
**REPORT OF THE AUDIT DIVISION
ON**

**Bush-Quayle '92
Primary Committee, Inc.**

December 27, 1994



**FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
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FEDERAL ELECTION COMMISSION

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WASHINGTON, D.C. 20463

REPORT OF THE AUDIT DIVISION
ON
BUSH-QUAYLE '92 PRIMARY COMMITTEE, INC.

EXECUTIVE SUMMARY

Bush-Quayle '92 Primary Committee, Inc. (the Primary Committee) registered with the Federal Election Commission on October 11, 1991. The Primary Committee was the principal campaign committee of President George Bush, the 1992 Republican presidential nomination.

The audit was conducted pursuant to 26 U.S.C. §9038(a) which requires the Commission to audit committees that receive Federal funds. The Primary Committee received \$10,658,521 in matching funds.

The audit findings were presented to the Primary Committee at the exit conference held on October 7, 1993 and in the interim audit report approved by the Commission on April 4, 1994. The Primary Committee's responses to the audit findings have been included in this report.

In the final audit report, the Commission made an initial determination that the Primary Committee pay the U.S. Treasury a total of \$700,049 in connection with expenditures which benefited the candidate's general election campaign; matching funds received in excess of entitlement; and Primary Committee checks that were never cashed. The Commission also determined that an additional payment of \$141,801 was required in connection with the receipt of excessive contributions. The total payment to the U.S. Treasury therefore totaled \$841,850.

These and other matters are summarized below.

Apparent General Election Expenditures - 26 U.S.C. §9038 (b)(2) and 11 CFR §9038.2(b)(2). Although the Primary Committee contended that it had properly allocated spending between the primary and general campaigns, the final audit report found that the Primary Committee had incurred \$807,249 in nonqualified campaign expenses benefiting the general election campaign. Of this amount, \$195,224--the pro rata portion paid with Federal matching funds--was repayable to the U.S. Treasury.

Matching Funds Received in Excess of Entitlement - 26
U.S.C. §9038(b)(1). Based on an analysis of the Primary Committee's financial situation, the audit found that the Primary Committee had received \$485,631 in matching funds in excess of the amount to which the candidate was entitled. The Commission determined that the Committee was required to repay that amount to the U.S. Treasury.

Apparent Unresolved Excessive Contributions - 2 U.S.C.
§441(a)(1)(A), 11 CFR §110.1(k), 103.3(b)(3) and (4). The Commission determined that the Primary Committee had to pay \$141,801 to the U.S. Treasury, representing the value of unresolved excessive contributions from individuals. Generally, although the Primary Committee appeared to have issued the refund checks in a timely manner in November 1992, virtually all the checks were still uncashed in August 1993. The Primary Committee has made the payment to the U.S. Treasury.

Disclosure of Contributor's Occupation and Name of Employer
- 2 U.S.C. §434(b)(3)(A), 431(13)(A) and 11 CFR §104.7 (a) and (b). A sample review of contributions received by the Primary Committee revealed that its reports did not include occupation and name of employer for 56 per cent of the items tested. In addition, language in several of the solicitations did not meet the "best efforts" standard for notifying the contributor that the reporting of the information is required by law. The interim report recommended that the Primary Committee contact all contributors who did not provide the required information. The Primary Committee contended that it had satisfied the "best efforts" standard; thus, it did not contact its contributors nor file amended reports.

Use of Corporate Aircraft - 11 CFR §114.9(e). The Primary Committee did not as required, pay two corporations in advance for travel on their aircraft. The \$10,810 in payments were made approximately three weeks after the flights. The Primary Committee viewed these incidents as both isolated and unintentional, and took actions which appeared to have prevented any reoccurrence.

Excessive Contributions Resulting From Staff Advances - 2
U.S.C. §441a(a)(1)(A) and 11 CFR §116.5(b). The audit identified an excessive contribution of 12,598, representing funds for travel and other expenses advanced by an individual. This amount was reimbursed by the Primary Committee, though not within the required time period; therefore the amount constituted an impermissible contribution. The Primary Committee argued that no contribution resulted because the time period was not applicable in this case since the individual was a commercial vendor who normally first billed expenses and later received payment. However, it failed to provide adequate documentation supporting its contention that the individual provided services as a business.

Reporting of Debts and Obligations - 2 U.S.C. §434(b)(8), 11 CFR §104.11(a) and (b). The Primary Committee did not disclose \$1,767,548 in obligations owed to vendors. Although the Primary Committee disagreed with the basis for this finding, in August 1994, it filed amended reports to correct the problem.

Use of Government Conveyance for Campaign Related Travel - 11 CFR §9034.7(a). The interim report recommended that, absent a demonstration to the contrary, the Primary Committee pay the United States Air Force (USAF) \$259,636 representing an apparent "underpayment" for campaign-related trips on USAF aircraft. In response, the Primary Committee provided documentation which demonstrated that, under the circumstances, it had reimbursed the USAF on a reasonable basis.

Stale-dated Committee Checks - 11 CFR §9038.6 Finally, the Primary Committee was required to pay the U.S. Treasury \$19,194, the value of stale-dated Primary Committee checks still uncashed. This payment has been made.



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REPORT OF THE AUDIT DIVISION
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BUSH-QUAYLE '92 PRIMARY COMMITTEE, INC.

I. Background

A. Audit Authority

This report is based on an audit of the Bush-Quayle '92 Primary Committee, Inc. (the Primary Committee). The audit is mandated by Section 9038(a) of Title 26 of the United States Code. That section states that "after each matching payment period, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of every candidate and his authorized committees who received payments under Section 9037." Also Section 9039(b) of the United States Code and Section 9038.1(a)(2) of the Commission's Regulations state that the Commission may conduct other examinations and audits from time to time as it deems necessary.

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, as amended.

B. Audit Coverage

The audit covered the period from the Primary Committee's inception, September 30, 1991, through September 30, 1992. During this period, the Primary Committee reports reflect an opening cash balance of \$-0-, total receipts of \$38,426,892, total disbursements of \$38,205,475, and a closing cash balance of \$221,417. In addition, a limited review of Primary Committee transactions was conducted through June 30, 1994, for purposes of determining the Primary Committee's remaining matching fund entitlement based on its financial position.

C. Campaign Organization

The Primary Committee registered with the Federal Election Commission on October 11, 1991. The Treasurer of the Primary Committee is J. Stanley Huckaby.

During the period audited, the campaign established offices in 43 states in addition to its national headquarters located in the District of Columbia. The campaign's current office is in Alexandria, Virginia.

To handle its financial activity, the campaign used 18 bank accounts at various times. From these accounts the campaign made approximately 14,799 disbursements through October 14, 1992. Approximately 133,980 contributions were received from 103,329 persons through September 30, 1992. These contributions totaled \$28,066,466.

In addition to contributions, the campaign received \$10,658,521 in matching funds from the United States Treasury. This amount represents 77.2% of the \$13,810,000 maximum entitlement that any candidate could receive. The Candidate was determined eligible to receive matching funds on November 27, 1991. The campaign made a total of 13 matching funds requests totaling \$10,720,792. The Commission certified 99.4% of the requested amount. For matching fund purposes, the Commission determined that President Bush's candidacy ended August 20, 1992. This determination was based on Section 9032(6) of Title 26 of the United States Code which states that the matching payment period ends "...on the date on which the national convention of the party whose nomination a candidate seeks nominates its candidate for the office of President of the United States, ..." also see 11 C.F.R. §9032.6. The campaign continued to receive matching fund payments through April 2, 1993, to defray expenses incurred before August 21, 1992, and to help defray the cost of winding down the campaign. Attachment 1 to this report is a copy of the Commission's most recent Report on Financial Activity. The amounts shown are as reported to the Commission.

D. Audit Scope and Procedures

In addition to a review of the qualified campaign expenses incurred by the campaign (see Finding III.C.), the audit covered the following categories:

1. The receipt of contributions or loans in excess of the statutory limitations (see Findings II.B. and D.);
2. the receipt of contributions from prohibited sources, such as those from corporations or labor organizations (see Finding II.C.);

3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed (see Finding II.E.);
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 campaign debts and obligations (see Finding II.F.);
6. accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
7. adequate recordkeeping for campaign transactions;
8. accuracy of the Statement of Net Outstanding Campaign Obligations (NOCO) filed by the campaign to disclose its financial condition and establish continuing matching fund entitlement (see Findings III.A. and D.);
9. the campaign's compliance with spending limitations; and,
10. other audit procedures that were deemed necessary under the circumstances.

As part of the Commission's standard audit process, an inventory of the Primary Committee's records was conducted prior to the audit fieldwork. Since this inventory determined that the records were materially complete and in an auditable state, the audit commenced on January 19, 1993.

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

II. Findings and Recommendations - Non-repayment Matters

A. Use of Government Conveyance for Campaign-Related Travel

Section 9034.7(a) Title 11 of the Code of Federal Regulations states that notwithstanding the provisions of 11 CFR part 106, expenditures for travel relating to the campaign of a candidate seeking the nomination for election to the office of President by any individual, including a candidate, shall,

pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

Sections 9034.7(b)(1) through (6) of Title 11 of the Code of Federal Regulations state for a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop, and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to the first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or the commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

President Bush and Vice President Quayle, frequently accompanied by staff, media personnel, U.S. Secret Service agents, campaign employees, and other "guests", made campaign-related trips on aircraft provided by the United States Air Force (USAF). In most cases, trips made by the President were identified and billed as Air Force I, whereas, trips made by the Vice President were identified and billed as Air Force II. Further, there were

several instances when the First Lady, and advance personnell^{1/} also made campaign-related trips on aircraft provided by the USAF. These trips were usually identified and billed as Airlift Operations.

The billings for the trips noted above originated in either the White House Military Office or in the Office of the Director of Airlift Operations, USAF. In most cases, the billings included a manifest which detailed the passengers aboard each flight, a summary memorandum which identified the number of political (campaign-related) passengers, the airfare charged per individual, and the total amount to be reimbursed. The billings were forwarded to the White House Administrative Office and then onto the Primary Committee, accompanied by a memorandum requesting reimbursement for the campaign-related trips.

Virtually all flight destinations were cities served by regularly scheduled commercial service. Thus, in accordance with 11 C.F.R. §9034.7(b)(5), the Primary Committee was required to reimburse (the United States Treasury/Air Force) the first class commercial airfare plus the cost of other services.^{2/}

The Audit staff analyzed the billings noted above in an effort to determine if the airfares charged to the Primary Committee were equivalent to the first class airfares available on the date of the trips. Further, the analysis would determine whether or not the total amount paid by the Primary Committee for its use of government conveyance was in accordance with 11 C.F.R. §9034.7(b). For the purpose of the analysis, the Audit staff selected the lowest unrestricted and non-discounted first class airfare, not subject to any type of conditional purchase/booking agreements, available on the date of the trip.

It should be noted that in instances where the aircraft flew "empty" (without campaign-related passengers aboard) to a specific location for the purpose of transporting campaign-related individuals back to Andrews AFB or onto another campaign event (positioning flights), the Audit staff charged an equivalent of one first class airfare.

^{1/} Advance personnel were identified on the manifests/billings as "preadvance" personnel. Typically these individuals traveled to event destinations to coordinate and organize in advance of the actual event.

^{2/} It should be noted that the White House Communications Agency did not bill the Primary Committee for the costs associated with the installation and maintenance of secured communication lines. According to the Assistant Treasurer, the White House Communications Agency considered these costs to be part of national security and did not bill the Primary Committee.

On December 8, 1993, Primary Committee representatives stated that it was not billed for "positioning flights". It was also their understanding that the 1988 campaign was not billed for such flights. The representatives further stated that the Primary Committee was only billed for campaign-related trips, but added that certain billings required adjustment, to correct the number of passengers inappropriately considered campaign-related by the USAF. The Primary Committee also provided documentation in support of the above statements.

