



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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February 23, 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Leslie Bright
Associate General Counsel

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Assistant General Counsel

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AGENDA ITEM
For Meeting of: 3-16-00

SUBJECT: Buchanan for President Committee, Inc. - Statement of Reasons
(LRA #466)

I. INTRODUCTION

The Office of General Counsel has prepared the attached draft Statement of Reasons concluding that Patrick J. Buchanan and the Buchanan for President Committee, Inc. (the "Committee") must repay a total of \$29,328 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2) and 11 C.F.R. § 9038.2(b)(3).¹ This amount relates to a \$12,159 repayment determination for inadequate documentation of disbursements, and \$17,169 for duplicate payments and non-campaign related disbursements.

On January 14, 1999, the Commission approved the Audit Report on the Committee and determined that Mr. Buchanan and the Committee must repay a total of \$44,791 to the United States Treasury. This amount related to repayment determinations

¹ Due to the large number of documents being submitted as attachments, we have not included them as attachments to the draft Statement of Reasons. However, all of the attachments are available for review in the Commission's Secretary's Office.

of \$24,228 for inadequately documented disbursements and \$20,563 for duplicate payments and non-campaign related disbursements.² (\$24,228 + \$20,563 = \$44,791).

The Commission's repayment determination was based on its findings that the Committee failed to provide the Commission with adequate documentation of its disbursements in accordance with 11 C.F.R. § 9038.2(b)(3). In addition, the Committee used public funds to defray nonqualified campaign expenses. 11 C.F.R. § 9038.2(b)(2).

On March 25, 1999, the Committee submitted legal and factual materials in an effort to demonstrate that a lesser repayment is required to be paid to the United States Treasury. On July 21, 1999, the Committee addressed the Commission in an oral hearing. Following the hearing the Committee submitted supplemental documentation to the Commission dated July 28, 1999 and August 13, 1999.

The Office of General Counsel reviewed the Committee's written responses and the arguments presented at the oral hearing.³ Based on that review, this Office recommends that the Commission determine that Mr. Buchanan and the Committee must repay \$12,159 to the United States Treasury for inadequate documentation of disbursements, and \$17,169 for duplicate payments and non-campaign related disbursements, making \$29,328 the total repayment due to the United States Treasury.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Determine that the Buchanan for President Committee, Inc. must repay \$12,159 within 30 days to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2) and 11 C.F.R. § 9038.2(b)(3);
2. Determine that the Buchanan for President Committee, Inc. must repay \$17,169 within 30 days to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2) and 11 C.F.R. § 9038.2(b)(2);
3. Approve the attached Statement of Reasons; and
4. Approve the appropriate letters.

² The \$44,791 does not include a payment of \$27,431 the Commission determined was due to the United States Treasury for stale-dated checks. See 11 C.F.R. § 9038.6.

³ The Audit Division also reviewed this information and its analysis is attached to the Statement of Reasons. See Attachment 6.

Memorandum to the Commission
Patrick J. Buchanan and Buchanan for President Committee, Inc.
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Attachment

Draft Statement of Reasons (with attachments 1-7)

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2 In the Matter of)
3)
4 Patrick J. Buchanan and)
5 Buchanan for President Committee, Inc.) LRA #466
6
7

8 **STATEMENT OF REASONS**
9

10
11 On _____ the Federal Election Commission
12 (the "Commission") determined that Patrick J. Buchanan (the "Candidate") and the
13 Buchanan for President Committee, Inc. (the "Committee") must repay a total of \$29,328
14 to the United States Treasury. The Commission's repayment determination is based on
15 findings that the Committee failed to provide the Commission with adequate
16 documentation of its disbursements resulting in a \$12,159 repayment determination, and
17 that the Committee made duplicate payments and non-campaign related disbursements
18 resulting in a \$17,169 repayment determination. 11 C.F.R. § 9038.2(b)(2) and (3). These
19 expenses are not qualified campaign expenses. 26 U.S.C. § 9032(9). Therefore, the
20 Committee used public funds to defray nonqualified campaign expenses. 26 U.S.C.
21 § 9038(b)(2). The Committee is ordered to repay these amounts to the United States
22 Treasury within thirty (30) calendar days after service of this determination. 11 C.F.R.
23 § 9038.2(d)(2). This Statement of Reasons sets forth the factual and legal basis for this
24 Post Administrative Review Repayment Determination. 11 C.F.R. § 9038.2(c)(3).

25 **I. INTRODUCTION**

26 The Committee registered with the Commission on February 16, 1995 as the
27 principal campaign committee for Patrick J. Buchanan, a candidate for the Republican

1 Party's nomination for the office of President of the United States. Attachment 1, at 6.
2 Mr. Buchanan was determined eligible to receive matching funds on May 31, 1995. *Id.*
3 The Committee received \$10,983,475 from the United States Treasury for the purpose of
4 seeking the Republican Party nomination. *Id.* The Commission conducted an audit of the
5 Committee's qualified campaign expenses pursuant to 26 U.S.C. § 9038(a).

