionally, this Office is in receipt of requests by the American Reform Party to split the Reform Party federal funds among three candidates: John Hagelin, Patrick Buchanan and Ralph Nader. This Office has yet to receive an application for general election public funding from Mr. Nader or certifications from ten states where Mr. Nader is on the general election ballot as a Reform Party Presidential candidate.

<sup>8</sup> The Hagelin and Goldhaber application will be addressed in a separate memorandum.

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the definition of “political party.” *See also* Advisory Opinion 1998-2 (The Commission has recognized the Reform Party as a political party.)

Finally, questions about whether the Commission should even make a determination on Mr. Buchanan and Ms. Foster’s application have arisen. The Commission has the statutory obligation to certify to the Secretary of the Treasury payment to eligible candidates in the full amount to which they are entitled not later than 10 days after they have met all applicable conditions for eligibility under the Fund Act. 26 U.S.C. § 9005(a). *See also* 11 C.F.R. § 9005.1(b). The statute provides that the Commission “shall certify to the Secretary of the Treasury for payment” to such candidates who are eligible to receive funds under the Fund Act. It is well established law that the use of “shall” in a statute is mandatory and not merely directive when applied to action by a public agency or official.<sup>9</sup> There is no legislative history or established Commission practice indicating that the ten day time period is not mandatory. Moreover, the courts have held that the Commission cannot delay certification of eligible candidates for public funds absent patent irregularities suggesting the possibility of fraud in view of the fundamental First Amendment rights of free speech that are at stake. *See In re Carter-Mondale v. FEC*, 642 F.2d 538, 553 (D.C. Cir. 1980); *Committee to Elect Lyndon LaRouche v. FEC*, 613 F.2d 834, 843 (D.C. Cir. 1979), *cert. denied*, 444 U.S. 1074 (1980). In our view, the Fund Act and the Commission’s regulations obligate the Commission to make an initial determination on Mr. Buchanan and Ms. Foster’s application. *See* 26 U.S.C. § 9005; 11 C.F.R. § 9005.1(b). Mr. Buchanan and Ms. Foster completed their pre-election funding application August 29, 2000, the date they submitted the tenth certification of their ballot access as Reform Party candidates. Therefore, we believe that the Commission has a duty to make initial and final determinations on that application. Any Commission action on the application can be appealed to the United States Court of Appeals for the District of Columbia Circuit.<sup>10</sup> 26 U.S.C. § 9011(a).

## VI. CONCLUSION

To date, Mr. Buchanan and Ms. Foster are the only Reform Party candidates who have submitted complete applications for pre-election funding. Accordingly, this Office advises that the Audit Division recommend that the Commission make an initial determination that Mr.

<sup>9</sup> *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (shall is mandatory, “which normally creates an obligation impervious to judicial discretion,” citing *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947)); *Association of Civilian Technicians, Montana Air Chapter No. 29 v. Federal Labor Relations Authority*, 22 F.3d 1150, 1153 (D.C. Cir. 1994) (“The word ‘shall’ generally indicates a command that admits no discretion on the part of the person instructed to carryout the directive. *See Eporial Ltd. v. United States*, 902 F.2d 45, 50 (D.C. Cir. 1990”). *Cf. Buckley v. Valeo*, 519 F.2d 821, 893 (D.C. Cir. 1975) *aff’d in part and rev’d in part on other grounds* (Even though FECA says “shall” at 2 U.S.C. § 437g(a)(7), Attorney General still has discretion whether to take referrals from FEC.)

<sup>10</sup> A memorandum from the Office of General Counsel regarding certain litigation issues that have been raised will be separately circulated to the Commission.

