



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 14, 2003

MEMORANDUM

TO: Ron M. Harris
Press Officer
Press Office

FROM: Joseph F. Stoltz *JFS*
Assistant Staff Director
Audit Division

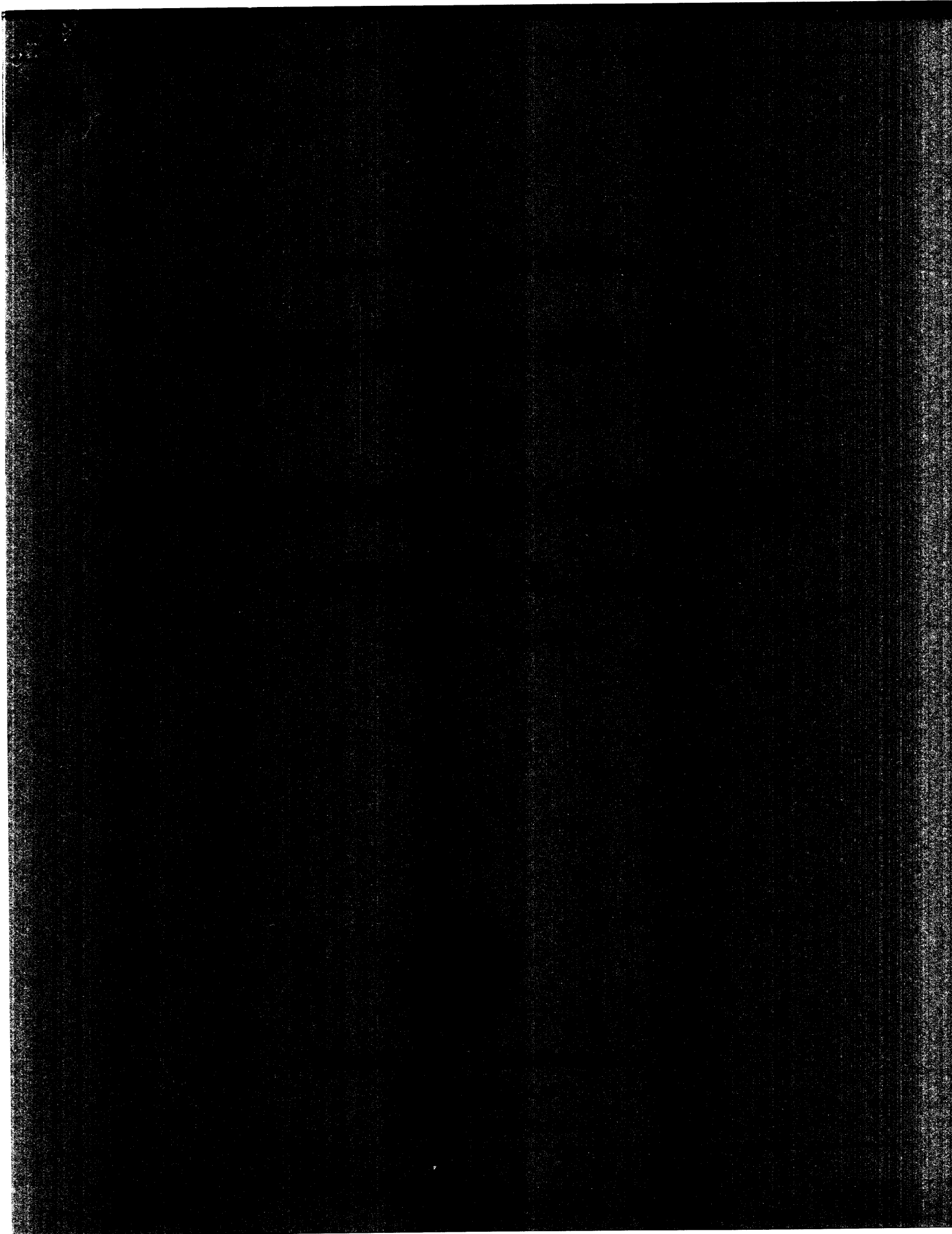
SUBJECT: Public Issuance of the Final Audit Report on Bush-Cheney 2000, Inc. and Bush-Cheney 2000 Compliance Committee, Inc.

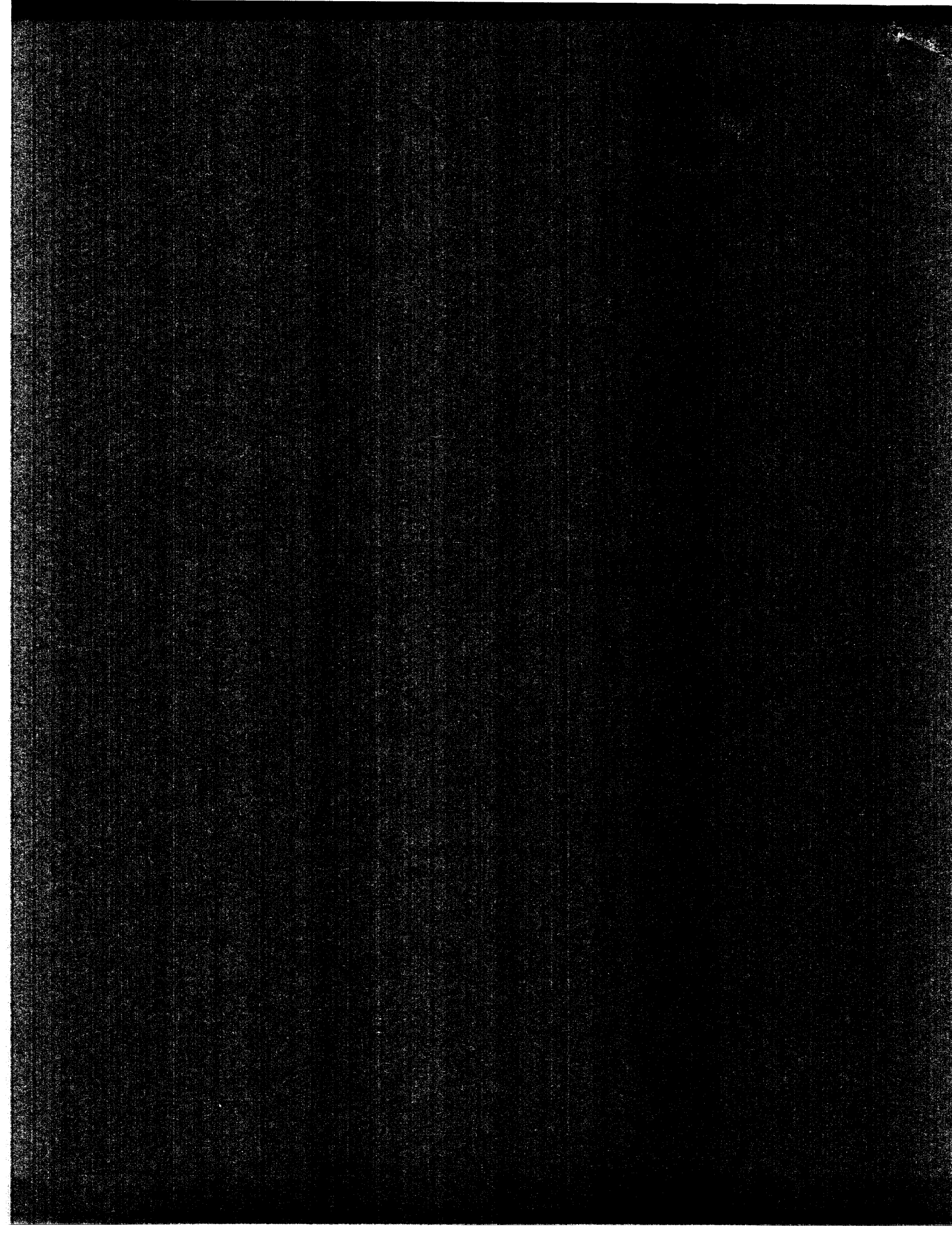
Attached please find a copy of the final audit report and related documents on Bush-Cheney 2000, Inc. and Bush-Cheney 2000 Compliance Committee, Inc. that was approved by the Commission on December 23, 2002.

All parties involved have received informational copies of the report and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel
Office of Public Disclosure
Reports Analysis Division
FEC Library





REPORT OF THE AUDIT DIVISION
ON
BUSH-CHENEY 2000, INC.
AND
BUSH-CHENEY 2000 COMPLIANCE
COMMITTEE, INC.

Approved December 23, 2002



FEDERAL ELECTION COMMISSION

999 E STREET, N.W.

WASHINGTON, D.C.

TABLE OF CONTENTS
BUSH-CHENEY 2000, INC.
AND
BUSH-CHENEY 2000 COMPLIANCE COMMITTEE, INC.