6 On January 14, 1999, the Commission approved the Audit Report and determined
7 that the Committee must repay a total of \$44,791 to the United States Treasury. *See*
8 Attachment 1.¹ The Commission's repayment determination was based on its findings
9 that the Committee failed to adequately document disbursements resulting in \$24,228
10 being repayable to the United States Treasury, and that the Committee made duplicate
11 payments and non-campaign related disbursements resulting in a \$20,563 repayment
12 determination. 26 U.S.C. § 9038(b)(2); and 11 C.F.R. § 9038.2(b)(2) and (3).

13 On March 25, 1999, the Committee submitted a written response to the
14 Commission seeking an administrative review of the repayment determination and
15 requesting an oral hearing as permitted under 11 C.F.R. § 9038.2(c)(2)(i). Attachment 2.
16 Included in the response was a reference to documentation the Committee had previously
17 submitted in response to the Exit Conference Memorandum. *See* Attachment 3. On July
18 21, 1999, the Committee gave its oral presentation before the Commission. *See*
19 Attachment 4. Following the oral hearing, the Committee submitted additional
20

¹ The repayment determination does not include a payment of \$27,431 that the Commission determined was due to the United States Treasury for stale-dated checks. 11 C.F.R. § 9038.6.

1 documentation dated July 28, 1999 and August 13, 1999.² See Attachment 5.

2 **II. LAW**

3 A qualified campaign expense is a purchase, payment, distribution, loan, advance,
4 deposit, or gift of money or anything of value incurred by or on behalf of a candidate in
5 connection with his campaign for nomination. 26 U.S.C. § 9032(9)(a). The
6 candidate bears the burden of demonstrating that disbursements made by or on behalf of
7 the candidate are qualified campaign expenses. 11 C.F.R. § 9033.11(a).³ The candidate
8 and his authorized committee shall obtain and furnish to the Commission upon request,
9 any evidence regarding qualified campaign expenses made by the candidate, his
10 authorized committees, or any persons authorized to make expenditures on behalf of the
11 candidate or committee. *Id.*

12 For disbursements in excess of \$200, the Commission requires a committee to
13 present a canceled check negotiated by the payee and a receipted bill documenting the
14 disbursement. 11 C.F.R. § 9033.11(b)(1)(i). If a committee is unable to provide the
15 Commission with a receipted bill, a committee may present a payee-generated bill,
16 invoice, or voucher stating the purpose of the disbursement; or a contemporaneous
17 memorandum from the candidate or committee that states the purpose of the
18 disbursement. 11 C.F.R. § 9033.11(b)(1)(ii)(A) and (B).

² Customarily, the Commission allows a committee five days from the date of the oral hearing to submit additional documentation to the Commission. The Committee submitted some documentation on July 28, 1999, five days following the hearing; however, the Commission granted the Committee a 16 day extension to submit additional documentation.

³ The Commission has the authority to prescribe regulations, to conduct examinations and audits, and to require the keeping and submission of any books, records, and information which it determines to be necessary to carry out its responsibilities under the Federal Election Campaign Act of 1971, as amended (the "FECA"). 26 U.S.C. § 9039(b).

1 If a committee incurs an expense and pays more than the value of the goods or
2 services that are provided in connection with seeking the nomination, the amount of the
3 overpayment is a nonqualified campaign expense. *Cf. Fulani for President v. Federal*
4 *Election Commission*, 147 F. 3d 924, 927 (D.C. Cir. 1998)(in denying Fulani
5 Committee's petition for judicial review of repayment determination, the court accepts
6 Commission's basis for repayment determination that an overpayment to a vendor is a
7 nonqualified campaign expense). The use of public funds to defray nonqualified
8 campaign expenses is a basis for repayment. 11 C.F.R. § 9038.2(b)(2)(i)(A).

9 **III. INADEQUATE DOCUMENTATION**

10 **A. Background**

11 In the context of the Audit Report, the Commission determined that the
12 Committee owed a repayment of \$24,228 to the United States Treasury for disbursements
13 totaling \$58,845 that were not adequately documented pursuant to 11 C.F.R.
14 § 9033.11(b)(1); ($\$58,845 \times .41173^4 = \$24,228$). Attachment 1, at 19. The
15 Commission's determination was based on the Committee's failure to demonstrate that
16 the disbursements were used to defray qualified campaign expenses. 26 U.S.C.
17 § 9038(b)(2).

18 The Committee submitted canceled checks that contained purpose statements that
19 did not demonstrate that the disbursements were made in connection with seeking the
20 nomination. Attachment 1, at 18. In addition, the Committee submitted copies of its

⁴ The Committee's repayment ratio is .41173. The repayment amount bears the same ratio to the total amount used for nonqualified campaign expenses as the amount of matching funds certified to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility. 11 C.F.R. § 9038.2(b)(2)(iii).