It is the opinion of the Audit staff, that the Primary Committee should be charged the equivalent of one first class airfare for each "positioning flight". The Audit staff applied this charge, with respect to government conveyance, throughout the 1992 Presidential cycle.

For purposes of our analysis, the Audit staff used the number of campaign-related passengers as identified on the trip itinerary/manifest provided by the USAF.

Further, the Audit staff identified five apparent campaign-related trips that were excluded from the above analysis. In response to request for additional documentation, the Primary Committee submitted invoices from the White House Office of Administration and copies of Primary Committee checks in payment thereof, for all trips except the April 30, 1992 trip (Andrews AFB to Columbus, OH to Andrews AFB). However, no official manifests/trip itineraries (from the USAF) were provided and the Audit staff could not verify the number of campaign-related passengers aboard each trip. In addition, discrepancies were noted in campaign-related stops identified on the invoices provided and the previously provided candidate schedules.

The amount calculated as "underpaid" represents the net difference between the amount paid by the Primary Committee and the correct billable amount as determined by the Audit staff. Based on this review, the Primary Committee "underpaid" the USAF \$259,636. Below is a discussion of the differences identified.

Air Force I

Our review of "Air Force I" revealed a net underpayment of \$118,200. The majority of this amount was a result of the USAF billing at an airfare that was less than the first-class amount determined by the Audit staff (\$100,785). The remaining underpayment was due to the Primary Committee not paying for an apparent campaign-related trip (\$12,534) and in six instances manual adjustments were made to the billings received from the White House Administrative Office (\$4,881 relating to apparent campaign-related passengers). In these cases, the passengers were identified as campaign-related on the military itinerary/manifest and on the initial billings from the White House. However, manual adjustments were made before the Primary Committee paid the bill. It should be noted that in many cases the documentation reviewed

did not identify the passenger and/or reason for the adjustment. Absent documentation, the Audit staff considered the passengers as campaign-related.

Air Force II

The first class airfare issue and the manual adjustments noted above were also prevalent in the "Air Force II" billings. Further, we identified an additional problem area. In several instances an entire trip was identified on the military manifest as campaign-related, while the White House considered only a portion of the trip to be campaign-related.

For example, the Vice President and other individuals traveled aboard "Air Force II" for several campaign-related events in Ohio, on August 6 & 7, 1992. Specifically, the plane went from Andrews AFB to Akron-Canton to Wilmington to Columbus to Mansfield before returning to Andrews AFB. Annotations on the military's manifest for this trip identifies the entire trip as "unofficial" (i.e., campaign-related). The billing from the Office of the Vice President did not consider the Wilmington and Mansfield legs to be campaign-related. Absent evidence to the contrary, the Audit staff considered the entire trip as campaign-related.

Airlift Operations

It should be noted that the same situation as noted above occurred frequently in the "Airlift Operations" billings and is the major underlying cause of the \$51,703 underpayment.

Interim Audit Report Recommendation

In the interim audit report, the Audit staff recommended that the Primary Committee demonstrate that the United States Air Force was not underpaid in the amount of \$259,636, or make a payment to the United States Air Force in the amount of \$259,636.

Further, the Primary Committee was to submit official manifest/trip itineraries from the USAF for the five trips noted above, including supporting documentation for the manual adjustments/deletions of individuals and/or flight legs.3/

Analysis of Primary Committee's Response

The Treasurer stated, "The investigation undertaken by the Committee indicates that the airfare billed by the White House and paid by the Committee was proper."

3/ The documentation submitted was materially complete, and it appears that the amounts paid by the Primary Committee were reasonable.

Further, the Assistant Treasurer states,

"On July 5, 1994, I spoke with Chris Vein, who worked in the White House Travel Office during the 1992 campaign...Mr. Vein explained that, on the day of travel, the White House Travel Office would determine the first-class airfare between the cities on the itinerary using the SABRE computer reservation system and that the office used only unrestricted, first-class airfares... In an effort to confirm the airfares used by the White House Travel Office, the Committee recently contacted both a travel agent and American Airlines. The Committee was informed, however, that outdated fares were not available for more than a few months back. The Committee is thus in a position of receiving two different fare quotes, but has not yet been able to confirm either...the White House Travel Office and the audit staff each used first class airfare for their calculations, the Committee is at a loss to explain the discrepancy. However, since first class airfare was in fact billed and paid, the Committee respectfully submits that no further action should be taken with respect to this issue."

With respect to positioning flights, the Treasurer stated there is no commercial airline that would charge its passengers for the necessity of bringing a plane to the city to provide service. As with a commercial airline, it is the responsibility of the United States Air Force to ensure that it has aircraft in the position to provide the service. Moreover, the Audit staff's current interpretation of the regulations differs from its interpretation during the 1984 and 1988 presidential campaigns. According to the Assistant Treasurer, Mr. Vein confirmed that the White House Travel Office did not charge for positioning flights in past election campaigns.

Based on the Primary Committee's response, the Audit staff re-examined a portion of the campaign-related flights. The results of this review indicate that, in most cases, the Primary Committee paid an amount equal to or greater than a published unrestricted first class airfare; however, the airfare was

discounted. The Audit staff's original calculation was based on unrestricted and non-discounted first class airfares that were not subject to conditional purchase agreements.

The regulation at 11 C.F.R. §9034.7(b)(5)(i) requires that first class commercial air fare plus the cost of other services be used as a basis to determine the amount paid to the government entity, apparently in an attempt to equate a trip aboard government conveyance to that of a scheduled commercial flight with the same origin and destination points, along with an equivalent level of service. In the Audit staff's opinion, travel encumbered with such conditions does not equate with the unrestricted use of government conveyance, therefore, the reimbursement for less than an unrestricted and non-discounted first class rate with no conditions attached is contrary to the intent of the regulation.

Nonetheless, because of (1) the specific facts presented above, (2) the inherent difficulty presented to committees in determining first class rates in the context of the reimbursement requirement at 11 C.F.R. §9034.7(b)(5), and (3) prior Commission determinations in this area^{4/} it appears that the amount paid by the Primary Committee satisfies the regulatory provision as currently written.

It should be noted that in the interim audit report, the Audit staff's analysis identified an apparent campaign-related trip aboard "Air Force I" that was not paid for by the Primary Committee. The cost of this trip, as calculated by the Audit staff, was \$12,534. Based on our re-examination, the net result of the amount not paid, considering instances where trips were overpaid and underpaid, was insignificant.

The Audit staff also identified several instances where manual adjustments were made to the billings from the White House Administrative Office for the flights aboard Air Force I, Air Force II, and Airlift Operations. In response to the interim audit report, the Assistant Treasurer stated that the adjustments were made after the Primary Committee discovered that the billings included charges for travel by non-campaign personnel.

Based on the Audit staff's analysis, we determined that the individuals' travel was not campaign-related and the manual adjustments to the billings were reasonable.

Finally, it remains our opinion that the Committee should be charged the equivalent of one first class airfare for each positioning flight. However, in light of the above, any difference which may have resulted from this application remains insignificant.

^{4/} See the Final Audit Report on Americans for Harkin, Inc., approved by the Commission on March 15, 1994, pages 7-10.

B. Apparent Unresolved Excessive Contributions

Section 441(a)(1)(A) of Title 2 of the United States Code states that no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 110.1(k) of Title 11 of the Code of Federal Regulations states, in part, that any contribution made by more than one person, except for a contribution made by a partnership, shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing. If a contribution made by more than one person does not indicate the amount to be attributed to each contributor, the contribution shall be attributed equally to each contributor. If a contribution to a candidate on its face or when aggregated with other contributions from the same contributor exceeds the limitations on contributions, the treasurer may ask the contributor whether the contribution was intended to be a joint contribution by more than one person. A contribution shall be considered to be reattributed to another contributor if the treasurer of the recipient political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and within sixty days from the date of the treasurer's receipt of the contribution, the contributors provide the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

Section 103.3(b)(3) of Title 11 of the Code of Federal Regulations states, in part, that contributions which exceed the contribution limitation may be deposited into a campaign depository. If any such contribution is deposited, the treasurer may request redesignation or reattribution of the contribution by the contributor in accordance with 11 CFR sections 110.1(b) and 110.1(k), as appropriate. If a redesignation or reattribution is not obtained, the treasurer shall, within 60 days of the treasurer's receipt of the contribution, refund the contribution to the contributor.

Section 103.3(b)(4) of Title 11 of the Code of Federal Regulations states, any contribution which appears to be illegal under 11 CFR 103.3(b)(1) or (3), and which is deposited into a campaign depository shall not be used for any disbursements by the political committee until the contribution has been determined to be legal. The political committee must either establish a separate account in a campaign depository for such contributions or maintain sufficient funds to make all such refunds.

The Commission notified the Primary Committee, by a letter dated June 2, 1992, that a sampling technique would be used to identify the dollar amount of excessive contributions received by the Primary Committee. The letter stated, in part, that Commission regulations provide 60 days in which to seek reattribution, redesignation or refund of excessive contributions (see 11 C.F.R. 103.3(b)(3)). The Commission no longer recognizes any untimely refunds, redesignations or reattributions made more than 60 days following a candidate's date of ineligibility or after the date of receipt of this letter, whichever is later. After that date, the Commission will request that all unresolved excessive contributions be paid to the United States Treasury. Excessive contributions resolved by the committee outside these time periods will not be considered mitigated violations.

1. Non-negotiated Refund Checks

The Primary Committee maintained a separate checking account used to refund excessive contributions. In conjunction with our testing of contributions subject to the \$1,000 limitation, the Audit staff reviewed all refunds, outstanding as of September 30, 1992, issued from this account.

The Audit staff identified excessive contributions totaling \$132,751 related to non-negotiated refund checks. It should be noted that the Primary Committee appears to have issued refund checks in a timely manner for all but three of the excessive contributions noted above. However, 156 refund checks, all of which were dated prior to November 10, 1992, had not been negotiated by the contributors and remained outstanding as of August 31, 1993.

As previously stated, the Commission notified the Primary Committee, by letter dated June 2, 1992, that the Commission will no longer recognize any untimely refunds made more than 60 days following the candidate's date of ineligibility or after receipt of this letter, whichever is later. With respect to the Primary Committee, the operative date is October 19, 1992, 60 days following the candidate's date of ineligibility.

During the fieldwork this matter was discussed with representatives of the Primary Committee. The representatives stated they were aware refunds checks were not being cashed and sent follow-up letters to the contributors, however, they did not pursue this matter to its disposition.

In addition, the Audit staff identified three excessive contributions totaling \$3,000 (excessive portion). One of the excessive contributions (\$1,000) was received on April 17, 1992, but not refunded to the contributor until January 14, 1993. Although in this instance the refund check was cashed, application of the above stated Commission policy renders this excessive

contribution unresolved. The remaining two excessive contributions (\$2,000) were incorrectly attributed, and remain unresolved.

On October 21, 1993, the Primary Committee issued a check payable to the United States Treasury which included payment of non-negotiated refunds, totaling \$119,501 [of the \$132,751 noted above]. As a result, excessive contributions totaling \$16,250 ($[\$132,751 - 119,501] + 3,000$) were not resolved.

In response to the interim audit report, the Primary Committee made a payment of \$16,250 to the United States Treasury.

2. Joint Fundraising

The Primary Committee participated in a joint fundraising event with the Ohio Republican Party Federal Account and Ohio Republican Party State Account. The participants established the "Republican Leadership Fund" as the joint fundraising agent. According to the joint fundraising agreement, the Primary Committee was to receive the first \$1,000 of all permissible contributions from individual donors who had not exceeded the contribution limit.