	Page
Executive Summary	1
Final Audit Report	3
Background	3
Findings	6
Legal Analysis	25
Transmittal to Committee	33
Transmittal to Candidate	35
Chronology	37



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON
BUSH-CHENEY 2000, INC.
AND
BUSH-CHENEY 2000 COMPLIANCE COMMITTEE, INC.**

EXECUTIVE SUMMARY

Bush-Cheney 2000, Inc. (BC2000) registered with the Federal Election Commission (the Commission) on August 4, 2000 as the principal campaign committee for then Governor George W. Bush, candidate for the Republican Party's nomination for the office of President of the United States. Bush-Cheney 2000 Compliance Committee, Inc. (BCCC) registered with the Commission on March 24, 1999.

The audit was conducted pursuant to Section 9007(a) of Title 26 of the United States Code, requiring that after each presidential election, the Commission conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President. BC2000 received federal funds totaling \$67,560,000 from the United States Treasury on August 4, 2000.

The findings of the audit were presented to BC2000 and BCCC at an exit conference held on March 8, 2002 and in the Preliminary Audit Report. The Committees' responses to those findings are contained in the audit report.

The following is an overview of the findings contained in the audit report.

ACCEPTANCE OF CONTRIBUTIONS BY AN ELIGIBLE CANDIDATE OF A MAJOR PARTY — 2 U.S.C. §441b(a); 26 U.S.C. §9003(b)(2); 11CFR §100.7; 11CFR §106.1(a)(1); 11CFR §114.9(e)(1); 11CFR §9007.2(b)(5).

In-Kind Contributions from State Party Committees – According to the vendor's invoice, fifteen Republican state party committees and BC2000 paid \$1,994,631 for a phone bank get-out-the-vote effort. The Party committees paid 75% of the cost or \$1,495,973, while BC2000 paid 25% or \$498,658. Given that the script was equally devoted in space and time to Governor Bush and "our great Republican team," the Audit staff determined that an allocation that attributes 50% of the cost to BC2000 was reasonable. Such an allocation would have resulted in the Parties Committees making in-kind contributions totaling \$498,658 to BC2000 and require a repayment of the same amount to the United States Treasury.

The Audit staff recommended that the Commission make a determination that BC2000 repay \$498,658. The Commission considered a motion to accept the Staff recommendation. The motion failed by a vote of 3 to 2.

In-Kind Contributions from Air Charter Vendors – BC2000 paid seven air charter companies the first class unrestricted commercial airfare in lieu of the charter rate. Based upon the documentation received from each air charter company, BC2000 should have paid \$123,227 for the flights in question. As a result, these vendors made and BC2000 received in-kind contributions totaling \$95,509 (\$123,227 - \$27,718 paid).

The Audit staff recommended that the Commission make a determination that \$95,509 was repayable to the United States Treasury pursuant to 11 CFR §9007.2(b)(5).

INCOME RECEIVED — 11 CFR §9004.5; 11 CFR §9007.2(b)(4). BC2000 earned interest totaling \$386,730 and paid federal taxes of \$135,227 on this interest. The difference \$251,503, is payable to the United States Treasury. Further, BC2000 was paid \$3,500 for use of its film footage relative to BC2000 media ads. BC2000 delivered to the Audit Division a check payable to the United States Treasury in the amount of \$255,003 (\$251,503 + \$3,500).

APPARENT NON-QUALIFIED CAMPAIGN EXPENSES – UNDOCUMENTED MEDIA

EXPENDITURES — 11 CFR §9002.11(a)(1); 11 CFR §9003.5(a); 11 CFR §9007.2(b)(2)(i). BC2000's media vendor wired \$1,050,000 to Garcia LKS. There was no documentation made available which supported disbursements made by Garcia LKS. Subsequently, BC2000 provided sufficient documentation to support the disbursements.

EXPENDITURE LIMITATION — 2 U.S.C. §441a(b)(1)(B) and (c); 26 U.S.C. §9004.9(b); 26 U.S.C. §9007(b)(2); 11 CFR §9003.3(a)(2)(ii)(A), (B) and (D). BC2000 exceeded the expenditure limitation by \$129,009. However, the Audit staff identified \$978,581 in expenditures, paid by BC2000 and charged to the limitation, which could have been paid by BCCC. A reimbursement by BCCC of \$129,009 would have brought BC2000's spending within the limitation.

Absent evidence that BC2000 has been reimbursed, the Audit staff recommended that the Commission make a determination that BC2000 repay \$129,009 to the United States Treasury pursuant to 26 U.S.C. §9007(b)(2).

STALE DATED CHECKS — 11 CFR §9007.6. BC2000 and BCCC paid the United States Treasury \$7,701 and \$33,415 respectively for stale-dated checks that had not been negotiated by the payee.

DISCLOSURE OF DEBTS AND OBLIGATIONS — 2 U.S.C. §434(b)(8); 11 CFR §104.3(d); 11 CFR §104.11(a) and (b); 11 CFR §104.18(f). The Audit staff identified three vendors in which BCCC either underreported or failed to report as debts and obligations outstanding balances totaling \$353,123. BCCC filed the necessary amended reports that disclosed the above debts.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

***REPORT OF THE AUDIT DIVISION
ON
BUSH-CHENEY 2000, INC.
AND
BUSH-CHENEY 2000 COMPLIANCE COMMITTEE, INC.***

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Bush-Cheney 2000, Inc. (BC2000) and Bush-Cheney 2000 Compliance Committee, Inc. (BCCC). 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 of BC2000 covered the period from its inception, August 4, 2000, through March 31, 2001. During the audit period, BC2000 reported an opening cash balance of \$-0-, total receipts of \$79,513,779, total disbursements of \$79,326,276 and a closing cash balance of \$187,503. In addition, the Audit staff conducted limited reviews of reported activity through September 30, 2002.

The audit of BCCC covered the period from its inception, March 24, 1999 through March 31, 2001. During this period, BCCC reported an opening cash balance of \$-0-, total receipts of \$9,451,396, total disbursements of \$3,325,166 and a closing cash balance of \$6,126,230. In addition, the Audit staff conducted limited reviews of reported activity through September 30, 2002.

C. CAMPAIGN ORGANIZATION

BC2000 registered with the Federal Election Commission (the Commission) on August 4, 2000 as the principal campaign committee for then Governor George W. Bush, candidate for the Republican Party's nomination for the office of President of the United States. BCCC registered with the Commission on March 24, 1999. The Treasurer of both BC2000 and BCCC was David Herndon, who continues to serve in that capacity. During the audit period, the campaign maintained its headquarters in Austin, Texas and moved to Washington, DC in January of 2001.

BC2000 maintained depositories in Austin, Texas. To handle its financial activity, BC2000 used 12 bank accounts. From these accounts, it made approximately 5,500 disbursements. BC2000 received \$67,560,000 from the United States Treasury on August 4, 2000. Additional receipts received through March 31, 2001 included \$9,987,344 from Press and United States Secret Service (USSS) in travel reimbursements; transfers in from Bush for President, Inc. (the Primary Committee) of \$77,213, from BCCC of \$708,289 and from the Recount Fund¹ of \$413,486 for reimbursement of expenses paid by BC2000; \$386,730 from interest income; \$369,720 from vendor refunds and rebates; \$11,692 in proceeds from the sale of assets; and \$6,430 from the return of petty cash.

BCCC maintained depositories in Dallas, Texas and Alexandria, Virginia. To handle its financial activity, BCCC used 5 bank accounts. From these accounts, BCCC made approximately 1,450 disbursements. Approximately 33,960 contributions were received from individuals. These contributions totaled approximately \$9,329,850.

D. AUDIT SCOPE AND PROCEDURES

In addition to a review of expenditures made by BC2000 to determine if they were qualified or non-qualified campaign expenses, and expenditures made by BCCC, the audit covered the following general categories:

1. the receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
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;

1. Subsequent to the 2000 general election, BC2000 established a Recount Fund to address the November 7, 2000 election results.

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 (see Finding III.B.);
6. the accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
7. adequate recordkeeping for transactions (see Finding II.C.);
8. accuracy of the Statement of Net Outstanding Qualified Campaign Expenses to disclose its financial condition (see Attachment 1);²
9. compliance with spending limitation (see Finding II.D.); and,
10. other audit procedures that were deemed necessary in the situation (see Findings II.B., II.E. and III.A.).

The Primary Committee did not accept federal matching funds and was not required to be audited. In addition, BC2000 established a Recount Fund to accept donations and defray expenses associated with the recount of votes in a number of states. The Audit staff reviewed certain expenditures made by the Primary Committee and the Recount Fund in order to verify the proper attribution of expenses between the primary and general election campaigns as well as the recount effort (see Finding II.D.).

The Audit staff did not analyze issue ads paid for by the national or state party committees or review payments made by the national or state party committees to media vendors utilized by BC2000.

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.

2. BC2000 did not file a Statement of Net Outstanding Qualified Campaign Expenses. The Audit staff generated the Statement of Net Outstanding Qualified Campaign Expenses at Attachment 1.

II. AUDIT FINDINGS AND RECOMMENDATIONS - AMOUNTS DUE TO THE UNITED STATES TREASURY (BC2000)

A. ACCEPTANCE OF CONTRIBUTIONS BY AN ELIGIBLE CANDIDATE OF A MAJOR PARTY

1. In-Kind Contributions from State Party Committees

Section 9003(b)(2) of Title 26 of the United States Code states, in part, that in order to be eligible to receive any payments under section 9006, the candidate of a major party in a presidential election shall certify to the Commission that no contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of section 9006(c), and no contributions to defray expenses which would be qualified campaign expenses but for subparagraph (C) of section 9002(11) have been or will be accepted by such candidates or any authorized committees.