1 Expense Authorization Requests⁵ without authorizing signatures and without purpose
2 statements that demonstrated that the disbursements were made in connection with
3 seeking the nomination. *Id.* Examples of the purposes listed on the canceled checks and
4 the Expense Authorization Requests submitted by the Committee included "advance,"
5 "reimbursement," "expense advance," and "reimbursement expense". Attachment 1,
6 at 18. The Commission concluded that these purpose statements were not sufficient to
7 establish that the expense was incurred in connection with seeking the nomination. *Id.*
8 Therefore, the Commission found that these expenditures were nonqualified campaign
9 expenses. Attachment 1, at 19.

10 In response to the Audit Report, the Committee disputed the Commission's
11 repayment determination for inadequate documentation. The Committee submitted
12 documentation in reference to its payments to certain individuals in an effort to
13 demonstrate that the Committee owed a lesser repayment. Upon review of the documents
14 submitted by the Committee, the Commission determines that the Committee has
15 submitted documentation to show that \$29,313 in disbursements were made in
16 connection with seeking the nomination leaving \$29,532 worth of disbursements
17 inadequately documented; ($\$58,845 - \$29,313 = \$29,532$). Therefore, the Commission
18 determines that the Committee owes a repayment of \$12,159 ($\$29,532 \times .41173$) to the
19 United States Treasury related to inadequately documented disbursements. 11 C.F.R.
20 § 9038.2(b)(3).

21

⁵ An Expense Authorization Request is an internal, Committee-generated document designed to track all expenditures made by the Committee.

1 **B. Expenses-At Issue**

2 **1. Greg Mueller Expenses**

3 The Commission determined that the Committee reimbursed its former Press
4 Secretary, Greg Mueller, in the amount of \$13,223 for expenses that had not been
5 documented to show that they were made in connection with seeking the nomination. In
6 response to the repayment determination, the Committee submitted a report ("Expense
7 Report") detailing Mr. Mueller's travel expenses and reimbursements. Attachment 5,
8 at 12. According to the Committee, its Treasurer, Scott Mackenzie, prepared the Expense
9 Report in December 1996 in order to demonstrate to Mr. Mueller that he was properly
10 reimbursed for expenditures he made related to his work on the campaign. Attachment 4,
11 at 10. The expenditures and reimbursements detailed in the December 1996 Expense
12 Report were from January 1995 through July 1996.

13 The Committee contends that since the Expense Report was prepared in
14 December 1996 for purposes not connected with the audit of the Committee, or any
15 matter relating to compliance with Federal Election laws, the Expense Report is
16 particularly reliable, and should be considered a contemporaneous memorandum.
17 Attachment 4, at 11 and 23.

18 Documentation that sets forth the purpose of disbursements is required to verify
19 that they were committee disbursements, and to insure that public funds were spent on
20 expenses related to seeking the nomination. *See Explanation and Justification for*
21 11 C.F.R. § 9033.11, 56 Fed. Reg. 35904 (July 29, 1991); *see also Reagan Bush*
22 *Committees v. Federal Election Commission*, 525 F. Supp. 1330, 1341 (D.D.C.
23 1981)("The public has a right to know, and promptly, how its monies are spent by

1 presidential committees.”). The Commission’s regulations detail the type of
2 documentation that is needed to demonstrate that a disbursement was made for a qualified
3 campaign expense, including receipts, invoices, and vouchers. 11 C.F.R. –
4 § 9033.11(b)(1). In the event that these or other such statements are not available, the
5 Commission allows a Committee to present collateral evidence, such as a
6 contemporaneous memorandum, to demonstrate the purpose of a disbursement.
7 11 C.F.R. § 9033.11(b)(1)(ii)(B) and (b)(1)(iii).⁶ The type of collateral evidence a
8 committee can present to document a qualified campaign expense is not limited to the
9 examples set forth at 11 C.F.R. § 9033.11(b)(1)(iii)(A) and (B). *See Financial Control*
10 *and Compliance Manual for Presidential Primary Candidates Receiving Public*
11 *Financing*, p. 44 (1996).

12 The document that the Committee claims is a contemporaneous memorandum
13 was prepared several months after the transactions. Given the possibility that significant
14 and relevant information could be omitted from a report that is prepared several months
15 after the transactions, the Commission concludes that the Expense Report is not a
16 contemporaneous memorandum to document the expenses as qualified campaign
17 expenses. However, because the Expense Report was prepared to demonstrate that
18 Mr. Mueller received proper reimbursements, rather than to dispute the audit findings, it
19 is reliable in demonstrating the purpose of the disbursements to Mr. Mueller. Many of

⁶ The Commission’s regulations do not provide a definition for *contemporaneous memorandum*. In the context of discussing exceptions to the hearsay rule, and the reliability of certain types of evidence, one court has described a contemporaneous memorandum as one that “describ[es] or explain[s] an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.” *United States v. American Telephone and Telegraph Company*, 516 F. Supp. 1237, 1240-1241 (D.D.C. 1981).