The Audit staff identified seven contributions, totaling \$6,050, in excess of the limitation related to the joint fundraising events. Six of the seven contributors previously contributed directly to the Primary Committee.

It should be noted that the excessive contributions were received (by the Primary Committee) on August 14, 1992 and not refunded until December 4, 1992. Since the refunds were made after October 19, 1992 and therefor considered untimely, the excessive contributions are considered unresolved and necessitate a payment to the United States Treasury in the amount of \$6,050.

At the exit conference, the Primary Committee was provided with a schedule of the unresolved excessive contributions. The Primary Committee did not comment on this matter.

In response to the interim audit report, the Primary Committee made a payment of \$6,050 to the United States Treasury.

C. Prohibited Contributions

Use of Corporate Aircraft

Section 114.9(e) of Title 11 of the Code of Federal Regulations states that a candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than

a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in advance, reimburse the corporation or labor organization 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 shall be used.

The Audit staff identified disbursements to two corporations (Irvine Company - \$1,434 and Mosbacher Energy Company - \$9,384) for use of company aircraft.^{5/} The flights occurred between January 28, 1992 and January 30, 1992; however, the Primary Committee did not reimburse the corporations until February 18, 1992. The amounts billed and paid, which approximated first class airfares, satisfied the billing rate standard of the Regulations.

As stated, 11 C.F.R. §114.9(e) requires reimbursement in advance for use of corporate aircraft. Since reimbursement did not occur until approximately three weeks after the flights, it is the opinion of the Audit staff that the Primary Committee received prohibited contributions totaling \$10,818 (\$1,434 + 9,384) during this time period.

At the exit conference, the Primary Committee was provided with copies of checks and company invoices related to the transactions noted above. The Primary Committee did not comment on this matter.

In the interim audit report the Audit staff recommended that the Primary Committee provide information to show that these transactions do not constitute prohibited contributions.

In response to the interim audit report recommendations, the Primary Committee provided information in an effort to demonstrate that the aforementioned transactions did not constitute prohibited contributions. Several points are addressed.

° The corporations, within three weeks of the flights, were fully and completely reimbursed for their costs. According to the Primary Committee, reimbursement occurred immediately upon learning about the flights, eliminating any benefit to the campaign;

° The reimbursements were disclosed on a timely basis; and,

^{5/} The corporate status of the companies was verified with the appropriate Secretary of State.

° The incident was both isolated and unintentional. In general, the Primary Committee did not allow campaign personnel to use corporate aircraft and, once this issue arose, reaffirmed its earlier policy with a written policy statement prohibiting the use of such aircraft and requiring requests for exceptions to be discussed with its General Counsel well before the date of travel. (The written policy statement in the form of a memorandum to senior campaign personnel was included as part of the Primary Committee's response).

Although the Primary Committee's actions appear to have prevented any reoccurrence involving improper usage of corporate aircraft, the fact remains - reimbursement did not occur until approximately three weeks subsequent to the dates of these flights; whereas the regulation requires payment in advance.

D. Excessive Contributions Resulting from Staff Advances

Section 441a(a)(1)(A) of Title 2 of the United States Codes states that no person shall make contributions to any candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceed \$1,000.

Section 116.5(b) of Title 11 of the Code of Federal Regulations states, in part, that the payment by an individual for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of, a candidate or political committee is a contribution unless the payment is exempted from the definition of contribution under 11 CFR 100.7(b)(8). If the payment is not exempted, it shall be considered a contribution unless it is for the individual's transportation and normal subsistence expenses incurred by an individual, other than a volunteer, while traveling on behalf of a candidate; and, the individual is reimbursed within sixty days after the closing date of the billing statement on which the charges first appear if the payment was made using a personal credit card, or within thirty days after the date on which the expenses were incurred if a personal credit card was not used. "Subsistence expenses" include only expenditures for personal living expenses related to a particular individual traveling on committee business, such as food or lodging.

During the review of the Primary Committee's expense reimbursements, the Audit staff noted that one individual, Robert B. Holt, advanced funds on behalf of the Primary Committee in excess of the \$1,000 limitation. The excessive portions of contributions and advanced funds totaled \$12,598. The expenses incurred were for travel and subsistence and campaign-related goods and services. This individual also contributed \$1,000, by check, on October 8, 1991. It should be noted that all advances by this individual were eventually reimbursed.

At the exit conference a schedule depicting this advance activity was provided to the Treasurer. The Treasurer stated that Mr. Holt operates his business as a sole proprietorship and he maintains a separate account for his personal expenses related to his political activities. All reimbursements made to him were credited to that account. The Treasurer further stated that Mr. Holt viewed himself as a commercial vendor and is willing to provide a statement to that effect.

Subsequent to the exit conference, the Primary Committee submitted a signed statement from Mr. Holt.

Among other things, Mr. Holt states:

"I conduct my fundraising activities on a volunteer basis. When the federal election laws are applicable, and consistent with my understanding of them, I always seek payment for travel and telephone expenses from the entity on whose behalf those expenses are incurred. My assistant send (sic) invoices to that entity on letterhead bearing the name "Robert B. Holt", my business name. When I receive payment of the invoices, the proceeds are deposited into my checking account, and all expenses are paid out of that checking account. This account is used for all of my business and volunteer activity. Any reimbursement for business or volunteer activity flows through this account as in a normal commercial transaction."

The Primary Committee's arguments are not persuasive and appear to be inconsistent with certain statements made by Mr. Holt. He said he was a volunteer and has not offered any evidence to show that the expenses incurred on behalf of the Primary Committee should be viewed as other than advances by an individual.

In the interim audit report the Audit staff recommended that the Primary Committee provide evidence that the staff advances are not excessive contributions, including, if applicable, a demonstration that portions of the amounts are exempt from the definition of a contribution under 11 C.F.R. 100.7(b)(8), or demonstrate that the individual acted as a commercial vendor and that the activity described above is in the vendor's "ordinary course of business" pursuant to 11 C.F.R. §116.3.

In its response, the Primary Committee attempted to demonstrate that Mr. Holt is a "commercial vendor" and his practice of billing expenses and later receiving reimbursement is in the normal course, and therefore should be viewed acceptable under 11 C.F.R. §116.3, thereby rendering the analysis under 11 C.F.R. §116.5 not pertinent.

In support of its position that Mr. Holt "was properly treated by the Primary Committee as a commercial vendor," the Primary Committee raised several points:

° The fundraising services provided by Mr. Holt were of a kind commonly purchased by campaigns from commercial vendors and were provided in the same manner as the services Mr. Holt provides to other organizations;

° The fact that Mr. Holt did not charge a fee for the value of his time does not change his status as a commercial vendor to the campaign;

° An interpretation of 11 C.F.R. §116.3 as inapplicable to the case at hand would raise serious First Amendment issues by (1) with no adequate justification, treat an "individual commercial vendor" who desired to volunteer for a campaign differently than such a vendor who was being paid, and (2) such an interpretation would impose an unjustifiable burden on a campaign that accepted the services of a "volunteer commercial vendor," thus restricting the campaign's First Amendment rights of speech and association.

Although the Primary Committee has presented several arguments in support of Mr. Holt's status as a commercial vendor, the question seems to turn on whether he meets the regulatory definition at 11 C.F.R. §116.1(c):

For purposes of this part, commercial vendor means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods and services (emphasis added).

The Primary Committee has provided several pieces of information regarding Mr. Holt's fundraising activities (Davis Declaration at paragraph 12, Holt Declaration, Attachment 5 to interim audit report.) However, in the Audit staff's opinion, this information is not dispositive with regard to the question -- whether or not Mr. Holt can be viewed as a commercial vendor, as defined at 11 C.F.R. §116.1(c). No showing has been made that Mr. Holt's usual and normal business involves fundraising for both political and non-political entities, the latter of which is not required by the regulations to meet the definition of commercial vendor.

There seems to be little question as to whether or not Mr. Holt performs fundraising services for a variety of entities; however, whether the provision of fundraising services represents his usual and normal business remains unclear. The only indications, based on information made available to date, regarding Mr. Holt's "business activities" (other than aforementioned fundraising) is contained on his stationery (see below) and disclosure reports filed.^{6/}

Robert B. Holt
Oil Properties
[address omitted]

Our review of entries in which Mr. Holt's contributions were itemized indicates that Mr. Holt's reported occupation was in the field of oil production (12 of 15), investments (2 of 15) or ranching (2 of 15).^{7/} Mr. Holt's name of employer was listed as self-employed (or variations thereof), except for one instance when the name of employer was "Robert G. [sic] Holt Company."

Given the absence of documentation which clearly demonstrates that Mr. Holt's usual and normal business is the provision of fundraising services, the Audit staff must view the transactions at issue under 11 C.F.R. §116.5.^{8/} Therefore, our position remains unchanged from the interim audit report.

E. Disclosure of Occupation and Name of Employer

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

^{6/} A name search was performed against the Commission's 1991-92 Disclosure Data Base.

^{7/} One entry listed oil, gas and ranching.

^{8/} The Primary Committee, in commenting on the Audit staff's calculations (assuming 11 C.F.R. §116.5 was applicable) asserted that rather than applying reimbursements received to the earliest expense incurred, the methodology employed should apply a given reimbursement amount to the specific expenses to which it relates. The methodology employed by the Audit staff, as approved by the Commission for use during the 1992 cycle, is consistent with the provisions of 11 C.F.R. §116.5. No change in methodology is necessary.

Section 431(13)(A) of Title 2 of the United States Code defines the term "identification" as, in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer.

Section 102.9(d) of Title 11 of the Code of Federal Regulations states, in part, that in performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain, and submit the required information and shall keep a record of such efforts.

Section 104.7 of Title 11 of the Code of Federal Regulation states, in part, that if best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. The treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. For purposes of 11 C.F.R. 104.7(b), such effort shall consist of a clear request for the information (i.e., name, mailing address, occupation, and name of employer) which request informs the contributor that the reporting of such information is required by law.

The Audit staff conducted a sample of receipts from individuals to determine if for contributions requiring itemization, the requisite information was adequately disclosed. An error rate of 56% was noted with respect to the disclosure of occupation and name of employer on reports filed.

Although, the solicitation devices examined did contain a request for the contributor's occupation and name of employer, the notice was incorrect: "the Federal Election Commission requires us to ask the following information" (emphasis added). The Regulations require it to state "the reporting of such information is required by law". Therefore, it is the opinion of the Audit staff that the Primary Committee has not met the best efforts provision of 11 C.F.R. §104.7.

At the exit conference, the Audit staff advised the Primary Committee of the high error rates. The Primary Committee did not comment on this matter.

Subsequent to the exit conference a representative of the Primary Committee stated that, in response to a Commission notice, all individual contributions disclosed on Schedules A-P were reviewed to identify those lacking occupation and name of employer. Once identified, the Primary Committee searched its receipts data base in an effort to determine if a contributor made a subsequent contribution (for which occupation and name of employer was provided). As a result, the Primary Committee filed amended reports disclosing occupation and name of employer for

approximately 500 contributors. The Primary Committee did not recontact its contributors in order to obtain the missing information.

The Audit staff compared the entries on the amended reports to its sample errors. It was noted that none of the errors were corrected by the amendments. It is the opinion of the Audit staff that a material deficiency still exists and that the Primary Committee has not met the best efforts provision of 11 C.F.R. §104.7.

Based on the above, it was recommended in the interim audit report that the Primary Committee contact all contributors who did not provide the required contributor information and file amended disclosure reports to correct the public record. Further, the Audit staff noted that the request for the information must include the appropriate notice that "the reporting of such information is required by law".