Section 9007.2(b)(5) of Title 11 of the Code of Federal Regulations states, in part, that if the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

Section 106.1(a)(1) of Title 11 of the Code of Federal Regulations states, in part, that expenditures, including in-kind contributions made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit reasonably expected to be derived. For example, in the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates. The methods described shall also be used to allocate payments involving expenditures on behalf of one or more clearly identified Federal candidates and disbursements on behalf of one or more clearly identified non-federal candidates.

According to the vendor's invoice, fifteen Republican state party committees (the Party committees) and BC2000 paid \$1,994,631 for a phone bank get-out-the-vote effort. The vendor, Feather Hodges Larson & Synhorst (FHLS) apparently conducted the phone bank within a week of the 2000 general election. The Party committees paid 75% of the cost or \$1,495,973, while BC2000 paid 25% or \$498,658 of the cost.

The issue addressed was whether the costs of a phone bank get-out-the-vote effort could have been allocated 75% to the Party Committees and 25% to BC2000. Based on the content of the phone bank script, the Staff recommended that the cost of the script (\$1,994,631) be allocated on a 50% / 50% basis. Such an allocation would have resulted in the Party Committees making in-kind contributions totaling \$498,658 to BC2000 and require a repayment of the same amount to the United States Treasury.

The Commission considered a motion to accept the Staff recommendation. The motion failed by a vote of 3 to 2.

2. In-Kind Contributions from Air Charter Vendors

Section 441b(a) of Title 2 of the United States Code states, in part, that it is unlawful for any national bank or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors are to be voted for or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section.

Section 114.9(e)(1) of Title 11 of the Code of Federal Regulations states a candidate, candidate's agent, or persons traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation other than a corporation licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation, in the case of travel to a city served by regularly scheduled commercial service, the first class air fare; in the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

Section 100.7 of Title 11 of the Code of Federal Regulations defines the term contribution. It includes in that definition all in-kind contributions. An in-kind contribution includes the provision of goods and services at less than the usual and normal charge for such goods or services. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee. The *usual and normal charge* for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution.

BC2000 used aircraft provided by a number of corporations for campaign-related travel. At the time the aircraft were used, five of the corporations had valid Air Carrier Certificates³ authorizing them to operate aircraft charter businesses that

3. An Air Carrier Certificate certifies that an entity has met the requirements of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and standards prescribed thereunder for the issuance of this certificate and is hereby authorized to operate as an air

served the general public and commercial concerns.⁴ With respect to two additional companies, one described itself as an air charter company on an “Aircraft Information Sheet” submitted to BC2000, while the other appeared to have the same address as that of an air charter company.

In the case of the company that shared an address with the charter company, BC2000 paid the Portman Equipment Company (Portman) for use of an aircraft. The tail number registration for this aircraft listed its owner as Aquila Air, LLC (Aquila) at an address that was close in proximity to Portman’s address. Documentation submitted by Portman also indicated that the aircraft was owned by Aquila. This entity was not listed in the Air Charter Service Guide. Reports from Dunn and Bradstreet and the Ohio Secretary of State both listed Portman and Aquila as having the same address.

Prior to each flight, BC2000 determined the cost of first class unrestricted commercial airfare for the flight leg(s) in question and issued a check or wire to the company. During the period August 8, 2000 through November 3, 2000, BC2000 paid \$27,718 to these companies. None of these entities appear to fall under the provisions of 11 CFR §114.9(e) and therefore should have been paid at a charter rate.

Based on the documentation generated during audit fieldwork, BC2000 should have paid \$154,129 for the flights in question. BC2000 did not maintain a record of charter aircraft rates for the seven companies identified above; therefore, the Audit staff applied the charter rate as published in the Air Charter Guide, 27th Edition, Winter 2000. Consequently, it appears these vendors made and BC2000 received in-kind contributions of at least \$126,411 (\$154,129 - \$27,718 paid).

At the exit conference, the Audit staff provided BC2000 representatives with a schedule of the transactions and requested BC2000 provide evidence that it did not receive in-kind contributions.

In a statement provided subsequent to the exit conference, Counsel stated BC2000 agreed that six of the seven vendors were air charter services. With respect to the remaining vendor, Counsel stated that Portman and another unrelated company own Aquila. Portman paid Aquila for the use of the aircraft and BC2000 paid Portman the required first class rate for the flight. Counsel did not provide documentation to support their claim of Portman owning Aquila and documentation to support the amount Portman paid Aquila for the use of the aircraft.

carrier and conduct common carriage operations in accordance with said Act and the rules, regulations, and standards prescribed thereunder and the terms, conditions, and limitations contained in the approved operations specifications.

4. One of the five vendors (Kleiner, Perkins, Caufield & Byers) appeared to have acted as an intermediary between BC2000 and ACM Aviation, Inc., an air charter company.

It is not clear what type of business entity Aquila was at the time of the BC2000 flight. An entity named Aquila Air, Inc. was an air charter service licensed with the Canadian Transportation Agency in 1992. However, that license was suspended in April of 1997. On October 31, 1997, Aquila filed Articles of Organization/Domestic Limited Liability Company with the Ohio Secretary of State, appointing 50 East Corporation as its agent. On June 1, 2001, Portman filed a Trade Name/Original Filing with the Ohio Secretary of State registering Aquila as an Ohio Limited Liability Company.

The preliminary audit report contained a number of recommendations relative to Aquila and Portman. However, BC2000 now agrees that Portman should have been paid a charter rate. Therefore, the documentation requested is not required.

Further, BC2000 was encouraged to provide documentation that demonstrated the amount of the total charter cost, as calculated by the Audit staff, should be adjusted. Such documentation was to include a statement from each vendor indicating the actual charter costs for the respective flights. The documentation was to also include an explanation of any charter cost that is lower than the charter cost calculated by the Audit staff.

In response to the preliminary audit report, Counsel stated that BC2000 agreed with the Audit staff that the seven entities were actually air charter services and concurs that a repayment is necessary.⁵ However, BC2000 disagrees with the total charter cost amount as calculated by the Audit staff.

The Audit staff has reviewed the documentation submitted by BC2000 and agrees that certain adjustments to the calculated charter rates are necessary, but not to the extent that BC2000 has suggested. It was noted that BC2000 calculated the charter costs based upon current charter rates. Further, it did not consider certain repositioning flights and overnight charges, any landing fees, taxes and other fees charged while the aircraft was on the ground. Although BC2000 agreed that Portman should have been paid a charter rate, it omitted such costs from its calculations, as well as the second day's charter provided by another charter service. As a result, the Audit staff contacted each charter service and received, by fax transmission, a breakdown of the actual charges had a charter rate been applied.

Based upon the documentation received, the Audit staff determined that BC2000 should have paid \$123,227 for the flights in question (see Attachment 2). Consequently, it appears these vendors made and BC2000 received in-kind contributions of \$95,509 (\$123,227 - \$27,718 paid).

5. Although BC2000 did not provide any of the requested documentation from Portman and Aquila, they now agree that Portman should have been paid a charter rate.

Recommendation #1

The Audit staff recommends that the Commission make a determination that \$95,509 is repayable to the United States Treasury pursuant to 11 CFR §9007.2(b)(5).

B. INCOME RECEIVED

Section 9004.5 of Title 11 of the Code of Federal Regulations states, in relevant 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 Secretary.

Section 9007.2(b)(4) of Title 11 of the Code of Federal Regulations states that if the Commission determines that 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.

1. Interest Earned

BC2000 earned interest, totaling \$386,730, by investing a portion of the payment received from the Presidential Election Campaign Fund. On August 10, 2001, BC2000 paid federal taxes of \$135,227 on the interest earned. No documentation for state and local taxes has been provided. Absent documentation of additional taxes paid, the difference, \$251,503, is payable to the United States Treasury.

2. Other Income

On August 14, 2001, Red October Productions, Inc. paid \$3,500 for use of film footage relative to BC2000 media ads. The Audit staff has not been presented with evidence of any taxes paid on this income. This amount less taxes paid is payable to the United States Treasury.

At the exit conference, the Audit staff provided BC2000 representatives with a schedule of the income discussed above. In a statement provided subsequent to the exit conference, Counsel indicated that BC2000's response to the preliminary audit report will include a payment to the United States Treasury, less any amount paid for federal, state or local taxes.

In the preliminary audit report, the Audit staff recommended that BC2000 provide documentation that demonstrated the amount of all federal, state or local taxes paid. Absent such a demonstration, the Audit staff would recommend the Commission

make a determination that \$255,003 (\$251,503 + \$3,500) is payable to the United States Treasury.

In response to the preliminary audit report, BC2000 did not provide documentation of any additional taxes paid but delivered to the Audit Division a check payable to the United States Treasury in the amount of \$255,003.