Memorandum to Robert J. Costa  
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 Patrick Buchanan and Ezola Foster (LRA #596)  
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Buchanan and Ms. Foster are entitled to \$12,613,452.<sup>11</sup> Any final determination regarding the amount of the entitlement will be made after Mr. Buchanan and Ms. Foster have had an opportunity review the basis of the Commission's decision and submit any redetermination request.<sup>12</sup> Assuming all other requirements for eligibility are met, certification to the United States Treasury will be made once the procedures under 11 C.F.R. § 9005.1(b) have been satisfied.<sup>13</sup>

Therefore, the Office of General Counsel concurs with the Audit Division's recommendations that: (1) Reform Party candidates are entitled to pre-election funding; (2) the letter of agreements and certifications submitted by Patrick Buchanan and Ezola Foster meet the applicable requirements of 26 U.S.C. § 9003 and 11 C.F.R. §§ 9003.1 and 9003.2; (3) Patrick Buchanan and Ezola Foster, as candidates of the Reform Party, qualify for pre-election funding, and have satisfied the eligibility requirements of the Fund Act and the Commission's regulations; and (4) the Commission should make an initial determination that Mr. Buchanan and Ms. Foster are entitled to \$12,613,452 in pre-election public funding.

Staff Assigned:

Rhonda J. Vosdigh  
 Angela Whitehead Quigley  
 Holly J. Baker

<sup>11</sup> Neither the Fund Act nor the Commission's regulations provide for an appeal of an initial determination of pre-election funding by another candidate claiming entitlement to the same funds. If Mr. Hagelin and Mr. Goldhaber were to establish their listing as Reform Party candidates in ten or more states prior to the Commission's final determination regarding Mr. Buchanan's entitlement to federal funding, such a situation would raise the issue of whether the funds should be split between the two sets of candidates.

<sup>12</sup> As the Fund Act creates one sum of money for the Reform Party candidates, once the Commission makes a final determination regarding the full amount of those funds, any subsequent application for those funds could not be accepted.

<sup>13</sup> If the candidates choose not to challenge the Commission's initial determination regarding the amount of their entitlement, certification will be made as soon as the final determination and statement of reasons are approved by the Commission.

September , 2000

Mr. Patrick Buchanan  
c/o Buchanan Reform Inc.  
8233 Old Courthouse Road  
Suite 200  
Vienna, Virginia 22182

Dear Mr. Buchanan:

This letter is to advise you that on <date>, the Federal Election Commission made an initial determination that you as a Presidential candidate in the 2000 general election and Ms. Ezola Foster as the Vice Presidential candidate are entitled to a payment of \$12,613,452.00 from the Presidential Election Campaign Fund established pursuant to 26 U.S.C. §9006(a). Attached is a copy of the staff report upon which the Commission based its decision and which contains the legal and factual reasons for its determination as required by 11 CFR §9005.1(b)(1).

Under 11 CFR §9005.1(b)(2) and (3) you may submit within 15 days, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if you so desire. The Commission will consider any written legal or factual materials timely submitted in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. Once a final determination has been made, the Commission will certify an amount for payment to the U.S. Department of Treasury.

Should you have any questions regarding this matter, please contact Mr. Raymond Lisi of the Audit Division at 202-694-1200 or toll free at (800) 424-9530.

Sincerely,

Darryl R. Wold  
Chairman

Enclosures as stated

September , 2000

Ms. Ezola Foster  
c/o Buchanan Reform Inc.  
8233 Old Courthouse Road  
Suite 200  
Vienna, Virginia 22182

Dear Ms. Foster:

This letter is to advise you that on <date>, the Federal Election Commission made an initial determination that you as a Vice Presidential candidate in the 2000 general election and Mr. Patrick Buchanan as the Presidential candidate are entitled to a payment of \$12,613,452.00 from the Presidential Election Campaign Fund established pursuant to 26 U.S.C. §9006(a). Attached is a copy of the staff report upon which the Commission based its decision and which contains the legal and factual reasons for its determination as required by 11CFR §9005.1(b)(1).

Under 11 CFR §9005.1(b)(2) and (3) you may submit within 15 days, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if you so desire. The Commission will consider any written legal or factual materials timely submitted in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. Once a final determination has been made, the Commission will certify an amount for payment to the U.S. Department of Treasury for payment.

Should you have any questions regarding this matter, please contact Mr. Raymond Lisi of the Audit Division at 202-694-1200 or toll free at (800)-424-9530.

Sincerely,

Darryl R. Wold  
Chairman

Enclosures as stated