In response to the interim audit report the Treasurer states that the Primary Committee complied with the "best efforts" provisions of 11 C.F.R. §104.7(b). The Treasurer explains that the Primary Committee contacted each contributor and requested their name, mailing address, occupation, name of employer and notified the contributors that "the Federal Election Commission requires us to ask the following information."

Further, the Treasurer states the Primary Committee altered the language on its contributor solicitations in response to a July 1, 1992 memorandum issued by the Commission. The revised notification to its contributors stated, "[t]he Federal Election Commission requires us to report the following information." The Treasurer claims the Audit staff determined that the "best efforts" provisions were not met because the Primary Committee used the phrase "Federal Election Commission requires" as opposed to "the law requires."

The Treasurer contends that the "best efforts" provisions were met for several reasons. First, the Treasurer states that the distinction between "the Federal Election Commission" and "the law" is insignificant because "the regulations properly promulgated by the Commission have the force of law." Second, the Treasurer maintains that no specific reason is identified in the interim report as to why the language used by the Primary Committee was "deficient." The Treasurer continues, "[t]he regulation does not require that specific words be used, only that contributors be informed of the substance of the message", and claims the Audit staff's "interpretation would constitute a material change in the regulation that cannot properly be implemented without a rulemaking proceeding."

In the opinion of the Treasurer, the Primary Committee interpretation of the regulation was reasonable and the adopted language was consistent with the "best efforts" requirements.

Finally, the Treasurer stated that the Primary Committee estimates that it would cost well over \$40,000 to contact contributors as recommended in the report.

As stated by the Treasurer, the regulation at 11 C.F.R. §104.7 does not require that specific words be used, only that contributors be informed of the substance of the message. The substance of the message is that the reporting of a contributor's name, mailing address, occupation, and name of employer is required by law.

Although the Primary Committee has put forth several arguments in support of its position that its actions satisfied the best efforts provision in effect at the time of the solicitations, the language used by the Primary Committee: "The Federal Election Commission requires us to ask the following information", does not inform the contributor that the reporting of the information is required by law.

The Primary Committee did not contact all contributors who did not provide the required contributor information as recommended in the interim audit report. Consequently, no amended reports containing information regarding these contributors were filed.

F. Reporting of Debts and Obligations

Section 434(b)(8) of Title 2 of the United States Code requires that each report shall disclose the amount and nature of outstanding debts and obligations owed by or to such political committee.

Section 104.11(a) of Title 11 of the Code of Federal Regulations states, in part, that debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished.

Section 104.11(b) of Title 11 of the Code of Federal Regulations states, in part, that 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, the amount of 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.

During our review of selected disbursements, the Audit staff noted that 76 obligations, totaling \$1,767,548 were not disclosed. The obligations were for telephone charges, media, direct mail, travel expenses, hotel charges, computer consulting, etc.

At the exit conference, the Primary Committee was provided with a schedule of unreported debts and obligations. The Treasurer stated that the invoice date is not necessarily the date the invoice was received by the Primary Committee. He did not consider any obligations as debts for reporting purposes until the invoice had been received by the Accounting Department and approved for payment by the appropriate personnel. Further, it should be noted that the Primary Committee did not date-stamp vendor invoices upon receipt but rather when the invoices arrived in the Accounting Department. The Treasurer also stated that the invoices were then paid within a few days of receipt by the Accounting Department.

The regulatory standard is the date of incurrence not the date the invoice is received in the Primary Committee's Accounting Department.

A written response from the Primary Committee, dated October 22, 1993, reiterated its position as described above and provided explanations as to why certain invoices were not received timely.

For example: the original invoice was either not received or sent to the wrong address, and at a later date obtained from the creditor; in certain instances, invoices issued by sub-contractors to the Primary Committee were forwarded to the contractor, who then forwarded the invoices to the Primary Committee.

Although the information provided may explain the delay in the Primary Committee's actual receipt of a particular invoice, such explanation does not, in the Audit staff's opinion, remove or modify the regulatory requirement that these debts be disclosed as of the date incurred.

In the interim audit report the Audit staff recommended that the Primary Committee file amended reports to correct the public record.

In response to the interim audit report, the Treasurer states that the standards used by the Audit staff in reviewing debts and obligations misapplies the regulations and, as applied, would "place an unreasonable burden on political committees." The Treasurer specifies that the "regulation expressly defines the debt or obligation as 'a loan, written contract, written promise or written agreement to make an expenditure'."

The Treasurer contends that the regulation cited is not relevant because the aforementioned transactions were generally "undertaken without a 'written' agreement specifying precise charges in advance and therefore do not fall into the categories listed in the regulation."

In addition, the Treasurer maintains that the Primary Committee promptly paid and/or reported debts and obligations in accordance with its policy, which in the opinion of the Treasurer, created no financial benefit. According to the Treasurer, the issue was the timing of disclosure.

In conclusion, the Treasurer states that the Primary Committee has begun to prepare amended reports to disclose the transactions.

The Primary Committee indicated that the Audit staff considered all debts over \$500 as reportable, as of the date incurred, regardless of when the invoice was received. It should be noted that the interim audit report does not suggest that the Primary Committee should have reported all debts (over \$500) as of the date incurred. The debts in question were determined to have been incurred during a reporting period and outstanding at the end of that specific period.

It is the opinion of the Audit staff that the scope of the regulation at 11 C.F.R. §104.11(b) is not limited to loans, written contracts, written promises and written agreements but, inclusive of all debts and obligations including those mentioned above. Therefore, contrary to the interpretation of the Primary Committee, the regulation cited does apply to the transactions at issue.

As stated above, the regulatory standard is the date of incurrence not the date the invoice is received in the Primary Committee's Accounting Department. In the Audit staff's opinion, the Primary Committee's response sufficiently explains why the above debts were not disclosed, however, the explanation does not modify the regulatory requirement that the aforementioned debts are required to be disclosed.

The Primary Committee did not file amended reports with its response to the interim audit report. However, amended reports, which materially disclosed the debts and obligations, were filed on August 12, 1994.

III. Findings and Recommendations - Repayment Matters

A. Determination of Net Outstanding Campaign Obligations

Section 9034.5(a) of Title 11 of the Code of Federal Regulations requires that within 15 calendar days after the candidate's date of ineligibility, the candidate shall submit a statement of net outstanding campaign obligations which contains, among other items, the total of all outstanding obligations for qualified campaign expenses and an estimate of necessary winding down costs. Subsection (b) of this section states that the total of outstanding campaign obligations shall not include any accounts payable for non-qualified campaign expenses.

In addition, 11 C.F.R. §9034.1(b) states, in part, that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments provided that on the date of payment there are remaining net outstanding campaign obligations.

Sections 9033.5(c) and 9032.6(a) of Title 11 of the Code of Federal Regulations define the date of ineligibility for a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention as the date of such nomination.

President Bush's date of ineligibility was August 20, 1992, the date on which he was nominated as the Republican Party's presidential candidate.

The Primary Committee filed a Statement of Net Outstanding Campaign Obligations (NOCO) which reflected a \$1,229,306 deficit at August 20, 1992. The Audit staff reviewed the Primary Committee's financial activity through June 30, 1994, analyzed estimates of winding down costs prepared by the Primary Committee and developed the figures shown below.

Bush-Quayle '92 Primary Committee, Inc.

Statement of Net Outstanding Campaign Obligations

August 20, 1992

Audit Analysis

Assets:

Cash on Hand	\$	700	
Cash in Bank		356,592	1/
Capital Assets		613,797	
Accounts Receivable:			
Estimated Deposits		602,001	
Amount due from Bush-Quayle '92 General Committee, Inc. *		1,108,826	2/
Total Assets:			\$2,681,916

Obligations:

Accounts Payable for Qualified Campaign Expenses at 8/20/92 (actual disbursements 8/21/92-6/30/94)		2,892,228	3/
Amount due U.S. Treasury (Excessive Contributions)		21,250	
Amount due Republican Leadership Fund		7,041	
Amount due General Committee		329	
Winding down Costs (Based on actual disbursements 8/21/92-6/30/94)		1,071,598	
Estimated Winddown (For the period 7/1/94-6/30/95):			
Salaries and Overhead		44,400	
Storage		14,400	
Rent		10,000	
Supplies		1,000	
Legal and Accounting Expense		75,000	4/
Total Obligations:			\$4,137,246

Net Outstanding Campaign Obligations: (Deficit) (\$1,455,330)

* Hereafter referred to as the General Committee.

Footnotes to NOCO:

1/ Cash in bank (reconciled) at 8/20/92 of (\$12,482); \$369,074 in contributor checks dated prior to 8/21/92 and deposited on/after 8/21/92.

2/ Represents apparent General Election expenses paid for by the Primary Committee of \$807,249; \$301,577 in expenses reimbursed by the General Committee subsequent to 8/20/92.

3/ Accounts payable developed per Audit staff review of post-date of ineligibility actual disbursements.

4/ This amount does not include the Treasurer's estimate of \$40,000 necessary to contact contributors who have not provided occupations and/or names of employers (see Finding II.E.). Should the Commission require the Primary Committee to contact its contributors, the Audit staff will adjust the NOCO statement and the amount of matching funds received in excess of the Candidate's entitlement (see Finding III.D.).

As calculated by the Audit staff, the Primary Committee was in a deficit position (\$1,455,330) on the Candidate's date of ineligibility. Please refer to Finding III.D. for a discussion of matching funds received in excess of the amount to which the Candidate was entitled.

B. Calculation of Repayment Ratio

Section 9038(b)(2)(A) of Title 26 of the United States Code states that if the Commission determines that any amount of any payment made to a candidate from the matching fund payment account was used for any purpose other than to defray the qualified campaign expenses with respect to which such payment was made it shall notify such candidate of the amount so used, and the candidate shall pay to the Secretary an amount equal to such amount.

Section 9038.1(c)(1)(v) of Title 11 of the Code of Federal Regulations states, in part, that the Commission will issue an interim audit report to the candidate and his authorized committee. The interim audit report may contain Commission findings and recommendations regarding preliminary calculations with respect to future repayments to the United States Treasury.

Section 9038.2(a)(2) of Title 11 of the Code of Federal Regulations states that the Commission will notify the candidate of any repayment determination made under this section as soon as possible, but not later than 3 years after the end of the matching payment period. The Commission's issuance of an interim audit report to the candidate under 11 CFR 9038.1(c) will constitute notification for purposes of the 3 year period.

Section 9038.2(b)(2)(iii) of Title 11 of the Code of Federal Regulations states that the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility.

Pursuant to 11 C.F.R. §9033.5(a) and 9032.6(c), the Commission determined President Bush's date of ineligibility to be August 20, 1992.

The formula and the appropriate calculation with respect to the Primary Committee's receipt activity is as follows:

$$\frac{\text{Total Matching Funds Certified Through the Date of Ineligibility (August 20, 1992)}}{\text{Numerator plus Total Deposits Through Date of Ineligibility}} = .261483$$

\$9,502,152
\$9,502,152 + \$26,837,308 = .261483

Thus, the repayment ratio for non-qualified campaign expenses is 26.1483%.

C. Apparent Non-qualified Campaign Expenses

Section 9032.9(a) of Title 11 of the Code of Federal Regulations, in part, defines a qualified campaign expense as one incurred by or on behalf of the candidate from the date the individual became a candidate through the last day of the candidate's eligibility; made in connection with his or her campaign for nomination; and neither the incurrence nor the payment of which constitutes a violation of any law of the United States or the State in which the expense is incurred or paid.

Section 9033.11(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 or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses.