Recommendation #2

The Audit staff recommends that the Commission make a determination that \$255,003 is repayable to the United States Treasury pursuant to 11 CFR §9007.2(b)(4). As stated, BC2000 delivered to the Audit Division a check payable to the United States Treasury.

C. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES – UNDOCUMENTED MEDIA EXPENDITURES

Section 9002.11(a)(1) of Title 11 of the Code of Federal Regulations states 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 relevant 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.

BC2000 authorized its media vendor, National Media, Inc. (National), to wire transfer funds to Garcia LKS (Garcia). During the period September 14, 2000 through October 26, 2000, National wired \$1,050,000 to Garcia. No documentation was made available which supported disbursements made by Garcia.

This matter was discussed with BC2000 representatives at the exit conference. Subsequent to the exit conference, BC2000 submitted documentation that appeared to be invoices and checks printed on plain paper. On the plain paper copies of the invoices, it was not possible to distinguish the billing vendor from the vendor being billed and on the checks it was not possible to identify the account on which the checks were drawn.

There were six invoices totaling \$1,050,000, and 75 checks issued to broadcast stations totaling \$855,392. The check amount is net of check #3961 in the amount of \$4,458 that had been voided. BC2000 stated it was continuing to search for documentation supporting the remaining payments and will update its response accordingly.

In the preliminary audit report the Audit staff recommended that BC2000 provide documentation supporting these transfers to Garcia. The documentation was to include station invoices, evidence of payment for such services (copies of the front and back of the negotiated checks and bank statements), and any associated expenses (e.g. commissions or production costs).

In response to the preliminary audit report, BC2000 provided sufficient documentation to support the transfers to Garcia. Such documentation included station invoices, front and back of negotiated checks made payable to the stations, and support for out-of-pocket expenses incurred by Garcia.

D. EXPENDITURE LIMITATION

Sections 441a(b)(1)(B) and (c) of Title 2 of the United States Code state, in relevant part, that no candidate for the office of President of the United States who is eligible under section 9003 of Title 26 to receive payments from the Secretary of the Treasury may make expenditures in excess of \$20,000,000 as adjusted for the increase in the Consumer Price Index.

Section 9007(b)(2) of Title 26 of the United States Code states that if the Commission determines that the eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under section 9004, it shall notify such candidates of the amount of such excess and such candidates shall pay to the Secretary of the Treasury an amount equal to such an amount.

Sections 9003.3(a)(2)(ii)(A), (B) and (D) of Title 11 of the Code of Federal Regulations state, in part, that expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 of the United States Code and Chapter 95 of Title 26 of the United States Code, shall be initially paid from the candidate's Federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. A candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts. A candidate may use contributions to the GELAC to reimburse his or her Federal fund account an amount equal to 50% of the costs (other than payroll) associated with

computer services. Such costs include but are not limited to rental and maintenance of computer equipment; data entry services not performed by committee personnel, and related supplies.

Section 9004.9(b) of Title 26 of the United States Code states, in relevant part, that each candidate shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The statement shall contain the information required by 11 CFR 9004.9(a)(1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

The expenditure limitation for the 2000 general election for the office of the President of the United States was \$67,560,000. Based on information contained in BC2000's reports, records and the response to the preliminary audit report, the Audit staff calculated that net operating expenditures subject to the limitation at September 30, 2002 totaled \$67,311,882.⁶

BC2000 did not file a Statement of Net Outstanding Qualified Campaign Expenses. The Statement of Net Outstanding Qualified Campaign Expenses, prepared by the Audit staff, can be found at Attachment 1.

6. Subsequent to the filing of the Year End 2000 disclosure report, BC2000 did not report an amount on line 13 of FEC Form 3P, Page 1 (Expenditures Subject to the Limitation). Therefore, the Audit staff calculated this amount.

In the preliminary audit report, the amount of net operating expenditures subject to the limitation calculated (\$66,960,154) represented activity reviewed through December 31, 2001. That amount has been updated based on BC2000's response to the preliminary audit report and a review of disclosure reports filed through September 30, 2002.

Shown below is the Audit staff's analysis of expenditures subject to the limitation.

Expenditures Subject to Limitation at September 30, 2002	\$ 67,311,882
Add: Accounts Payable	
Due to Primary Committee	2,736 (a)
Due to BCCC	124,450 (b)
Due to Recount Fund	382,996 (c)
Less: Accounts Receivable:	
Due From Press as of 9/30/02	(68,814)
Due From Vendors as of 9/30/02	<u>(64,241)</u>
Adjusted Expenditure Subject to the Limitation	\$ 67,689,009
Less: Expenditure Limitation	\$ <u>67,560,000</u>
Amount in Excess of the Limitation	<u>\$ 129,009</u>

- (a) This amount represents the net adjustment necessary to correct misattribution of expenses between BC2000 and the Primary Committee. BC2000 representatives were given a detailed worksheet supporting this amount at the exit conference.
- (b) This amount represents the net adjustment necessary to correct misattribution of expenses between BC2000 and BCCC. BC2000 representatives were given a detailed worksheet supporting this amount at the exit conference.
- (c) This amount represents \$288,437 due to the Recount Fund for payroll and overhead expenses as explained below and \$94,559 in net adjustments necessary to the correct misattribution of expenses between BC2000 and the Recount Fund. BC2000 representatives were given a detailed worksheet supporting this amount at the exit conference.

Explanation of Amount Due to Recount Fund for Payroll and Overhead

During the period November 11, 2000, through December 7, 2000, (the end of the expenditure report period) the Recount Fund paid 100% of payroll expenses, \$975,227, for individuals assigned to state offices as well as those assigned to the national headquarters. BC2000 could not provide documentation demonstrating that every individual was in a recount state or took part in the recount effort. In addition, the Recount Fund paid 100% of the overhead expenses, \$269,364, during the same period.

In order to evaluate BC2000's contention that all salary and overhead for the period was attributable to the recount effort, the Audit staff reviewed travel expense vouchers in order to determine which individuals were in potential recount states and which individuals were in other states. This analysis indicates that of the salary paid to staff not located at the national headquarters, 24% was paid to staff located in non-recount states. In order to recognize a campaign aspect of activities at the national headquarters, this percentage was then applied to salary paid to those employees located at the national headquarters and to overhead expenses for the period.

Based on this review, BC2000 should have paid \$223,790 in payroll expenses and \$64,647 in overhead expenses for the period, net of an allowable compliance exemption, or a total of \$288,437. The remainder of the amount due to the Recount Fund is explained at Footnote (c) to the expenditure limitation calculation at page 14.

Subsequent to the exit conference, Counsel submitted the following statement with respect to payroll and overhead expenses paid by the Recount Fund.

“Given this unprecedented situation, the Committee opted to reflect the reality of where the staff's efforts were directed and paid salaries from the private funds raised for the recount. Therefore, the Committee staff tried to complete its wind down duties on an expedited time frame. The Audit staff now wants the taxpayers to carry the costs of the campaign's staff members who were focused on the recount.”

“The Audit staff is fundamentally incorrect that there were any wind-down activities in the state offices after November 11. The attached leases for the Committee's state offices demonstrate that the leases for all of the offices expired by November 15 and that most were shut down by November 10. As a result there were no wind-down activities in the state offices and no support for state wind-down activities that had to be performed

during the period in question beyond the time period during which salaries were paid by the Committee.”

Counsel’s contention ignores the payroll and other records maintained by BC2000. Persons located in the various states where there was no recount effort continued to be paid after November 11, 2000. Further, BC2000 continued to report the disbursement of funds. During the period ending December 7, 2000, BC2000 issued 474 checks, totaling approximately \$2,400,000, to various vendors. These disbursements represent payment of BC2000 obligations incurred before the date of the general election. Taken together, these facts establish that, contrary to BC2000’s contention, general election activities continued at some level.

It cannot be argued that the primary focus of BC2000 was not the recount effort, but as evidenced above, the campaign’s business also continued. Lacking any better indicator, the Audit staff believes that the 24% BC2000 and 76% Recount Fund allocation is reasonable. Finally, it is not the intent of the Audit staff for taxpayers to “carry the costs of the campaign’s staff members who were focused on the recount.” It is the intent of the Audit staff to ensure that the Recount Fund did not supplement the efforts of BC2000 by making expenditures on its behalf.

Conclusion

As of September 30, 2002, BC2000 exceeded the limitation by \$129,009. However, the Audit staff identified \$978,581 in expenditures, paid by BC2000 and charged to the above limitation, which could have been paid by BCCC. Therefore, a reimbursement by BCCC of \$129,009 would bring BC2000’s spending within the limitation.

At the exit conference, the Audit staff provided BC2000 representatives with schedules detailing the expenditure limitation calculation as of December 31, 2001, as well as the audited Statement of Net Outstanding Qualified Campaign Expenses.

In a statement provided subsequent to the exit conference, Counsel disagreed with the Audit staff’s calculation. Specifically, Counsel does not agree that BC2000: 1) received in-kind contributions, totaling \$498,658, from the Party committees and 2) should be required to reimburse the Recount Fund \$288,437 for salary and overhead expenses incurred between November 11, 2000 and December 7, 2000. As such, Counsel does not believe either amount should be charged to the expenditure limitation.