1 the expenditures listed in the Expense Report relate to campaign travel and lodging
2 expenses. Attachment 5, at 12. Therefore, the Commission concludes that the \$13,223
3 paid to Mr. Mueller are qualified campaign expenses and not subject to repayment.

4 2. John Condit Expenses

5 In the context of the Audit Report, the Commission determined that the
6 Committee did not provide adequate documentation to demonstrate that \$2,475 in
7 disbursements related to John Condit were made in connection with seeking the
8 nomination.

9 According to the Committee, Mr. Condit served as a Press Secretary for the
10 Committee. Attachment 4, at 17. Mr. Condit relocated temporarily from Ohio to
11 Virginia in order to work closely with the campaign. Attachment 2, at 4. Mr. Condit
12 received a monthly living expense of \$825 for three months totaling \$2,475. *Id.* At no
13 point in the audit process did the Committee provide the Commission with any
14 documentation related to the specific expenditures made by Mr. Condit. However, in
15 response to the Exit Conference Memorandum, the Committee submitted a statement
16 signed by Mr. Condit and the Committee's Assistant Treasurer, Thomas Carocci, stating
17 that Mr. Condit and the Committee verbally agreed to three monthly stipend payments to
18 cover Mr. Condit's living expenses while he was employed with the Committee in
19 Virginia. Attachment 3, at 1101. In response to the Audit Report the Committee states
20 that because of the nature of a living stipend, the Committee did not require, nor expect
21 Mr. Condit to submit information related to his expenditures.⁷ Attachment 2, at 4.

⁷ A review of available records shows that the Committee provided other employees with stipends to cover living expenses. Attachment 6, at 2. For example, the Committee provided its employees with stipends to cover their living expenses in January and February 1996 related to the Iowa Caucus. *Id.*

1 The stipend payments to Mr. Condit were a form of compensation for the work
2 that he performed for the Committee. Therefore, the Commission concludes that the
3 information that is required to show that the payments to Mr. Condit are qualified
4 campaign expenses is similar to information used to verify salary payments to other
5 Committee staff. The Committee documented that Mr. Condit served as Press Secretary
6 for the Committee. The Committee also showed that during Mr. Condit's tenure as Press
7 Secretary, he relocated to Virginia to work more closely on the campaign. Attachment 4,
8 at 12.⁸ Therefore, the Commission concludes that the payment to Mr. Condit for \$2,475
9 for living expenses is adequately documented to show that the expenditure was made in
10 connection with seeking the nomination, and is therefore not subject to repayment. *See*
11 11 C.F.R. § 9033.11(b)(1)(3)(A).

12 3. Kevin Forbes Expenses

13 In the context of the Audit Report, the Commission determined that the
14 Committee failed to demonstrate that \$2,500 in disbursements related to Kevin Forbes
15 were made in connection with seeking the nomination.

16 In response to the Audit Report, the Committee states that its former Assistant
17 Press Secretary, Mr. Forbes, was required to leave Virginia, where he was working on the
18 campaign, due to a family emergency. Attachment 4, at 16. Mr. Forbes asked the
19 Committee to advance him a portion of his earnings. *Id.* According to the Committee,
20 Mr. Forbes was reaching the end of his term of employment, and Mr. Forbes and the

⁸ The facts are based in part on a signed statement submitted by the Committee. The Commission has no information contrary to the information submitted by the Committee. *See generally, Robertson v. Federal Election Commission*, 45 F.3d 486, 493 (D.C. Cir. 1995)(although the recipients of public funds bear the burden of accounting for, allocation, and documentation of campaign expenses, the Commission cannot reject uncontroverted documentation).

1 Committee decided that instead of considering the \$2,500 an advance in pay that would
2 have to be deducted from his final payment check, the \$2,500 payment would instead be
3 considered a severance payment.⁹ Attachment 4, at 17. The Committee submitted a
4 letter signed by Mr. Forbes and Committee Assistant Treasurer Thomas Carocci stating
5 that the Committee and Mr. Forbes had a "prior verbal agreement" that the \$2,500
6 payment to Mr. Forbes would not be deducted from his final paycheck, nor would the
7 campaign require repayment of the money since it was to serve as a severance payment.
8 Attachment 3, at 1146.