Section 9033.11(b)(2) of Title 11 of the Code of Federal Regulations requires, in part, that all disbursements have a record disclosing the identification of the payee, the amount, date and purpose of the disbursement if made from a petty cash fund, or a canceled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

Section 9034.4(a)(1) of Title 11 of the Code of Federal Regulations states that all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

Section 9003.4(a)(1) of Title 11 Code of Federal Regulations states, in part, that a candidate may incur expenditures before the beginning of the expenditure report period, if such expenditures are for property, services or facilities which are to be use in connection with the general election and which are used during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditure include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

Further, 11 C.F.R. §9003.4(b), in relevant part, limits the sources of funds used to make expenditures prior to the expenditure report period to: a candidate obtaining a loan which

meets the requirements for loans in the ordinary course of business; borrowing from his or her legal and accounting compliance fund; use of the candidate's personal funds up to his or her \$50,000 limit; and, for a candidate who has received federal funding under 11 CFR part 9031 et seq., borrowing from his or her primary election committee(s) an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c).

Section 9038.2(b)(2) of Title 11 of the Code of Federal Regulations states, in relevant part, that the Commission may determine that amounts of any payments made to a candidate from the matching payment account were used for purposes other than to defray qualified campaign expenses. The amount of any repayment under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to total deposits, as of the candidate's date of ineligibility. Total deposits is defined in accordance with 11 CFR 9038.3(c)(2).

1. Apparent General Election Expenditures

During the review of Primary Committee vendor files, the Audit staff identified \$1,641,246 in disbursements in payment for goods and services which appear to have benefited the general election campaign. Goods and services relative to polling, focus group surveys, direct mail including list rentals, materials including shipping (\$1,305,652); print media services (\$130,789); leased office space (\$40,228); and equipment (\$164,577) were noted. It should be noted that the Candidate's date of ineligibility was August 20, 1992, the date on which he received his party's nomination. State primary elections/caucuses were held through June 9, 1992.

a. Polls/Focus Group Surveys, Direct Mail, Campaign Materials - \$1,305,652

(1) Polls/Focus Group Surveys

Vendors conducted polls and focus group surveys. The majority of the invoices relative to such activity were dated between June 26, 1992 and August 31, 1992. The questionnaires for polls and surveys dealt with, for the most part, positions and/or past records of both President Bush and the Democratic nominee Bill Clinton. Further, many questions included references to Ross Perot.

A California Statewide Poll contained questions such as "Here are some races that will be on the ballot in California this November For President: George Bush, Bill Clinton, Ross Perot, Don't know, Refused/NA." "For each candidate, please rate THE PROBABILITY that you might vote for him

or her this November. Ross Perot, Bill Clinton, George Bush." The majority of the questions centered around the above named candidates.

It should be noted, that for the most part, only the November Presidential election was addressed in the questionnaire. There was one question for Bush voters, Clinton voters, and Perot voters asking if they voted for George Bush or Michael Dukakis in the 1988 Presidential election.

In addition, interviews were conducted with 600 individuals in Monmouth County, New Jersey on July 27, 1992. There was a recontact of 500 individuals on August 14, 1992. The original interviews (July 27) contained questions such as:

Do you feel things in the country are generally going in the right direction;

Do you approve or disapprove of the way George Bush is handling his job as President;

I'd like you to rate some people in the news today - George Bush, Bill Clinton, Dan Quayle, Al Gore, Tom Kean, Nicholas Brady, etc.;

If the presidential election were held today, would you vote for - George Bush, Bill Clinton, Ross Perot, Don't know, Refused/NA.

The questions then centered around issues, such as, the budget deficit, the economy, creating more jobs, taxes, foreign trade, etc. and asked who would do the best job handling it as President. The choices were George Bush, Bill Clinton, Don't know, or Refused/NA.

The recontact interviews (August 14) contained the same questions, plus additional questions about George Bush and Bill Clinton.

The Primary Committee stated that, for the most part, polls/focus group surveys taken in July/August 1992 focused on issues, and were pre-convention expenditures that can be paid by the Primary Committee.

(2) Direct Mail

Direct mail pieces featured pictures of both President Bush and Bill Clinton, along with their positions

on certain matters and their past records. There were no requests for funds.

The Marilyn Quayle package contained a letter from Mrs. Quayle dated August 4, 1992, a poster, bumper stickers and a position paper. The letter addresses kicking off our campaign to re-elect President Bush in a few weeks. It gives President Bush's position on a number of issues, and comments on Bill Clinton's economic game plan. It also gives a special Volunteer Hotline number active through Labor Day. One side of the position paper features a picture of President Bush, addresses issues and accomplishments, while the reverse side features a picture of Bill Clinton, and comments on issues and accomplishments.

In addition, a direct mail piece, mailed August 3, 1992, and August 6, 1992, contains a picture of Bill Clinton and addresses his record as Governor of Arkansas.

Finally, the Colorado Victory Self Mailer features 5 pictures of President Bush and 4 pictures of Bill Clinton and addresses each candidate's position on specific issues such as taxes, the deficit, crime, the economy, health care, defense and foreign policy.

According to the Primary Committee, the purpose of direct mail letters and volunteer cards was to recruit volunteers and to generate excitement for the Convention and, if mailed, shipped, or distributed before August 21, 1992, the associated costs represent a primary expense.

(3) Campaign Materials

Materials were purchased and shipped to various state offices in July/August 1992, including, but not limited to, flags, tee shirts, bumper stickers, hats, pins, signs, and brochures. According to the Primary Committee's response to the exit conference, the Primary Committee paid for materials purchased on or before August 20, 1992. Materials purchased after August 20, 1992, were paid by Bush-Quayle '92 General Committee, Inc. (General Committee). Charges for shipping the above material were paid by the Primary Committee if shipped on or before August 20, 1992. Whereas, delivery charges for the same type of material shipped on August 21, 1992, were paid by the General Committee.

The Primary Committee further stated that campaign materials purchased and shipped to state offices before the Convention also represent primary expenses.

The Audit staff has considered the Primary Committee's position with respect to the above disbursements. It is our opinion that the cost of the

polls/focus group surveys, direct mail, and campaign materials benefited the candidate's general election efforts, and therefore, should have been paid by the General Committee.

b. Print Media - \$130,789

The Primary Committee's media vendor placed advertisements in 5 newspapers and 3 publications which appear to have benefited the candidate's general election efforts. In addition, the media vendor paid for a national focus group survey conducted on August 12, 1992.

On July 29, 1992, the same full page advertisement appealing for the votes of Ross Perot's supporters, appeared in the USA Today, Dallas Morning News, Orlando Sentinel, Denver Post, and the Orange County Register. The advertisement included the following:

"His message has reached many receptive ears. And his recent decision not to run has left a void. That's why in these days following his withdrawal, I'm asking for your vote. Give me the chance to earn it. Over the next few months, study the two remaining candidates. Study our positions on issues like welfare reform. Fighting crime and drugs. Upholding family values. Creating jobs and balancing the budget."

Further, the Primary Committee paid for an advertisement which appeared in the Fall '92 (October) issue of the Louisiana Trooper and Mississippi Trooper. Although generic in nature, the ads addressed President Bush's anti-crime program. However, the ads stated they were "paid for by the Bush-Quayle '92 General Committee, Inc." In addition, the Primary Committee also paid for an advertisement in the Christian American, September/October 1992 issue, comparing traditional family value positions of President Bush and Bill Clinton. The ad also stated it was paid for by the Bush-Quayle '92 General Committee, Inc.

Finally, the media vendor contracted with Market Strategies to conduct national focus group surveys on August 12, 1992, in Towson, Maryland. According to the invoice, the focus groups were (1) conducted among two groups of 13 participants each, (2) primarily straight focus groups with storyboard ad testing, and (3) primarily composed of individuals who leaned toward Bill Clinton or were undecided, and a few who favored President Bush.

With respect to the advertisement appealing to Ross Perot's supporters a representative of the Primary Committee stated: "This ad was to recruit support from former

Perot supporters, after he withdrew his candidacy. It was part of on-going efforts to build support and attract volunteers to the campaign."

With respect to the advertisement which appeared in the above mentioned publications, the General Committee reimbursed the Primary Committee for the production costs and placement fees.

Finally, with respect to the focus group surveys, the Primary Committee stated the cost was a pre-convention expense.

It is the opinion of the Audit staff that the above advertisements and focus group surveys placed through the Primary Committee's media vendor and paid by the Primary Committee benefited the candidate's general election efforts, and therefore, should be paid by the General Committee.

c. Leased Office Space - \$40,228

In certain instances, the Primary Committee leased office space in a state during that state's primary election, closed the office after the date of the primary and then re-opened the same office or an office at another location in July/August, 1992. Lease payments up to and including August 20, 1992, were paid by the Primary Committee and after August 20, 1992, by the General Committee.

For example, the Primary Committee's Connecticut office space was leased for the period February 28, 1992 to March 28, 1992. The Connecticut state primary was held on March 24, 1992. The Primary Committee re-opened an office from July 20, 1992 to November 19, 1992. Lease payments were made by the Primary Committee for the period July 20, 1992 through August 20, 1992. The General Committee made the lease payments for the remainder of the lease (August 21, 1992 through November 19, 1992).

A representative of the Primary Committee stated: "State offices were opened for two basic purposes - to support activity relating to a specific primary election, caucus, or convention, and to serve as branch offices of the national campaign. The state offices served in this second capacity throughout the primary period up to August 20, independent of individual state primaries."

It is the Audit staff's opinion that establishing state offices in the July/August 1992 time period benefited the candidate's general election efforts. Expenses associated with these leases should have been paid by the General Committee.

d. Equipment - \$164,577

During July and August of 1992, the Primary Committee purchased and/or leased computer components and related software. The equipment was shipped to either a state office or to the national office. If the equipment was purchased before August 21, 1992, it was paid for by the Primary Committee. If equipment was leased, the Primary Committee paid the lease payments up to and including August 20, 1992. The General Committee paid these expenses subsequent to August 20, 1992. Further, if at the time the equipment was leased, the Primary Committee purchased supplies such as laser toner, fax refills, etc. and had the equipment and supplies shipped to a state, the Primary Committee paid the entire cost of supplies and shipping even though the lease expense was pro-rated.

For example, the Primary Committee leased a computer and a laser printer for the period July 30, 1992 through August 29, 1992. At the same time, the Primary Committee purchased laser toner and fax refills. The vendor shipped everything to the Phoenix, AZ office. The Primary Committee paid \$796 representing (a) lease expense - July 30th through August 20th - (\$213), (b) the entire cost of the laser toner (\$240) and fax refills (\$240), and (c) shipping charges (\$103). The General Committee paid only a pro-rated share of the lease expense (\$87).

It is the opinion of the Audit staff that, in the above example, the leased equipment and supplies benefited only the candidate's general election efforts, therefore, the entire cost should have been paid by the General Committee. Further, it is also our opinion that any equipment purchased in July/August 1992, except for purchases shipped to Houston or directly related to Convention activity in Houston, benefited the candidate's general election efforts and should have been paid for by the General Committee.

It is the position of the Primary Committee that expenditures incurred prior to August 20, 1992 were appropriately paid by the Primary Committee, while expenditures incurred after the completion of the nominating convention were of course paid by the General Committee.

Interim Audit Report Recommendation:

The Audit staff recommended that the Primary Committee demonstrate that the expenses discussed above are expenses in connection with the Candidate's campaign for nomination or obtain reimbursements from the General Committee of \$1,604,461 (\$1,641,246 - 36,785 already reimbursed by the General Committee).