The Audit staff recommended that BC2000 provide evidence that demonstrated it did not exceed the expenditure limitation or provide evidence that it received a reimbursement from BCCC (copy of the front and back of the negotiated check).

Absent such a demonstration, the Audit staff would recommend that the Commission make a determination that BC2000 repay the amount in excess of the limitation to the United States Treasury pursuant to 26 U.S.C. §9007(b)(2).

In response to the preliminary audit report, Counsel for BC2000 restated many of its previously arguments. Counsel has also misinterpreted the Audit staff's recommendation. Counsel stated that the Audit staff says a payment from the taxpayers' fund (BC2000) to the Recount Fund is required and that "BC2000 should be praised and not punished for erring on the side of guaranteeing that taxpayer funds were not used on the unqualified campaign expense of underwriting the cost of waging the recount."

The recommendation in the preliminary audit report did not require BC2000 to reimburse the Recount Fund; rather it noted that BC2000 had received an in-kind contribution from Recount. The preliminary audit report concluded that BC2000 exceeded the expenditure limitation by \$402,114 as of December 31, 2001. However, it also noted that the Audit staff identified \$603,958 in expenditures, paid by BC2000 and charged to the above limitation, which could have been paid by BCCC and that a reimbursement by BCCC of \$402,114 would bring BC2000's spending within the limitation. Finally, the payment of recount expenditures by BC2000 would not have been considered non-qualified campaign expenses.

As noted above, the amount in excess of limitation has decreased from \$402,114 to \$129,009. This decrease is due primarily to the receipt of in-kind contributions (\$594,167) initially charged the expenditure limitation but subsequently removed from the above calculation.

Recommendation #3

BC2000 neither demonstrated it did not exceed the expenditure limitation nor provided evidence that it received a reimbursement of \$129,009 from BCCC. Absent evidence that BC2000 has been reimbursed, the Audit staff recommends that the Commission make a determination that BC2000 repay \$129,009 to the United States Treasury pursuant to 26 U.S.C. §9007(b)(2).

E. STALE-DATED CHECKS

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The audit identified 21 checks made payable to individuals and vendors, totaling \$7,701, which had not been negotiated by the payees. The value of the stale-dated checks is payable to the United States Treasury.

Subsequent to the exit conference, a BC2000 representative delivered to the Audit Division a check payable to the United States Treasury in the amount of the \$7,701.

III. AUDIT FINDINGS AND RECOMMENDATIONS – BUSH-CHENEY 2000 COMPLIANCE COMMITTEE, INC.

A. STALE-DATED CHECKS

Section 9007.6 of Title 11 of the Code of Federal Regulations states that if the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

The bank reconciliation identified 41 checks made payable to individuals for contribution refunds totaling \$33,415 that had not been negotiated by the payees. The value of the stale-dated checks is payable to the United States Treasury.

Subsequent to the exit conference, a BCCC representative delivered to the Audit Division a check payable to the United States Treasury in the amount of the \$33,415.

B. DISCLOSURE OF DEBTS AND OBLIGATIONS

Section 434(b)(8) of Title 2 of the United States Code states, in part, that each report filed under this section shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee.

Section 104.3(d) of Title 11 of the Code of Federal Regulations states, in part, that each report filed under 11 CFR 104.1 shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting committee.

Sections 104.11(a) and (b) of Title 11 of the Code of Federal Regulations state, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. A debt or obligation, the amount of which is \$500 or less, shall be reported

as of the time payment is made or not later than 60 days after such obligation is incurred, whichever comes first. A debt or obligation which is over \$500 shall be reported as of the date on which the debt or obligation is incurred, except that any obligation incurred for rent, salary or other regularly reoccurring administrative expense shall not be reported as a debt before the payment due date.

Sections 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.

BCCC's disbursements were reviewed to determine if it had correctly reported debts and obligations owed to vendors. Three vendors were identified in which BCCC either underreported or failed to report as debts and obligations outstanding balances totaling \$353,123. The amount of unreported debt was determined by counting each reportable obligation only once, even if the obligation was outstanding for more than one reporting period. This amount represents 25% of the total reportable debt of \$1,406,662.

At the exit conference, the Audit staff provided BCCC representatives with a schedule pertaining to the three vendors noted above. BCCC made no specific comment at the exit conference but did file amended reports electronically that addressed two vendors. The amended reports addressed \$50,875 of the \$353,123 identified debt.

The preliminary audit report recommended that BCCC file complete amended electronic reports for each reporting period in which the above debts should have been reported.

In response to the preliminary audit report, BCCC filed the necessary amended reports that disclosed the above debts.

SUMMARY OF AMOUNTS DUE TO THE UNITED STATES TREASURY

Finding II.A.2.	Acceptance of Contribution by an Eligible Candidate of a Major Party	\$ 95,509	
Finding II.B.	Income Received	255,003	*
Finding II.D.	Expenditure Limitation	129,009	
Finding II.E.	Stale Dated Checks (BC2000)	7,701	*
Finding III.A.	Stale-Dated Checks (BCCC)	<u>33,415</u>	*
	Total	520,637	
	Amount Paid	<u>296,119</u>	
	Total Due United States Treasury	<u>\$224,518</u>	

* As noted in Findings II.B., II.E., and III.A., these amounts have been paid to the United States Treasury.

Bush-Cheney 2000, Inc.
Statement of Net Outstanding Qualified Campaign Expenses
as of December 7, 2000
as determined through 9/30/02

Assets

Cash on Hand		\$ 8,780	
Cash in Bank		1,585,008	
Accounts Receivable			
Press Travel Reimbursements	\$ 1,050,415		
Secret Service Travel Reimbursements	1,360,785		
Refunds/Rebates	<u>395,985</u>	2,807,185	
Due from Primary Committee		37,303	
Due from BCCC		64,050	
Due from Recount Fund		295,036	
Due from Transition Foundation		438	
Capital Assets		156,952	
Other Assets		<u>26,701</u>	
Total Assets			\$4,981,453

Obligations

Accounts Payable through 9/30/02		\$3,098,778	
Due to Primary Committee			
Actual Paid Between 12/8/00 and 9/30/02	\$ 128,823		
Due to as of 9/30/02	<u>2,736</u>	131,559	
Due to BCCC			
Actual Paid Between 12/8/00 and 9/30/02	130,901		
Due to as of 9/30/02	<u>124,450</u>	255,351	
Due to Recount Fund			
Actual Paid Between 12/8/00 and 9/30/02	256,460		
Due to as of 9/30/02	<u>382,996</u>	639,456	
Payable to US Treasury - Charter Aircraft (see Finding II.A.2.)		95,509	
Payable to US Treasury - Income (see Finding II.B.)		251,503	
Payable to US Treasury - Stale Dated Checks (see Finding II.E.)		7,701	
Actual Winding Down Costs 1/1/01 Through 9/30/02		<u>573,862</u>	
Total Obligations			5,053,719
Net Outstanding Qualified Campaign Expenses (Deficit)			\$ <u>(72,266)</u>