9 In the past, the Commission determined that absent a submission of
10 documentation or other evidence to demonstrate that severance payments were made in
11 connection with seeking the nomination, the payments would be considered nonqualified
12 campaign expenses.¹⁰ Wilder for President, Statement of Reasons Supporting Final
13 Repayment Determination, May 4, 1995. In the Wilder for President Committee audit,
14 the Wilder Committee submitted canceled checks to document severance payments.
15 However, the Commission determined that the canceled checks with "severance" as the
16 notation in the memorandum line was insufficient documentation to demonstrate that the
17 severance payments were qualified campaign expenses. See Wilder for President,
18 Statement of Reasons Supporting Final Repayment Determination, p. 9 - 12.

⁹ In the context of the Audit, the Committee initially characterized the payment to Mr. Forbes as an advance in salary, but clarified in its written response to the repayment determination that it was intended to be a severance payment. Attachment 2, at 4.

¹⁰ Similar to a bonus, a severance payment represents an additional payment to an employee that is not for specific services rendered. The Commission's regulations state that monetary bonuses are qualified campaign expenses if they are provided for in a written contract made prior to the date of ineligibility. 11 C.F.R. § 9034.4(a)(5)(ii)(A). The regulations require that an arrangement for such a bonus payment be prepared in writing prior to the payment of the bonus. *Id.*

1 Although counsel for the Committee indicated during the oral presentation that
2 the Committee verbally agreed to issue Mr. Forbes a severance payment, the Committee
3 did not provide the Commission with any additional evidence pertaining to the severance
4 payment. The record before the Commission therefore is the same as it was when the
5 Commission made the repayment determination in the context of the Audit Report and
6 concluded that the Committee had not demonstrated that the severance payment was a
7 qualified campaign expense. 11 C.F.R. § 9033.11. As such, there is no basis for the
8 Commission to change its determination that the payment at issue constitutes a
9 nonqualified campaign expense. The Commission determines that the \$2,500 severance
10 payment to Mr. Forbes is a nonqualified campaign expense subject to repayment pursuant
11 to 26 U.S.C. § 9038(b)(2).

12 4. **Bob Surrick Expenses**

13 In the context of the Audit Report, the Commission determined that the
14 Committee failed to demonstrate that a \$3,273 payment to attorney Bob Surrick was
15 made in connection with seeking the nomination.

16 In response to the repayment determination, the Committee noted that Mr. Surrick
17 was an attorney hired to defend one of Mr. Buchanan's delegates. Attachment 2, at 3.
18 The Committee states that "an arrangement was made ... by the campaign, to pay those
19 legal expenses." Attachment 4, at 28. The Committee submitted to the Commission a
20 copy of a check in the amount of \$3,273 that was issued to Mr. Surrick. Attachment 3, at
21 1434. The memo section of the check indicated that the payment was for "legal fees," but
22 did not give any additional information as to the nature of the disbursement. *Id.*

1 In the Committee's response to the repayment determination, the Committee
2 reiterated that the payment to Mr. Surrick was made to cover legal fees the Committee
3 agreed to pay for Mr. Surrick's representation of a delegate. Attachment 2, at 3.
4 The Committee did not submit any documentation as to the specific nature of
5 Mr. Surrick's representation of the delegate.¹¹

6 The Commission concludes that the Committee did not demonstrate that the
7 \$3,273 payment to Mr. Surrick for legal fees was made in connection with seeking the
8 nomination. Although the Committee presented a copy of a canceled check to document
9 the disbursement, the Commission determines that listing the purpose of the payment as
10 "legal fees" is not sufficient. It cannot be determined from this information that the
11 payment was made in connection with seeking the nomination. *Cf.* Explanation and
12 Justification for 11 C.F.R. § 9033.11, 56 Fed. Reg. 35904 (July 29, 1991) (a canceled
13 check in combination with a broad per diem policy does not always provide adequate
14 evidence that the expenses claimed are qualified campaign expenses). Therefore, the
15 \$3,273 payment to Mr. Surrick is a nonqualified campaign expense and is subject to
16 repayment.

17 **5. Angela Buchanan and Shelley Buchanan Payments**

18 In the context of the Audit Report, the Commission determined that the
19 Committee failed to submit documentation to show that disbursements related to travel
20 expenses, telephone bills, and cellular phone services, paid by the Committee for Angela

¹¹ A signed statement from Mr. Surrick detailing the services provided, and how those services were provided in connection with Mr. Buchanan's campaign for nomination is an example of documentation that would be sufficient to show that the disbursement was made in connection with seeking the nomination. See 11 C.F.R. § 9033.11(a).

1 Buchanan and Shelley Buchanan were made in connection with seeking the nomination.
2 See Attachment 1, 18-19. The Commission found \$9,872 in inadequately documented
3 disbursements related to Angela Buchanan, and \$8,053 in inadequately documented
4 expenditures related to Shelley Buchanan. Attachment 6, at 1-2.

5 In response to the repayment determination, the Committee submitted credit card
6 statements, telephone bills, per diem statements, invoices and receipts to demonstrate that
7 the disbursements were made in connection with seeking the nomination. See
8 Attachment 5.