Specifically, the Primary Committee was to submit documentation which demonstrated the following with respect to each expenditure:

polling/focus group surveys - explain and document how the results of each poll/focus group survey was used in connection with the candidate's campaign for nomination, as opposed to being considered used for the candidate's campaign for election. For example, the report discusses the California Statewide Poll. Explain and document how the results of this poll, that contains questions concerning the three candidates and the November presidential election, be considered in connection with the candidate's campaign for nomination.

direct mail - explain and document how direct mail pieces which target volunteers and provide a Volunteer Hotline number active through September 7, 1992 can be viewed in connection with the candidate's campaign for nomination and not in connection with the candidate's campaign for election. Further, explain and document how direct mail pieces which include a picture of only Bill Clinton and discuss his record as Governor of Arkansas can be considered in connection with the candidate's campaign for nomination. Similar explanations should be provided for all other direct mail pieces noted in this finding.

campaign materials - explain and document how the campaign materials discussed at C.1.a.(3) above were used in connection with the candidate's campaign for nomination. Further, explain and document how the cost of materials, shipped on August 20, 1992, and received for distribution in a state on or after August 21, 1992 can be considered in connection with the candidate's campaign for nomination.

print media/focus group survey - explain and document the relationship between the July 29, 1992 advertisement and the candidate's campaign for nomination. The ad contains a request for the votes of former Perot supporters. Since, the next election in which votes were to be cast would have been the 1992 general election, explain how a request for these votes relates to the candidate's campaign for nomination. Further, explain and document how the results of a national focus group survey, conducted August 12, 1992, that was primarily composed of individuals who leaned toward Bill Clinton can be considered in connection with the candidate's campaign for nomination.

leased office space - explain and document how the opening of campaign offices in the July/August 1992 time period and equipping such offices with

computers, fax and copying machines, etc. are in connection with the candidate's campaign for nomination and not in connection with the candidate's campaign for election.

equipment - explain and document how equipment purchased/leased was used in connection with the candidate's campaign for nomination. Such explanation should include the specific use of the equipment. Further, explain and document the apparent inconsistent treatment of equipment purchased versus the same type of equipment leased. For example, equipment purchased on August 15, 1992, is considered (by the Primary Committee) a primary expense. Where as, equipment leased from August 15, 1992 through September 15, 1992, is pro-rated as follows, August 15, 1992 through August 20, 1992 - Primary Committee, and August 21, 1992 through September 15, 1992 - General Committee.

Absent such a demonstration, the Audit staff will recommend that the Commission make an initial determination that a pro rata repayment to the United States Treasury of \$405,622 is due pursuant to 11 C.F.R. §9038.2(b)(2).

In response to the interim audit report the Primary Committee states, in part,

The Report questions four categories of expenditures that should be attributed to the General Committee and not the Primary Committee. All of the expenditures were incurred prior to August 20, 1992, when President Bush accepted the Republican nomination to run for President. Some of the polls, surveys and materials addressed the comparison between President Bush and the Democratic nominee, Bill Clinton. Because the expenditures "appear to have benefitted the general election campaign," the report concludes that they should have been paid by the General Committee.

The Report reaches this conclusion because "it has applied the wrong standard for determining whether an expenditure was a qualified primary campaign expenditure. The Presidential Primary Matching Payment Account Act defines a 'qualified campaign expense' as any payment 'incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election, and . . . neither the incurring nor payment of which

constitutes a violation of any law . . .'
26 U.S.C. § 9032(9) (emphasis added). The
Commission's regulations track this
definition, defining, in relevant part, a
qualified campaign expense as an expense
'incurred by or on behalf of a candidate .
. . . through the last day of the candidate's
eligibility . . . made in connection with
his or her campaign for nomination . . .'
11 C.F.R. § 9032.9(a) (emphasis added).
The Commission has in the past used a
bright-line test based on the date of a
candidate's nomination, not a subjective
review of content, to allocate expenses
between the primary and general elections."

"The expenses challenged in the Report meet
the test for qualified primary campaign
expenses. First, President Bush's
eligibility as a primary candidate ended on
August 20, 1992, when the Republican Party
nominated him as its candidate for
President. See 11 C.F.R. §§ 9033.5 and
9032.6(a). The expenses were incurred
prior to his nomination while President
Bush was still an eligible primary
candidate. Second, there is no suggestion
that these expenditures violated any law.
Finally, as explained more fully below, the
expenditures were made 'in connection with'
the President's 'campaign for nomination.'
There is no requirement that an
expenditure's exclusive effect be to
benefit the campaign for nomination. See
Adv. Op. 1978-99, Fed. Election Camp. Fin.
Guide (CCH) ¶ 5387, at 10,396 (1979)
(campaign materials ordered and received
only one day before the primary election,
which were both used in the primary
election and the general election, may be
treated as primary campaign expense).17/"

[Footnote #17 omitted]

"Indeed, the Commission has previously held
that expenditures having an obvious benefit
to the general election campaign may
nonetheless be attributed to a primary
campaign. For example, in auditing the
1984 primary campaign of President Reagan,
the Commission considered whether certain
advertising production expenses incurred by
the Reagan-Bush primary committee were
properly allocated for advertisements that

aired both during the primary and the general election periods. The Commission did not challenge payments by the primary committee for broadcast time prior to the convention, even though the very same advertisements were aired again after the convention during the general election."

"Based upon this clear precedent, the Committee used August 20, 1992 -- the date that President Bush accepted the nomination of the Republican Party -- to allocate expenses between the primary and general committees.18/

[Footnote #18 omitted]

The Report ignores this traditional approach and substitutes instead a subjective determination, almost two years after the expenditures were incurred, about whether the general campaign benefitted from the expenditure."

"As explained in the attached affidavit of Mary Matalin, the Committee's Deputy Campaign Manager for Political Affairs (Exhibit 4), virtually every expenditure made by a successful primary candidate will also benefit the candidate's general election campaign. The reason that political parties hold a series of primaries and then a convention is to select a candidate that can win the general election in November. A candidate must therefore convince the delegates that he or she can do just that: Win in November. Thus, from the very beginning of their campaigns, primary candidates take polls and conduct focus groups asking, inter alia, who the respondents would vote for 'if the general election were held today.' See, e.g., Matalin Decl. at ¶ 18 and Attachment A. Candidates publicly attack their counterparts in the opposing party. Id. at Attachment B (sample news articles). They argue to the voters that their policies are better than the policies of the other party's candidates. In general, the candidates seek to build support among all voters -- not just those registered

with their own party -- so that they can credibly claim to their party's convention delegates that they would, if nominated, win in November."

"The run-up to the Republican National Convention in 1992 provides a particularly good illustration of this point. After the Democratic Convention, Bill Clinton took a commanding 20-point lead in the public opinion polls. Matalin Decl. at ¶ 8. The effect was to shake the confidence of some members of the Republican Party about the ability of President Bush and Vice President Quayle to win the November election. Prominent Republicans, such as George Will and Tommy Thomas, made public calls for President Bush to change his Vice Presidential candidate or even to step down himself to open the Convention to another candidate. Id. At best, this dissension was undermining the ability of President Bush to generate the enthusiasm necessary for a favorable Convention atmosphere or to forge a political platform acceptable to him.19/"

[Footnote #19 omitted]

"The most effective way for President Bush to counter such criticism was to show that he could beat Bill Clinton in November. Matalin Decl. at ¶ 13. That meant, most importantly, raising his standings in the polls with all voters, not just delegates to the Republican Convention. The campaign therefore took polls and surveys to ascertain why the Bush-Quayle ticket was lagging in the polls and generated advertisements and promotional materials designed to bolster those ratings as well as to build overall excitement during the Convention. Id. Thus, polls that analyzed the issues important to voters in the November election, advertisements that addressed Bill Clinton, and appeals to Ross Perot's supporters were all an integral part of the President's pre-Convention strategy. Id. at ¶ 14. So long as these expenditures were 'in connection with' the campaign for nomination, it is, we

respectfully submit, simply irrelevant that these efforts may have also benefitted the general election campaign.20/

[Footnote #20] - In addition, the expenditures at issue could not be allocable to the general election campaign. They were not made 'for use during the expenditure period' as required by 11 C.F.R. Sect. 9003.4(a)(1) because President Bush was not a 'candidate' as required under 11 C.F.R. Sect. 9002.2 until after August 20, 1992."

"Moreover, the Report seems to assume that, at some easily determinable time, President Bush had 'locked up' the Republican nomination, and needed to do no more 'in connection with' his campaign for the nomination. As Ms. Matalin's affidavit shows, however, the delegates of many states were not legally 'bound' to cast their votes for President Bush. Moreover, since the days of Lincoln, an integral part of the nomination process has been the drafting and adoption by the delegates of a party platform. Many platform issues were in dispute until it was adopted on the floor of the Convention."

"By abandoning the bright-line approach, the Commission would force political campaigns to make subjective determinations, subject to later second-guessing, concerning the relative impact of a given expenditure on the primary versus the general election. Such a change in interpretation of the regulations would cripple a campaign. For example, under the approach suggested by the Report, polls, recruiting efforts, and campaign speeches in states immediately after their respective primaries might be viewed as sufficiently connected to the general election to be attributable to the general election committee.21/

[Footnote #21 omitted]

Because of this uncertainty and because of restrictions on general election expenses prior to the nomination, a campaign could avoid these problems only by shutting down

in each state after each primary and shutting down completely after 'locking up' the nomination. Indeed, an incumbent running unopposed arguably would be prevented from campaigning at all until after the nomination. Since the advent of the federal campaign laws, this has never been the practice; nor should it be now. The consequences of such conduct would be, as Ms. Matalin states, 'political suicide.' Matalin Decl. at ¶ 14.22/"

[Footnote #22 omitted]

"Turning to the specific expenditures cited in the Report, their connection with the nomination should be clear:

a. Polling/Focus Group Surveys: The polls and surveys discussed in the Report, which were completed before the Convention, sought to ascertain voters' feelings about various candidates, including George Bush, Bill Clinton, and Ross Perot, and about a variety of issues, including the budget deficit, taxes, and foreign policy. Similarly, direct mail pieces sent in early August addressing the records of President Bush and Bill Clinton were designed to generate enthusiasm and to counter the attacks on President Bush and Vice President Quayle from inside the party in late July and early August.

b. Direct Mail: The Report asks the Primary Committee to explain how the direct mail pieces, mailed before the Convention, 'can be viewed in connection with the candidate's campaign for nomination and not in connection with the candidate's campaign for election.' Report at 28. Again, we respectfully submit that the Report sets forth the wrong standard. While a qualified primary campaign expense must be made in connection with the bid for nomination, it is irrelevant if that effort also benefits the general election campaign. Nevertheless, as Ms. Matalin's Declaration shows, these expenditures clearly were made in connection with the campaign for nomination. Matalin Decl. at ¶ 14.

With respect to the nomination, the direct mail pieces sought to recruit volunteers and generate excitement leading up to the Convention. Likewise, items that addressed Bill Clinton and his record as Governor of Arkansas were part of the response to the dissension among the Republican ranks during the pre-Convention build-up. The Primary Committee was seeking to establish for the benefit of the delegates that the Bush-Quayle ticket could and would win the November election.

c. Campaign Materials: Shipments of campaign materials made on or before August 20, 1992, were paid for by the Primary Committee while shipments after that date were paid for by the General Committee. See Adv. Op. 1975-9, Fed. Election Camp. Fin. Guide (CCH) ¶ 5110 at 10,035 (1975). This approach is consistent with the bright-line cutoff based upon the date of ineligibility used by the Commission in the past.... Campaign materials were shipped across the country in a constant stream throughout the primary season. These materials were used to campaign for primaries and caucuses and then to generate support leading up to the Convention. It would not be possible objectively to set a date when these same materials somehow became a general election expense."

d. "Print Media/Focus Group Survey: The July 29, 1992 advertisement, including the appeal to former Perot supporters, again constituted part of the attempt to build President Bush's support in advance of the Convention so that the delegates would enthusiastically support him at the Convention. Matalin Decl. ¶ 13. Likewise, focus group surveys played an important part in the development of the campaign's pre-convention strategy. Id.

e. Leased Office Space: The campaign offices served an important role throughout the primary campaign season and in the pre-Convention preparation by supporting efforts of and disseminating information from the national campaign headquarters. For example, efforts by the campaign to stay in contact with Convention delegates, provide them current information about the

which benefited the candidate's general election campaign. Based on documentation made available, all expenses identified by the Audit staff should have been paid in their entirety by the General Committee.