Bush-Cheney 2000, Inc.														
Schedule of Charter Aircraft Paid With First Class Airfare														
Vendor Name	Flight Legs	Flight Date	Purpose	Flight Time Usage	Minimum Standby Time	Standby Overnight Time	Charter Rate	Standby Charges	Audit PAR Response Analysis			Total Charter Rate	Payment Amount	Corp. Contribution
									Landing Fees	Fixed Fees	Subtotal			
DALTON AIR GROUP	Scranton/Wilmington	11/03/00	Deadhead for Charter	0.50			\$1,650.00			\$825.00	\$81.88	\$866.88	\$2,201.00	\$866.88
DALTON AIR GROUP	Wilmington/Nashville/Dallas	11/03/00	Gore Detector - Elizabeth Dole/Bob Davis	3.70			\$1,650.00			\$6,105.00	\$457.88	\$4,361.88	\$2,201.00	\$4,361.88
DALTON AIR GROUP	Dallas/Scranton	11/03/00	Deadhead for Charter	2.60			\$1,650.00			\$4,290.00	\$321.75	\$4,611.75	\$2,201.00	\$4,611.75
DALTON AIR GROUP Total														
EXECUTIVE CHARTERS	St Pete-Clearwater/Tampa	11/01/00	Deadhead for Charter	0.40			\$2,100.00			\$840.00	\$63.00	\$903.00	\$338.50	\$903.00
EXECUTIVE CHARTERS	Tampa/West Palm Beach	11/01/00	Gen. Schwarzkopf Trip	0.70	0.00		\$2,100.00	\$0.00	\$225.00	\$1,895.00	\$127.13	\$1,822.13	\$338.50	\$1,483.63
EXECUTIVE CHARTERS	West Palm Beach/St Pete-Clearwater	11/01/00	Deadhead for Charter	0.70	0.20		\$2,100.00			\$1,890.00	\$141.75	\$2,031.75	\$338.50	\$2,031.75
EXECUTIVE CHARTERS Total														
KLEINER, PERKINS, CAUFIELD & BYERS	San Jose/San Francisco	10/24/00	Deadhead for Charter	0.31			\$2,700.00			\$837.00	\$62.78	\$899.78	\$4,244.00	\$899.78
KLEINER, PERKINS, CAUFIELD & BYERS	San Francisco/Daytona Beach	10/24/00	John McCain Trip	4.87			\$2,700.00			\$13,149.00	\$986.18	\$14,135.18	\$4,244.00	\$9,891.18
KLEINER, PERKINS, CAUFIELD & BYERS	Daytona Beach/Washington, DC	10/25/00		1.68	1.00		\$2,700.00	\$700.00	\$800.00	\$6,044.91	\$463.37	\$6,498.28	\$4,244.00	\$6,498.28
(Through ACM Aviation, Inc.)	Washington, DC/Lincoln/San Jose	10/25/00	Deadhead for Charter	6.16			\$2,700.00			\$16,632.00	\$1,247.40	\$17,879.40	\$4,244.00	\$17,879.40
KLEINER, PERKINS, CAUFIELD & BYERS TOTAL														
KOURY AVIATION (Causey Aviation)	Causey/Washington	08/08/00	Deadhead for Charter	0.83			\$1,650.00			\$1,369.50	\$102.71	\$1,472.21	\$4,244.00	\$1,472.21
KOURY AVIATION (Causey Aviation)	Washington/Austin/Manchester	08/08/00	Senators Gregg to VP Debate	8.96	4.00		\$1,650.00	\$40.00	\$0.00	\$14,944.00	\$1,120.80	\$16,064.80	\$4,244.00	\$14,078.80
KOURY AVIATION (Causey Aviation)	Manchester/Causey	08/08/00	Deadhead for Charter	2.08			\$1,650.00			\$3,432.00	\$257.40	\$3,689.40	\$4,244.00	\$3,689.40
KOURY AVIATION (Causey Aviation)	Causey/St. Louis	09/22/00	Deadhead for Charter	1.94			\$1,650.00			\$3,201.00	\$240.08	\$3,441.08	\$4,244.00	\$3,441.08
KOURY AVIATION (Causey Aviation)	St. Louis/Reading/Harrisburg/Washington	09/22/00	Mrs. Cheney Trip	2.96	7.55		\$1,650.00	\$40.00	\$0.00	\$5,219.00	\$381.43	\$5,600.43	\$4,244.00	\$6,660.59
KOURY AVIATION (Causey Aviation)	Washington/Causey	09/22/00	Deadhead for Charter	0.81			\$1,650.00			\$1,336.50	\$100.24	\$1,436.74	\$4,244.00	\$1,436.74
KOURY AVIATION TOTAL														
MCRAE AVIATION	Austin/Lansing/Wadison/Austin	9/20-21/00	Karl Rove Trip	6.20			\$1,700.00			\$10,990.00	\$824.25	\$11,814.25	\$4,244.00	\$9,960.25
MCRAE AVIATION	Austin/St. Louis/Austin	10/17/00	George P. Bush Trip	3.80	1.00		\$1,700.00	\$450.00	\$70.00	\$6,530.00	\$488.75	\$7,018.75	\$4,244.00	\$5,568.75
MCRAE AVIATION	Austin/St. Louis/Austin	10/17/00	George P. Bush Trip - Revised										\$1,421.00	(\$1,421.00)
MCRAE AVIATION TOTAL														
PORTMANS EQUIPMENT CO	Cincinnati/Washington	09/10/00	Deadhead for Charter	1.00			\$1,400.00			\$1,400.00	\$105.00	\$1,505.00	\$565.50	\$1,505.00
PORTMANS EQUIPMENT CO	Washington DC/Cincinnati	09/10/00	Cong. Rob Portman Trip	1.00			\$1,400.00			\$1,400.00	\$105.00	\$1,505.00	\$565.50	\$939.50
PORTMANS EQUIPMENT CO Total														
SWIFT TRANSPORTATION, INC.	Phoenix/Austin	10/22/00	Women's Bus Tour - Mrs. McCain	5.00	0.00		\$2,400.00	\$400.00	\$100.00	\$12,500.00	\$937.50	\$13,437.50	\$1,447.00	\$11,990.50
Totals														



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
AUDIT DIVISION

2002 DEC -2 A 9:42

December 2, 2002

MEMORANDUM

TO: Robert J. Costa
Deputy Staff Director

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Gregory R. Baker
Acting Associate General Counsel

Lorenzo Holloway
Assistant General Counsel

Albert R. Veldhuyzen
Attorney

Tracey L. Ligon
Attorney

SUBJECT: Report of the Audit Division on Bush-Cheney 2000, Inc. and
Bush-Cheney 2000 Compliance Committee, Inc. (LRA #593)

I. Introduction

The Office of General Counsel has reviewed the proposed Report of the Audit Division on Bush-Cheney 2000, Inc. (the "General Committee") and Bush-Cheney 2000 Compliance Committee, Inc. ("BCCC"), which was submitted to this Office on October 9, 2002.¹ This memorandum presents our comments on the proposed Report. We concur with any findings not specifically discussed in this memorandum. If you have any

¹ This Office recommends that the Commission consider the proposed Report in open session. See 11 C.F.R. § 9007.1(e)(1).

questions, please contact Albert Veldhuyzen or Tracey Ligon, the attorneys assigned to this audit.

The proposed Audit Report includes several findings and repayment recommendations that are intricately linked to each other. In order to place our comments in context, we need to unravel the complex linkages. The report recommends that the General Committee repay a total of \$1,555,062 to the United States Treasury. The repayment includes \$594,167 for contributions received from private sources, \$255,003 for income received on an investment and the use of the General Committee's asset, and \$664,776 for exceeding the expenditure limitation.² The contributions repayment is composed of funding from several state party committees ("Party Committees") and funding from the General Committee's air charter vendors. The amounts subject to the expenditure limitation also include the funding from the private sources, plus a reimbursement from the Bush-Cheney 2000 Recount Fund ("Recount Fund") for winding down expenses that should have been paid by the General Committee. Therefore, the private source funding is the basis of two independent bases for repayment: contribution repayment and the repayment for exceeding the expenditure limitation.

The General Committee and BCCC could have taken action to bring the General Committee within the expenditure limitation and eliminate this basis for repayment. The proposed Audit Report notes that there were sufficient expenses that were subject to the expenditure limitation that BCCC could have paid to bring the General Committee within the limitation. *See* 11 C.F.R. §§ 9003.3(a)(2)(i) and 9003.3(a)(2)(iii). However, this adjustment would require BCCC to reimburse the General Committee. *See* 11 C.F.R. § 9003.3(a)(2)(ii)(G). The Preliminary Audit Report ("PAR") recommended that BCCC reimburse the General Committee. However, both committees elected not to consummate the reimbursement.³ Rather, the General Committee's response to the Preliminary Audit Report addresses certain expenses that the auditors had found subject to the expenditure limitation. The General Committee disputes the finding that it received a contribution from the Party Committees. The General Committee also contends that a reimbursement to the Recount Fund is not necessary because the Recount Fund did not incur winding down expenses on its behalf.⁴ Our comments address the two issues that the General Committee disputes as well as the issue of whether it is

² The General Committee and BCCC also owe \$41,116 to the United States Treasury for stale-dated checks. However, the committees already paid \$296,119. Therefore, the total outstanding balance owed to the Treasury is \$1,258,943 (\$1,555,062 - \$296,119).

³ BCCC may still reimburse the General Committee prior to any repayment determination by the Commission pursuant to 11 C.F.R. § 9007.2. 11 C.F.R. § 9003.3(a)(2)(ii)(G).

⁴ In its cover memorandum to the Preliminary Audit Report, the Audit Division explained that it was not seeking a repayment of these recount contributions pursuant to 26 U.S.C. § 9007(b)(3) because the "Recount Fund is within the Bush-Cheney organization." The Audit Division is treating these private contributions from the Recount Fund that defray qualified campaign expenses as misallocations.

appropriate to seek repayments for contributions from private sources and exceeding the expenditure limitation when the private contributions are also subject to the expenditure limitation.

II. Funding from State Party Committees (Finding II.A.1.)

The Proposed Report notes that 15 Republican Party Committees and the General Committee paid \$1,994,631 for a phone bank that was a get-out-the-vote effort. Feather Hodges Larson & Synhorst conducted the phone bank the week prior to the general election. The callers requested that the individuals “get . . . families and friends . . . out . . . to vote for Governor George W. Bush and all of our great Republican team.” The Party Committees paid 75% of the cost (\$1,495,973) while the General Committee paid 25% (\$498,658) of the cost of the solicitation effort. The Proposed Report notes that the General Committee “could not provide documentation to support its 75%/25% allocation.” It is this Office’s understanding that the Audit Division means the General Committee has not provided a legal basis for its allocation.⁵

The Audit staff analyzed the text of the phone bank script under 11 C.F.R. § 106.1(a)(1) and concluded that a 50% allocation was more appropriate. Section 106.1(a)(1) provides that expenditures, including in-kind contributions, made on behalf of more than one clearly identified federal candidate shall be attributed to each candidate according to the benefit reasonably expected to be derived. Although the Audit staff acknowledged that the only clearly identified candidate⁶ was Governor George W. Bush, they treated the reference to “our great Republican team” as another clearly identified candidate. Thus, the Audit staff determined that an allocation of 50% for the General Committee was reasonable given that the script was equally devoted in space and time to the candidate and the entity.⁷ The Audit Division’s 50% allocation results in a \$498,658 contribution to the General Committee from the Party Committees.