9 With respect to Angela Buchanan, the Commission determines that the
10 documentation submitted demonstrates that disbursements totaling \$5,562 were made in
11 connection with seeking the nomination. The Commission examined documentation
12 submitted in response to the repayment determination and concluded that some of the
13 telephone bills, per diem statements, and receipts demonstrated that the related
14 disbursements were qualified campaign expenses. An examination of the per diem
15 statements showed that they covered periods in which Angela Buchanan was traveling
16 with the campaign. In addition, an examination of the telephone bills documented calls to
17 various individuals and vendors related to the campaign. Attachment 6, at 1-2.

18 The Commission determines that disbursements totaling \$4,310 ($\$9,872 - \$5,562$
19 $= \$4,310$) are still subject to repayment. A portion of the documentation submitted by the
20 Committee was duplicative of the information submitted in response to the Exit
21 Conference Memorandum and in the context of the audit. The Committee did not submit
22 any new documentation that demonstrated that the remaining \$4,310 in disbursements
23 were made in connection with seeking the nomination.

1 With respect to Shelley Buchanan, the Commission determines that the
2 documentation submitted by the Committee is sufficient to demonstrate that all of the
3 disputed disbursements totaling \$8,053 were qualified campaign expenses. The
4 Committee submitted credit card statements, telephone bills, and receipts which
5 evidenced that the disbursements were made in connection with seeking the nomination.
6 An examination of the charges listed on the credit card statements and telephone bills,
7 along with the dates of the charges, and the location at which they were made,
8 demonstrates that those expenses were campaign related. With respect to receipts, the
9 nature of the purchases such as airport parking and hotel bills, as well as the date of the
10 purchases, demonstrates that those disbursements were campaign related.

11 **IV. DUPLICATE PAYMENTS AND NON-CAMPAIGN RELATED**
12 **DISBURSEMENTS**

13
14 **A. Background**

15
16 In the context of the Audit Report, the Commission determined that the
17 Committee owed a repayment to the United States Treasury for duplicate payments and
18 non-campaign related expenses. Attachment 1, at 22. The total amount disbursed for
19 duplicate payments (\$26,538) and noncampaign related expenses (\$23,405) was \$49,943
20 (\$26,538 + \$23,405). Therefore, the Commission determined that the Committee must
21 repay \$20,563 ($\$49,943 \times .41173$) to the United States Treasury pursuant to 11 C.F.R.
22 § 9038.2(b)(2). *Id.*

23 The Committee disputed the repayment determination for duplicate payments and
24 noncampaign related disbursements and submitted documentation in an effort to

1 demonstrate that a lesser repayment was owed. The Commission reviewed the
2 Committee's documentation. The Commission concludes that the Committee has not
3 submitted any documentation to show that the duplicate payments were refunded. With
4 respect to non-campaign related disbursements, the Commission concludes that the
5 Committee has demonstrated that a \$8,213 non-campaign related disbursement was not
6 paid by the Committee. Therefore, the Commission has excluded this disbursement from
7 the repayment determination. Thus, the Commission determines that the Committee must
8 repay \$17,169 [$\$20,563 - (\$8,213 \times .41173)$] to the United States Treasury for duplicate
9 payments and non-campaign related expenditures.

10 B. Duplicate Payments

11 In the context of the Audit Report, the Commission identified duplicate payments
12 and excessive reimbursements totaling \$26,538.¹² Attachment 1, at 20. This amount
13 includes the reimbursement of expenses to individuals totaling \$18,527, which the
14 Committee had also paid directly to the vendor providing the goods or services, and the
15 duplicate reimbursement of travel expenses to individuals totaling \$8,011; ($\$18,527 +$
16 $\$8,011 = \$26,538$). *Id.* The duplicate payments to individuals and vendors include
17 \$1,250 in payments to Angela Buchanan and select vendors, and \$16,231 to Shelley
18 Buchanan and select vendors.

19 In response to the repayment determination, the Committee acknowledges that it

¹² Included in the Commission's finding of \$26,538 in duplicate payments, was a payment to Dave Scott for \$30. In response to the repayment determination, the Committee stated that the \$30 duplicate payment to Dave Scott was refunded and should not be subject to repayment. Attachment 2, at 4. The Committee did not submit any evidence to support this argument. However, because of the amount at issue, the Commission determines that this payment is immaterial. Therefore, the \$30 duplicate payment is not subject to repayment.

1 made payments to Angela Buchanan and Shelley Buchanan for expenditures that the
2 Committee had already paid directly to the vendors. Attachment 4, at 5. The Committee
3 explains that the reimbursement reports detailing the campaign expenditures made by
4 Angela Buchanan and Shelley Buchanan were improperly maintained. *Id.* According to
5 the Committee, as various expenses were paid to the vendor, or reimbursed to the
6 individual, the records were not appropriately purged for duplicate submissions, causing
7 double-payments to the individual for one expense. Attachment 4, at 5-6. The
8 Committee asserts that "after eliminating all undocumented and duplicate payments, the
9 [C]andidate and [Shelley Buchanan] are due an additional reimbursement of \$684.00" for
10 expenses charged to their joint credit card account. Attachment 2, at 6.