The Primary Committee stresses that the Commission, in consideration of the final audit report for the 1984 Reagan Bush Primary Committee, held that expenditures having an obvious benefit to the general election campaign may nonetheless be attributed to a primary campaign. Indeed, the Commission made a determination that certain polling expenses, as well as voter registration expenses made in a state after that state's primary/caucus were made in connection with the candidate's campaign for nomination and therefore a qualified campaign expense.

However, it should be noted that the 1984 Reagan Bush Primary Committee also acknowledged making four expenditures, totaling approximately \$64,000, that were subsequently reimbursed by the 1984 Reagan Bush General Committee. These expenditures were for telemarketing and phone deposits incurred and initially paid by the 1984 Reagan Bush Primary Committee prior to the 1984 convention.

The Primary Committee also argues that after the Democratic Convention, the Democratic nominee took a commanding 20 point lead in the public opinion polls which caused dissension within the Republican Party. It further states, the most effective way for President Bush to counter such criticism was to show he could beat Bill Clinton in November. That meant raising his standing in the polls with all voters not just delegates to the Republican Convention.

The Primary Committee further stated that the polling results with respect to issues important to voters in the November election, advertisements that addressed Bill Clinton and appeals to Ross Perot's supporters were in connection with the campaign for nomination, it is, (the Primary Committee states) simply irrelevant that these efforts may have also benefited the general election campaign.

It is the opinion of the Audit staff that the expenditures for polls, advertisements that addressed Bill Clinton, and the appeals to Ross Perot's supporters can only be viewed as made for the Candidate's campaign for election. The polls, advertisements, and appeals represent initial attempts to determine campaign strategy, identify potential voters, not for purposes of nomination or Convention enthusiasm.

The Primary Committee asserts that the interim audit report assumes that at some easily determinable time, President Bush had "locked up" the Republican nomination, and needed to do no more "in connection with" his campaign for nomination. According to Ms. Matalin "the delegates of many states were not legally 'bound'

to cast their votes for President Bush." The Primary Committee further states that by abandoning the bright-line approach, the Commission would force political campaigns to make subjective determinations. Such a change in interpretation of the regulations would cripple a campaign. For example, under the approach suggested by the interim audit report, polls, recruiting efforts and campaign speeches in states immediately after their respective primaries might be viewed as sufficiently connected to the general election.

It should be noted that the interim audit report does not address a point in time that President Bush had "locked up" the nomination. It merely addresses expenditures incurred, for the most part, during the July/August 1992 time period. The approach suggested by the interim audit report will not cripple a campaign, nor will it require a campaign to shut down. It does not question expenditures made immediately after a states' primary. As stated above, it does question expenditures incurred during a defined time period (for the most part July/August 1992). The regulations at 11 C.F.R. § 9003.4(a) envision such expenditures during this period:

"A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling."

Further, in support of its position that the expenditures were made in connection with the President's campaign for nomination and that there is no requirement that an expenditure's exclusive effect be to benefit the campaign for nomination, the Primary Committee references Advisory Opinion 1978-99.

In that Advisory Opinion, a non-publicly financed committee, not subject to any spending limitations, requested an opinion as to the correct reporting of a debt incurred, prior to the date of the primary election, for campaign materials used before and after the primary election. The Commission concluded that the full balance owed may, if the committee wishes, be treated as a primary debt.

campaign, and garner their support for particular platform items were often coordinated with local campaign offices. Matalin Decl. at ¶ 14. Similarly, these offices helped support the more general efforts to generate enthusiasm for the Convention. Id.

f. Equipment: Again, the equipment being used by the campaign, both nationally and across the country, was part of the effort to prepare for and generate excitement for the Convention as well as the efforts to counter the Republican attacks on the Bush-Quayle ticket. With respect to the treatment of leased versus purchased equipment, there is no inconsistency. Leases were pro-rated between the two committees on the basis of the August 20, 1992, date of ineligibility. Purchased equipment was sold to the General Committee pursuant to the practice set forth in footnote 18 above.

As a final matter, even under the excessively restrictive standard proposed by the Commission, many of the primary expenses challenged in the Report would still constitute qualified primary expenditures. For example, the palm cards printed by the Todd/Allen Printing Co. were shipped to and distributed at the Convention. Similarly, the 'Accomplishment' brochures printed by Corporate Press were also used at the Convention. A detailed exposition concerning the expenses is included as Attachment F to the Davis Declaration."

Analysis of the Primary Committee's Response to the Interim Audit Report

In addition to the above text, the Primary Committee provided a declaration from Keith A. Davis (Assistant Treasurer) and Mary Matalin (Deputy Campaign Manager for Political Affairs), along with copies of various news articles. The declarations and news articles, in part, explain and attempt to justify the Primary Committee's and the General Committee's payment of expenses in question.

In its response, the Primary Committee maintains that it has properly allocated expenses between the Candidate's primary and general election campaigns. In the Audit staff's opinion, no basis exists to pro rate expenses paid by the Primary Committee

The Primary Committee also cites Advisory Opinion 1975-9, to support its "bright-line cutoff" approach. As stated above, the Primary Committee's position is that the expenses related to shipments of campaign materials made on or before August 20, 1992 were properly paid by the Primary Committee, while post-8/20/92 shipments were properly paid by the General Committee.

Advisory Opinion 1975-9 is in response to a non-publicly financed committee questioning whether a primary election in which there is only one candidate seeking the nomination is an election for purposes of the contribution and spending limitations of 18 U.S.C. §608. The Commission concluded that those expenditures made solely to defray expenses incurred with respect to the primary election would not be chargeable to the unopposed candidate's expenditure limits in the general election.

It is the opinion of the Audit staff that neither opinion cited is relevant. Advisory Opinion 1978-99 did not address a situation where spending limitations were applicable. In Advisory Opinion 1975-9, the Commission clarified the application of contribution and expenditure limitations in the case of an unopposed candidate.

The single most relevant question is, did the expenditures benefit the Primary Committee's campaign for nomination or the General Committee's campaign for election? We believe the general election campaign received the benefit of the expenditures discussed in this report for the following reasons:

First, as previously stated, certain expenditures by the 1984 Reagan Bush Primary Committee were questioned by the Audit staff. The 1984 Reagan Bush Primary Committee determined that the actual benefit of expenditures, totaling in excess of \$64,000, was to the 1984 Reagan Bush General Committee even though the expenditures were incurred prior to the Convention. Therefore, in our opinion, the pertinent question is what committee/campaign benefited from the expenditure, as opposed to when the expenditure was incurred. The Primary Committee's arguments that the polls were conducted in order to counter dissension within the Party or with delegates and, therefore, were primary election expenditures, are not persuasive. We do believe, however, that such polls/focus groups resulted in information necessary to develop campaign strategies for the general election.

Second, in our opinion, advertisements which targeted Ross Perot's supporters can only be viewed as a general election expense and not as the Primary Committee contends, an attempt to build support in advance of the Convention so that delegates would enthusiastically support President Bush. The advertisements were, in our opinion, an attempt to influence voters in the November general election. The advertisements stated "...I'm asking for your vote. Give me the chance to earn it. Over the next few months, study the two remaining candidates. Study our positions on issues..." The use of the words "over the next few months" can

only mean the period of time between when the ads ran (July 29, 1992) and the November election, and not the eighteen day period between July 29th and the start of the Republican Convention. Further, the statement, "...asking for your vote", in the Audit staff's opinion, targets the November general election. The identity of the two remaining candidates is obvious.

Third, as in the case of polls and the focus group surveys, expenditures for campaign materials, leased office space, and equipment are the types of activity envisioned by the Regulations as start-up costs. Such expenditures can be made with funds borrowed from the Primary Committee prior to the start of the expenditure report period, provided that the amount borrowed be repaid (by the General Committee) within 15 days of receipt of payments received by the Candidate under 11 C.F.R. §9005. (See 11 C.F.R. §9003.4(b)).

Further, as noted above, the Primary Committee's position with respect to polls, advertisements, and appeals to Ross Perot's supporters as well as its contention that it is "simply irrelevant" that the expenditures may have benefited the general election is without merit.

The "benefit" to the general election, whether intentional or not, cannot be dismissed as "simply irrelevant".

Finally, during our review of information provided by the Primary Committee in its response to the interim audit report, the Audit staff re-examined certain expenditures. For the most part, these included consulting fees and travel expenses not related to a specific poll, survey, or focus group; the cost of palm cards used at the Convention; and a survey conducted just prior to the North Dakota primary. As a result of our review, the above expenses, totaling \$59,494, are now viewed as qualified campaign expenses of the Primary Committee. Therefore, the amount of non-qualified campaign expenses stands at \$1,581,752 (\$1,641,246 - 59,494).

On December 8, 1994, the Commission determined that it would allow 50 percent of the apparent general election expenses paid by the Primary Committee to be considered primary election related (see Attachment 2).

It should be noted that apparent general election expenditures, totaling \$83,992, were either reimbursed by the General Committee or paid by the Primary Committee subsequent to January 12, 1993, the last day matching funds (that the Primary Committee was entitled to) were present in the Primary Committee's accounts. As a result, no repayment of matching funds, pursuant to 11 C.F.R. §9038.2(b)(2), will be requested at this time with respect to these expenditures.

Recommendation #1

The Audit staff recommends that the Commission make an initial determination that a pro rata repayment to the United States Treasury of \$195,224 ($(\$1,577,196 - \$83,992) \div 2 \times (.261483)$), representing the value of non-qualified campaign expenses, is due pursuant to 11 C.F.R. §9038.2(b)(2).9/

D. Matching Funds Received in Excess of Entitlement

Section 9038(b)(1) of Title 26 of the United States Code states if the Commission determines that any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount of payments to which such candidate was entitled under section 9034, it shall notify the candidate, and the candidate shall pay to the Secretary an amount equal to the amount of excess payments.

Section 9034.1(b) of Title 11 of the Code of Federal Regulations states that if on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR §9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of: (1) the amount of contributions submitted for matching; or (2) the remaining net outstanding campaign obligations.

Based on our analysis of the Primary Committee's NOCO statement, the Candidate had net outstanding campaign obligations on August 20, 1992 of \$1,455,330 (see Finding III.A.).

The Primary Committee deposited private contributions^{10/} totaling \$784,592 from August 21, 1992 to January 5, 1993. In addition, the Primary Committee received federal matching fund payments of \$175,216 on September 2, 1992 and \$440,884 on November 3, 1992. Therefore, on January 5, 1993, the Candidate's remaining

9/ Should the Primary Committee be reimbursed (by the General Committee) for the remaining general election expenses, or portion thereof, the repayment amount will be adjusted accordingly.

10/ The "private contributions" calculation excludes the amount of contributor checks dated 8/20/92 or earlier and deposited after 8/20/92; further, contributor checks that were later returned for "Not Sufficient Funds" or refunded were also excluded.

entitlement was \$54,638. Further, the Primary Committee received a matching fund payment of \$98,829 on January 5, 1993, which exceeded the Candidate's entitlement in the amount of \$44,191.

The Primary Committee received two additional matching fund payments: March 2, 1993 (\$340,662), and April 2, 1993 (\$100,778). As a result, matching fund payments totaling \$485,631, were received in excess of the Candidate's entitlement.