⁵ Audit staff indicated that the General Committee provided documentation reflecting its payment of 25% of the costs of the phone bank.

⁶ Under the Act and the Commission’s regulations, a candidate is clearly identified if his or her name or likeness appears (e.g. nickname, photograph, drawing) or if his or her identity is apparent by unambiguous reference (e.g. “the President,” “your Congressman,” “the incumbent,” “the Republican candidate for Senate in the State of Georgia”). 2 U.S.C. § 431(18); 11 C.F.R. §§ 106.1(d), 100.17.

⁷ The Commission’s regulations provide that the attribution for *publication and broadcast communications* shall be determined by the proportion of space or time devoted to each candidate as compared to the total space or time devoted to all candidates (emphasis added). 11 C.F.R. § 106.1(a)(1). Similarly, the costs for phone banks should be allocated “according to the number of questions or statements devoted to each candidate.” Explanation and Justification for 11 C.F.R. § 106.1(a)(1), 55 *Fed. Reg.* 26061 (June 26, 1990).

In response to the PAR, the General Committee argues that the Audit staff is attempting to impose a new and incorrect standard for phone bank allocations without a formal rulemaking process. The General Committee further argues that it did not have notice that the proposed 50% allocation would be imposed. Finally, the General Committee argues that its 75%/25% allocation is appropriate under both 11 C.F.R. § 106.1(a)(1) and 11 C.F.R. § 106.5(e). Initially, the General Committee relied on a regulation meant to allocate the costs of exempt activities, 11 C.F.R. § 106.5(e), to justify its allocation. The General Committee noted that Governor Bush was mentioned in only two of the ten lines of the script.

The Commission's regulations do not provide for allocation of the type of expenditure at issue. Section 106.5(e) is not applicable because this regulation applies to party committees allocating the cost of exempt activities. The amount paid to the vendor for the phone bank was not for exempt activity.⁸ Similarly, Section 106.1(a) does not provide for allocation of the cost of the phone bank since it only applies to expenditures made on behalf of *more than one* clearly identified federal candidate, and "our great Republican team" is not a clearly identified candidate. 11 C.F.R. §§ 106.1(a) and (d). Significantly, the Commission considered alternative approaches to the definition of "clearly identified candidate" to include broader concepts. Explanation and Justification for 11 C.F.R. § 100.17; 60 *Fed. Reg.* 35292, 35293-94 (July 6, 1995). The definition would have been expanded to include candidates of a clearly identified political party and a clearly identified group of candidates (e.g. "Vote Pro-Life"). *Id.* However, the Commission declined, stating it would be difficult to determine the candidates in such a group. *Id.* Thus, the Commission specifically considered and declined to broaden its allocation provisions to encompass expenditures that refer to both specific individuals and a description of a group of candidates.

This raises the question of whether the expenditures at issue should be allocated at all. In the past, the Commission has permitted allocations that were not provided for in the regulations with respect to expenditures involving multiple purposes.⁹ In Advisory

⁸ Exempt activities include phone bank costs for get-out-the-vote efforts. 11 C.F.R. § 100.7(b)(17). However, paid professionals cannot be used to operate the phone bank. 11 C.F.R. § 100.7(b)(17)(v). In this case, paid professionals were used to operate the phone banks.

⁹ In Matter Under Review ("MUR") 4131, the First General Counsel's Report addressed the failure of the National Abortion and Reproductive Rights Action League PAC to properly allocate the costs of a seven panel voter's guide as contributions to specific candidates. The publication/voter's guide endorsed specific candidates and also contained non-candidate specific language, including a solicitation for contributions to a state PAC. According to the First General Counsel's Report, "neither the language of the regulation itself nor the Commission's explanation and justification of the specific rule for publications describe how to allocate space in publications parts of which advocate the election of Federal or non-Federal candidates and parts of which do not refer to specific candidates or elections." The Office of General Counsel recommended that the cost of panels not endorsing Federal candidates be subtracted "from the total cost of the Voter's Guide prior to making the particular-candidate-to-all-candidates calculation mandated by Section 106.1(a)(1)." MUR 4131, 1st Gen. Counsel's Rep., at 22. Without discussion on the

Opinion (“AO”) 1988-6, the Albert Gore, Jr. for President Committee requested advice on whether a portion of the costs of a broadcast advertisement featuring the candidate discussing trade policy along with a visual listing of the words “Vote – Volunteer – Contribute” could be considered as an exempt fundraising expense pursuant to 11 C.F.R. § 100.8(b)(21). The Commission answered the question in the affirmative and agreed that a 50% allocation of the costs was reasonable.¹⁰

In this matter, the phone bank communication appears to have had the multiple purpose of benefiting then-Governor Bush as well as “our great Republican team.” This Office does not have information that suggests that the phone bank communication exclusively benefited then-Governor Bush. This Office is not aware of the identity or the number of candidates that were being referenced by the term “our great Republican team” in the phone bank script. However, it appears likely that this reference in the communication provided some benefit to the state party committees as such organizations are generally interested in promoting the election of all federal, state, and local candidates on the Republican ticket. Under the circumstances, this Office believes that it would be reasonable for the Commission to recognize the apparent multiple purposes for which the phone bank expenditures were made, and to accordingly permit allocation of the costs. Given that the script was equally devoted in space and time to then-Governor Bush and “our great Republican team,” this Office believes it is reasonable to allocate the costs of the phone bank on a 50% basis. This allocation percentage is consistent with the Commission’s treatment of other expenditures involving two purposes. *See* Advisory Opinion 1988-6.

Finally, the General Committee’s argument that it did not have notice that it would be required to pay 50% of the cost of the phone bank has no merit since, as stated previously, the Commission’s regulatory framework does not specifically provide for allocation of the type of expenditure at issue. Thus, the General Committee knew or should have known that it could be held responsible for paying the entire cost of the phone bank.

specific issue of allocation, the Commission found reason to believe that the National Abortion and Reproductive Rights Action League PAC and the recipient federal committees violated the Act.

¹⁰ The Commission wrote;
Because these provisions recognize that expenditures within the purview of the Act may be made for multiple purposes, the Commission believes that expenditures for broadcast time to run an advertisement which includes a fundraising solicitation may be allocated on a ‘reasonable basis’ to the fundraising exclusion for presidential candidates who accept matching funds.
AO 1988-6 at 4.

III. Amount Due to Recount Fund for Payroll and Overhead (Finding II.D)

Immediately following the 2000 elections, the General Committee established the Recount Fund to receive private funds to defray the costs associated with the challenges to the vote count in Florida. However, at the same time the General Committee began its campaign to defend the vote count, it is reasonable to assume that the General Committee was also winding down its political campaign. Winding down expenses are recognized as qualified campaign expenses at 11 C.F.R. § 9004.4(a)(4), and as such the General Committee must document the expenses. However, the General Committee has not provided documentation of its winding down costs to the Audit Division despite specific evidence of winding down activity during the recount period.¹¹ In the absence of a winding down figure from the General Committee, the Audit Division derived a formula to estimate the winding down expenditures¹² and determined that the Recount Fund contributed \$288,437 for payroll and overhead expenditures that should have been paid by the General Committee.¹³

The General Committee objects to the Audit Division's finding that it accepted an in-kind contribution from the Recount Fund and it asserts that the Audit Division's formula is a "wild guess" and that the auditors are substituting their judgment in place of what the General Committee knows its staff was doing. However, the General Committee failed to provide its own calculation of winding down costs.

The regulations do not presume or require a minimum amount of winding down costs by a committee.¹⁴ 11 C.F.R. § 9004.4(a)(4). However, in this instance, the Audit

¹¹ The Preliminary Audit Report noted that the General Committee issued 474 checks during the recount period, totaling approximately \$2,400,000 to various vendors, for obligations incurred before the date of the general election. Although the \$2,400,000 is attributable as general election expenditures since paid prior to the end of the expenditure report period, the cost of the effort to issue checks after the election to pay vendors is an administrative cost associated with winding down the campaign. 11 C.F.R. § 9004.4(a)(4)(i).

¹² The Audit Division reviewed the General Committee's travel expense vouchers and found that 24% of the General Committee's salary was paid to individuals who were working in states where there was no issue of recounting the general election votes. The auditors conclude that the remaining 76% of the salary must have been related to the General Committee's recount efforts and they assigned this percentage of the salary to the General Committee's recount efforts accordingly. The auditors used the same 24%/76% allocation formula for the overhead costs.

¹³ This issue is different from the prior issue on the proper allocation between the General Committee and the Party Committees. Here, the issue is a factual question of how much did the General Committee expend in winding down expenses. The prior discussion is a legal question of what standard determines the allocation of expenses between the General Committee and the Party Committees.