11 According to the Committee's response, Shelley Buchanan used an American
12 Express credit card that is jointly held by her and the Candidate to pay for \$94,491 in
13 expenses related to seeking the nomination.¹³ Attachment 2, at 6. The Committee states
14 that it reimbursed Shelley Buchanan by remitting a \$86,885 payment to American
15 Express. The Committee recognizes an under-payment to American Express in the
16 amount of \$7,606 (\$94,491 - \$86,885). *Id.* The Committee further states that
17 Shelley Buchanan spent \$28,977 using a Visa credit card and personal funds to pay for
18 expenditures made in connection with seeking the nomination. Attachment 2, at 6.
19 According to the Committee, it reimbursed Shelley Buchanan \$35,934 for those

¹³ A candidate who accepts matching funds may not make expenditures from his personal funds, or funds from his immediate family in connection with his campaign which exceed \$50,000. 11 C.F.R. § 9035.2(a)(1). In addition, expenditures made using a credit card for which a candidate is jointly or solely liable will count against the \$50,000 expenditure limit to the extent that the full amount due is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. 11 C.F.R. § 9035.2(a)(2).

1 expenses, which reflects an over-payment of \$6,957 (\$28,977 - \$35,934). The Committee
2 states that the \$7,606 under-payment and the \$6,957 over-payment should be offset, and
3 thus represent a net underpayment to Shelley Buchanan of \$648 (\$7,606 - \$6,957). *Id.*

4 In order to account for the inadvertent overpayments to Angela Buchanan and
5 Shelley Buchanan caused either by duplicative reimbursements, or by the Committee
6 issuing a payment for one expense to both the individual and the vendor, the Committee
7 began an informal system of reconciling the overpayments. Attachment 4, 5-6.
8 According to the Committee, once the Committee discovered the overpayments for the
9 reimbursements, it "subtracted out the duplicate expenses, and it offset them against the
10 unpaid expenses." Attachment 4, at 6.

11 The Committee contends that while, "in some cases the Committee's records may
12 not have accurately identified the particular expense to which particular disbursement
13 should have been attributed, the total amount of reimbursement received was not
14 significantly in excess of the total amount of qualified campaign expenses submitted for
15 reimbursement, and properly paid by the Committee." Attachment 2, at 2.

16 The Commission's regulations state that for disbursements in excess of \$200, the
17 candidate must present a canceled check, receipt, bill, or voucher documenting the
18 purpose of the disbursement. *See* 11 C.F.R. § 9033.11(b)(1). However, the Committee
19 acknowledges that it is unable to identify each expense for which the Committee
20 reimbursed Angela Buchanan and Shelley Buchanan. Attachment 2, at 2. Rather, the
21 Committee attempts to reconcile the overpayments it made to Angela Buchanan and
22 Shelley Buchanan by comparing the overall amount the individuals received in
23 reimbursements with the total amount the Committee claims was spent by Angela

1 Buchanan and Shelley Buchanan and submitted for reimbursement. This method
2 accounts for the overall disbursements made by the Committee to individuals, but it does
3 not account for each particular expense.

4 The Commission concludes that a comparison of the overall amount paid to the
5 individuals with the total amount submitted for reimbursement is not sufficient. For
6 disbursements in excess of \$200, the regulations require a receipted bill, invoice or
7 voucher that states the purpose of the disbursement. 11 C.F.R. § 9033.11(b)(1).
8 Therefore, committees must make a specific showing for disbursements in excess of
9 \$200. The Committee's failure to show the connection between the Committee's
10 reimbursements and the individual's expenses is contrary to the Committee's
11 responsibility to disclose the purpose of the disbursement. *See Reagan Bush Committees*
12 *v. Federal Election Commission*, 525 F. Supp. 1330, 1341 (1981) ("The public has the
13 right to know, and promptly, how its monies are spent by presidential committees.").
14 Therefore, the Commission concludes that the Committee paid \$17,481 (\$1,250 overpaid
15 to Angela Buchanan + \$16,231 overpaid to Shelley Buchanan) in nonqualified campaign
16 expenses for overpayments made to Angela Buchanan and Shelley Buchanan. Thus, the
17 \$17,481 paid to Angela Buchanan and Shelley Buchanan is subject to repayment.

18 C. Non-Campaign Related Disbursements

19 In the context of the Audit Report, the Commission identified \$23,405 in non-
20 campaign related disbursements that were subject to repayment. Attachment 1, at 22.
21 Among these disbursements was a payment for vehicle repair costs; printing photography
22 and video duplication services; and a payment to West End Travel for a trip to Europe.
23 Attachment 1, at 20-22.