¹⁴ The Commission repeatedly declined to adopt proposals to limit winding down expenses by time or amount. Explanation and Justification for 11 C.F.R. § 9034.4; 48 *Fed. Reg.* 5228 (Feb. 4, 1983), 60 *Fed. Reg.* 31866 (June 16, 1995) ("the final rules contain no new restrictions on the amount spent on

Division has shown that there was at least some winding down activity after the date of the election.¹⁵ Since winding down costs are qualified campaign expenses, the General Committee must document the expenses. 11 C.F.R. § 9003.5(a). This documentation issue is complicated by the fact that the winding down activity occurred at the same time as the recount activity. However, this complicated scenario does not mean that the General Committee is entitled to ignore its documentation requirements. 11 C.F.R. § 9003.5(b). Given the dual activities in which it was engaged at this point, this Office believes that the General Committee should have been more vigilant in documenting its qualified campaign expenses. Therefore, in the absence of documentation, we agree with the Audit Division's approach in using a formula to estimate the General Committee's winding down expenses. *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).

IV. Repayments for Contributions from Private Sources and Exceeding Expenditure Limitation

In the Summary of Amounts Due to the United States Treasury of the proposed Report, the Audit Division lists \$594,167 as due to the Treasury for the General Committee's acceptance of in-kind contributions from the Party Committees (\$498,658) and from air charter vendors (\$95,509) (Finding II.A.). 26 U.S.C. § 9007(b)(3). However, these same amounts are also included as part of Finding II.D. (Amount in Excess of the Expenditure Limitation). 26 U.S.C. § 9007(b)(2). It is appropriate to include these amounts in both findings for accounting purposes since in-kind contributions are both contributions and expenditures. 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv)(A). However, when doing so triggers a double repayment to the United States Treasury, the Office of General Counsel believes that a repayment on both grounds is inappropriate. 26 U.S.C. § 9007(b)(5).

As a pre-condition for the receipt of federal funds for the general election, presidential candidates must agree not to accept contributions. 11 C.F.R. § 9003.2(a)(2). Such a receipt of contributions to defray qualified campaign expenses triggers a repayment of the amounts in question to the United States Treasury. 26 U.S.C. § 9007(b)(3). The statute provides that "no payment shall be required from the eligible candidates of a political party under this subsection to the extent that such payment, when added to other payments required from such candidates under this subsection, exceeds the amount of payments received by such candidates under section 9006." 26 U.S.C. § 9007(b)(5). Therefore, the basic principle in the law is that the government should not profit from repayments under the public financing system. While this case does not

winding down or the time taken."). Furthermore, the Commission has not required committees to have a pre-set level of winding down expenses.

¹⁵ See *supra* note 11.

represent a specific instance where the total repayments exceed the payments made to the candidate as a part of his entitlement to public funds, this is a case where the government would recoup two repayments from the same transaction. If the Commission seeks a repayment from the General Committee on both bases, the government may be placed in a better position than it was prior to the dispensing of the funds to the General Committee.¹⁶

General election public financing is an aggregate financing system, with the premise that 100% of the candidate's funding will flow from the government. If the candidate uses financing from any source other than the government, the government's share of the financing is reduced through a repayment to the Treasury in direct proportion to the amount provided from the other source. 26 U.S.C. § 9007(b)(3). Therefore, once the Commission recoups a repayment for private source financing, the Commission has achieved its goal of maintaining an aggregate financing system. There is no need to seek an additional repayment based on the fact that the General Committee received funding from a source other than the government. Thus, the Office of General Counsel recommends that the Audit Division revise the report to eliminate the repayment for exceeding the expenditure limitation to the extent that such repayment is based on private source funding.

¹⁶ The regulations do provide one instance where the government may be placed in a better situation than prior to the dispensing of public funds; namely when a candidate who invested public funds must repay the resulting derived income. 11 C.F.R. § 9007.2(b)(4). However, this is distinguishable from a situation of mixed public and private funds that results in a double repayment to the United States Treasury. In the primary context, a committee, exceeding both the overall expenditure limitation and one or more State expenditure limitations, is required to repay only the larger amount and not both amounts in excess of the limit. 11 C.F.R. § 9038.2(b)(2)(v). The Explanation and Justification for this rule state that "to avoid the possibility of double counting," the lesser amount of expenditures exceeding either the state-by-state limit or the overall limit are subsumed into the larger amount of expenditures exceeding either limit. Explanation and Justification for 11 C.F.R. § 9038.2(b)(2)(v). 56 *Fed. Reg.* 35908 (July 29, 1991). In both contexts discussed above, a double repayment would place the government in a better position than it was prior to the dispensing of public funds. This interpretation is consistent with the decision in *Kennedy For President Committee v. Federal Election Commission*. The Kennedy primary committee, using a mix of federal funds and private contributions, had exceeded campaign expenditure limits. Subsequently, the Commission ordered the Kennedy committee to repay the full amount of unqualified expenditures to the Treasury without regard to whether the monies originated from matching funds or private contributions. Reasoning that this could result "in the repayment of a greater sum of money than the candidate received in federal matching payments," the Court found that the Commission exceeded its statutory authority by ordering a full repayment. *Kennedy For President Committee v. Federal Election Commission*, 734 F.2d 1558, 1561-62 (D.C. Cir. 1984).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 7, 2003

David Herndon, Treasurer
Bush-Cheney 2000, Inc.
515 Congress Avenue
Suite 2300
Austin, Texas 78701-3587

Dear Mr. Herndon:

Attached please find the Report of the Audit Division on Bush-Cheney 2000, Inc. and Bush-Cheney 2000 Compliance Committee, Inc. The Commission approved the report on December 23, 2002. As noted in the report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9007.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$224,518 is required within 90 calendar days after the service of this report (April 11, 2003).

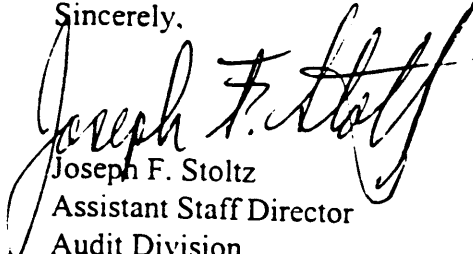
Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9007.2(c)(2)(i) provide the Candidate with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (March 11, 2003), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9007.2(c)(2)(ii) permits a Candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60-day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the repayment determination, please contact Greg Baker of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530. If the Candidate does not dispute this determination within the 60-day period provided, it will be considered final.

The Commission approved report will be placed on the public record on January 13, 2003. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220.

Any questions you have related to matters covered during the audit or in the report should be directed to Jeff Spilizewski or Thomas J. Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Joseph F. Stoltz
Assistant Staff Director
Audit Division

Attachment as stated

cc: Keith Davis; Huckaby Davis & Associates
Benjamin L. Ginsberg; Patton Bogs LLP



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

January 7, 2003

The Honorable George W. Bush
c/o Mr. Benjamin L. Ginsberg
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037-1350

Dear Mr. President:

Attached please find the Report of the Audit Division on Bush-Cheney 2000, Inc. and Bush-Cheney 2000 Compliance Committee, Inc. The Commission approved the report on December 23, 2002. As noted in the report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR §§9007.2(c)(1) and (d)(1), the Commission has made a determination that a repayment to the Secretary of the Treasury in the amount of \$224,518 is required within 90 calendar days after service of this report (April 11, 2003).

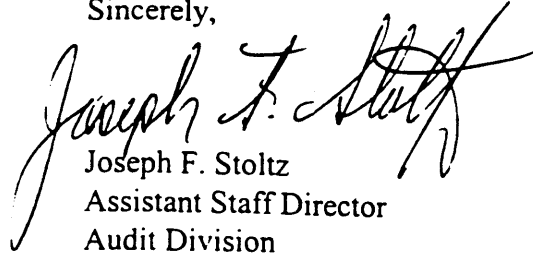
Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9007.2(c)(2)(i) provide you with an opportunity to submit in writing, within 60 calendar days after service of the Commission's notice (March 11, 2003), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9007.2(c)(2)(ii) permits a candidate who has submitted written materials to request an opportunity to address the Commission in open session based on the legal and factual materials submitted.

The Commission will consider any written legal and factual materials submitted within the 60-day period when deciding whether to revise the repayment determination. Such materials may be submitted by counsel if you so elect. If you decide to file a response to the repayment determination, please contact Greg Baker of the Office of General Counsel at (202) 694-1650 or toll free at (800) 424-9530. If you do not dispute this determination within the 60-day period provided, it will be considered final.

The Commission approved report will be placed on the public record on January 13, 2003. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220.

Any questions you have related to matters covered during the audit or in the report should be directed to Jeff Spilizewski or Thomas J. Nurthen of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,



Joseph F. Stoltz
Assistant Staff Director
Audit Division

Attachment as stated

CHRONOLOGY
BUSH-CHENEY 2000, INC.
AND
BUSH-CHENEY 2000 COMPLIANCE COMMITTEE, INC.

Audit Fieldwork	03/26/01 – 03/07/02
Exit Conference	03/08/02
Preliminary Audit Report to the Committee	06/27/02
Response to the Preliminary Audit Report	08/29/02
Final Audit Report Approved	12/23/02