1 The Commission concluded that \$8,213 paid to West End Travel for airplane
2 tickets related to the Candidate, his wife, and an aide's travel were personal expenses.¹⁴
3 Attachment 1, at 21. While reviewing West End Travel invoices, the Commission found
4 evidence that West End Travel billed the Committee \$33,639 for Committee travel, and
5 \$8,213 for the trip to Europe for the Candidate, his wife, and an assistant, totaling
6 \$40,852. Attachment 1, at 21. In the absence of documentation of who paid the personal
7 travel bill, the Commission determined that the travel expenses were nonqualified
8 campaign expenses, and thus subject to repayment. *Id.*

9 In response to the repayment determination, the Committee disputed the payment
10 to West End Travel as a nonqualified campaign expense. The Committee presented the
11 travel itinerary, and an invoice for the travel. The Committee also submitted a copy of
12 the Candidate's mutual fund statement for the period of October 1, 1996 to October 31,
13 1996 which showed a payment to West End Travel on October 15, 1996 in the amount of
14 \$8,213, representing the amount of the personal travel. In addition, the Committee
15 submitted a statement from a travel agency employee that states that the trip to Europe
16 taken by Mr. Buchanan, his wife, and an assistant was personal in nature, and was paid
17 using the Candidate's personal check. Attachment 2, at 3. The travel representative
18 further states that the tickets were not charged or billed to the Committee's account, nor
19 paid by the campaign. *Id.*

20 Contrary to the statement given by the travel representative, the Committee states
21 that "by error [West End Travel] billed the ticket to the [C]ommittee." Attachment 2, at
22 3. The Committee clarifies however, that the "Committee never paid for the tickets, and

¹⁴ The Committee defined this trip as "personal" in nature. Attachment 2, at 3.

1 informed West End Travel that the tickets should be billed to the [C]andidate
2 personally." *Id.*

3 Based on the copy of the mutual fund account statement submitted by the
4 Committee showing a payment from Mr. Buchanan to West End Travel in the amount of
5 \$8,213, the Commission concludes that the Committee has demonstrated that the
6 Candidate paid for the personal trip to Europe. Therefore, the \$8,213 is not subject to
7 repayment as a Committee disbursement.

8 V. CONCLUSION

9 For the foregoing reasons, the Commission determines that Patrick J. Buchanan,
10 and the Buchanan for President Committee, Inc. must repay a total of \$29,328 to the
11 United States Treasury pursuant to 26 U.S.C. § 9038(b)(2). With respect to the
12 inadequate documentation of disbursements, the Committee presented documentation to
13 demonstrate that \$29,313 of the \$58,845 of disbursements in question were made in
14 connection with seeking the nomination, leaving \$29,532 (\$58,845 - \$29,313) in
15 inadequately documented disbursements. The Committee's repayment ratio is .41173.
16 Attachment 1, at 19. Therefore, Patrick J. Buchanan, and the Committee must repay
17 \$12,159 ($\$29,532 \times .41173$) related to the inadequately documented disbursements.

18 Regarding the duplicate payments and non-campaign related disbursements
19 (\$26,538 and \$23,405 respectively) the Commission determined that the \$30 duplicate
20 payment to Dave Scott is immaterial, and not subject to repayment leaving \$26,508
21 subject to repayment; ($\$26,538 - \$30 = \$26,508$). With respect to the non-campaign
22 related disbursements, the Committee has demonstrated that the \$8,213 related to West
23 End Travel is not subject to repayment leaving \$15,192 subject to repayment; ($\$23,405 -$

1 \$8,213 = \$15,192). Therefore, Patrick J. Buchanan and the Committee must repay
2 \$17,169 [(\$26,508 + \$15,192) x .41173]] to the United States Treasury related to
3 duplicate payments and non-campaign related disbursements. In sum,
4 Patrick J. Buchanan and the Committee must make a repayment to the United States
5 Treasury in the amount of \$29,328 (\$12,159 + \$17,169).

6 **Attachments**

- 7 1. Report of the Audit Division on the Buchanan for President, Inc. dated
8 January 14, 1999.
9
- 10 2. Request of the Buchanan for President Committee for an Administrative Review
11 of the Repayment Determination dated March 25, 1999.
12
- 13 3. Response to the Exit Conference Memorandum dated July 22, 1998.
14
- 15 4. Transcript of the Buchanan for President Committee, Inc. Oral Hearing before the
16 Federal Election Commission on July 21, 1999.
17
- 18 5. Supplemental Submissions of the Buchanan for President Committee, Inc. dated
19 July 28, 1999 and August 13, 1999.
20
- 21 6. Memorandum from the Audit Division to the Office of General Counsel (Analysis
22 of the Administrative Review Request) dated December 20, 1999.
23