Recommendation #2

The Audit staff recommends that the Commission make an initial determination that the Candidate was not entitled to \$485,631 in matching funds pursuant to 11 C.F.R. §9038.2(b)(1)(i), and that the Primary Committee make a repayment of \$485,631 to the United States Treasury pursuant to 26 U.S.C. §9038(b)(1).

E. Stale-dated Checks

Section 9038.6 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 staff reviewed the Primary Committee bank accounts and identified stale-dated checks as of August 31, 1993, totaling \$17,278. These checks were dated between January 20, 1992 and January 22, 1993.

At the exit conference, the Primary Committee was provided with a schedule of these stale-dated checks. The Primary Committee did not comment on the matter.

On October 7, 1993, the Primary Committee provided documentation that demonstrated a \$123 reissued check had cleared the bank and \$287 represented an amount not owed. Further, on October 21, 1993, the Primary Committee issued a check payable to the United States Treasury in the amount of \$16,868 (\$17,278 - 410).

On October 15, 1993, the Primary Committee issued a refund check payable to the Republican Leadership Fund, a joint fundraising agent, in the amount of \$2,326. However, the Republican Leadership Fund could not negotiate the check, since it had closed its bank account. As a result, on July 25, 1994, the Primary Committee issued a check payable to the United States Treasury in the amount of \$2,326.

Recommendation #3

The Audit staff recommends that the Commission make an initial determination that stale-dated checks, totaling \$19,194 (\$16,868 + 2,326), are payable to the United States Treasury. The payments were made on October 21, 1993 and July 25, 1994.

IV. Repayment Summary

Presented below is a recap of the amount due the United States Treasury:

Finding II.B. - Apparent Unresolved Excessive Contribution	\$141,801 */
Finding III.C. - Apparent Non-qualified Campaign Expenses	195,224
Finding III.D. - Matching Funds Received in Excess of Entitlement	485,631
Finding III.E. - Stale-dated Checks	<u>19,194 */</u>
Sub-total	\$841,850
Amount Paid to U.S. Treasury	<u>160,995</u>
Amount Due	<u>\$680,855</u>

*/ The Primary Committee paid these amounts to the United States Treasury, leaving a balance of \$680,855 (\$841,850 - 141,801 - 19,194).

Adjusted Receipts
(Through September 30, 1994)

	Federal Matching Funds	Individual Contributions Minus Refunds	PAC's and Other Cmte Contrib Minus Refunds	Contributions from the Candidate	Candidate Loans Minus Repayments	Other Loans Minus Repayments	Other Receipts	Adjusted Total Receipts
Democrats								
Larry Agran	\$269,891	\$331,631	\$0	\$500	\$3,000	\$1,029	\$3,001	\$608,852
Jerry Brown	\$4,239,345	\$5,178,338	\$0	\$0	\$0	\$0	\$4,693	\$9,420,374
Bill Clinton	\$12,518,130	\$24,983,688	\$2,429	\$0	\$0	\$1	\$30,724	\$37,534,972
Tom Harkin	\$2,103,352	\$3,080,208	\$415,570	\$0	\$0	\$0	\$22,601	\$5,621,729
Bob Kerrey	\$2,198,284	\$3,913,332	\$349,757	\$0	\$0	(\$1,225)	\$5,931	\$6,466,079
Lyndon LaRouche	\$568,434	\$1,604,065	\$0	\$0	\$0	\$0	\$8,231	\$2,180,730
Paul Tsongas	\$3,039,388	\$5,072,689	\$3,568	\$0	\$45,000	(\$9,575)	\$0	\$8,151,068
Doug Wilder	\$289,028	\$508,519	\$750	\$0	\$0	\$0	\$1,039	\$799,334
Total Democrats	\$25,225,650	\$44,670,466	\$772,072	\$500	\$48,000	(\$9,770)	\$76,220	\$70,783,138
Republicans								
Patrick Buchanan	\$4,999,983	\$7,157,808	\$24,750	\$0	\$0 ¹	\$0	\$43,940	\$12,226,481
George Bush	\$10,658,513	\$27,088,825	\$44,250	\$0	\$0	\$0	\$222,417	\$38,014,005
David Duke [*]	\$0	\$220,715	\$0	\$0	\$1,000	\$0	\$0	\$271,815
Total Republicans	\$15,658,496	\$34,467,348	\$69,000	\$0	\$1,000	\$0	\$266,357	\$50,512,301
Other Party								
Andre Marrou [*]	\$0	\$562,770	\$181	\$116	\$15,000	\$0	\$0	\$578,067
Lenora Fulani [*]	\$1,935,524	\$2,201,490	\$0	\$325	(\$1,258)	\$1,200	\$0	\$4,137,281
John Hagelin	\$353,160	\$563,800	\$449	\$0	\$0	\$5,630	\$5,316	\$928,355
Total Other Party	\$2,288,684	\$3,328,060	\$630	\$441	\$13,742	\$6,830	\$5,316	\$5,643,703
Grand Total	\$43,172,830	\$82,465,874	\$841,702	\$941	\$62,742	(\$2,940)	\$347,893	\$128,939,142
Perot	\$0	\$3,905,594	\$0	\$65,544,735	\$2,056,371	\$0	\$5,807	\$71,512,507

Adjusted Disbursements
(Through September 30, 1994)

	Operating Expenditures Minus Offsets	Exempt Fundraising Minus Offsets	Exempt Legal/Accounting Minus Offsets	Other Disburse	Adjusted Total Disbursements	Expenditures Subject to Limit	Latest Cash On Hand	Debts Owed By the Campaign
Democrats								
Larry Agran	\$609,111	\$0	\$0	\$95	\$609,206	\$616,223	\$47	\$3,170
Jerry Brown	\$6,315,622	\$2,276,936	\$311,790	\$108,584	\$9,014,934	\$6,666,482	\$135,482	\$0
Bill Clinton	\$25,321,257	\$5,524,000	\$3,969,675	\$0	\$34,834,932	\$24,528,607	\$284,544	\$20,932
Tom Harkin	\$4,027,765	\$1,144,006	\$198,633	\$35,316	\$5,405,720	\$3,142,973	\$164,246	\$143,369
Bob Kerrey	\$5,181,458	\$1,076,978	\$179,911	\$23,404	\$6,461,751	\$6,050,481	\$9,682	\$0
Lyndon LaRouche	\$1,550,693	\$0	\$132,929	\$290,604	\$1,974,426	\$1,520,588	\$215,155	\$0
Paul Tsongas	\$6,808,157	\$754,978	\$191,375	\$0	\$7,754,510	\$7,001,566	\$7,496	\$164,472
Doug Wilder	\$806,776	\$6,568	\$39	\$0	\$813,383	\$807,258	\$766	\$0
Total Democrats	\$50,621,039	\$10,785,468	\$5,004,352	\$458,003	\$66,868,862	\$50,356,178	\$817,418	\$331,963
Republicans								
Patrick Buchanan	\$11,828,268	\$0	\$0	\$0	\$11,828,268	\$11,828,272	\$487,855	\$0
George Bush	\$27,429,418	\$5,526,322	\$4,938,167	\$73,400	\$37,967,307	\$27,429,422	\$6,405	\$0
David Duke	\$353,838	\$0	\$0	\$1,000	\$354,838	\$0	\$0	\$29,250
Total Republicans	\$39,611,524	\$5,526,322	\$4,938,167	\$74,400	\$50,150,411	\$39,267,694	\$494,060	\$29,250
Other Party								
Andre Marrou*	\$415,576	\$160,219	\$0	\$0	\$575,795	\$0	\$0	\$0
Lenora Fulani*	\$4,204,009	\$0	\$0	\$3,235	\$4,207,244	\$4,207,526	\$0	\$0
John Hagelin	\$700,534	\$91,458	\$52	\$90,293	\$882,337	\$700,534	\$0	\$0
Total Other Party	\$5,320,119	\$251,677	\$52	\$93,528	\$5,665,376	\$4,908,060	\$0	\$0
Grand Total	\$95,552,682	\$16,563,467	\$9,942,571	\$825,931	\$122,884,651	\$94,521,932	\$1,311,478	\$361,213
Perot	\$69,152,998	\$0	\$0	\$5,388	\$69,158,386	\$0	\$975,716	\$1,938,407

Bush-Quayle '92 Primary Committee, Inc.
Recap of General Election Expenses Paid by the Primary Committee

<u>Vendor</u>	<u>Amount</u>
Market Strategies	\$ 133,164
Karl Rove & Company	301,551
The Tarrance Group	25,920
Spalding Companies	122,512
James R. Foster & Associates	4,500
Corporate Press, Inc.	39,031
Campaign Services Group	43,056
Western Wats Center	44,873
Todd/Allan Printing Co., Inc.	6,299
Strategic Planning	20,104
Direct Communication	22,000
Satellite Network Systems, Inc.	81,660
Direct Mail Systems, Inc.	19,726
Anjoy Research, Inc.	25,000
Campaign Tel Ltd.	357,692
BCE Corporation of Rockville	150,644
Andrews Office Products	2,317
The Core Group	5,184
Depue & Associates	5,021
Radio Shack	481
Various - Office Space	40,228
November Company	<u>130,789</u>
Subtotal	1,581,752
Capital assets reimbursed by the General Committee	<u><4,556></u>
Subtotal	1,577,196
Expenses recognized by General Committee as general election related and reimbursed by the General Committee.	<u><37,301></u>
Total	<u>\$1,539,895</u>
50% viewed as general election expenses paid by the Primary Committee (\$1,539,895 * 50%)	<u>\$769,948</u>
Total amount of general election expenses paid by the Primary Committee (\$769,948 + \$37,301)	<u>\$807,249</u>

Rec'd 10/24/94
10-24-94

Adman File
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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 24, 1994

MEMORANDUM

TO: Robert J. Costa
Assistant Staff Director
Audit Division

THROUGH: John C. Surina *JCS*
Staff Director

FROM: Lawrence M. Noble *LMN*
General Counsel
Kim Bright-Coleman *KBC*
Associate General Counsel
Kenneth E. Kellner *KEK*
Assistant General Counsel

Delanie DeWitt Painter *DDP*
Attorney

Jane Whang *JW*
Attorney

SUBJECT: Proposed Final Audit Report on Bush-Quayle '92
Primary Committee (LRA #425/AR #94-16)

I. INTRODUCTION

The Office of General Counsel has reviewed the proposed Final Audit Report on the Bush-Quayle '92 Primary Committee (the "Committee") submitted to this Office on August 24, 1994. The following memorandum summarizes our comments on the proposed Report. We concur with findings in the proposed Final Audit Report which are not discussed separately in the following memorandum.^{1/} If you have any questions concerning our comments, please contact Delanie DeWitt Painter, the lead attorney assigned to this audit.

1/ Parenthetical references are to the placement of findings in the proposed report. Throughout our comments, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §§ 431-455. The Commission's discussion of this document is not exempt from disclosure under the Commission's Sunshine Regulations and the document should be considered in open session. 11 C.F.R. § 2.4.

**II. APPARENT NON-QUALIFIED CAMPAIGN EXPENSES -- GENERAL
ELECTION EXPENDITURES PAID BY PRIMARY COMMITTEE
(III. C.)**

The Committee paid for expenses totaling \$1,641,246 which benefited the candidate's general election campaign, including polling, focus group surveys, direct mail, list rentals, shipping and materials, print media services, leased office space, and equipment. These expenditures were incurred prior to the candidate's date of ineligibility but after the state primary elections and caucuses.^{2/} The Audit Division states that there is insufficient information to divide portions of specific expenditures between the Committee and the GEC. The Audit staff concludes that all of the expenses were related to the general election, and that the Committee should seek reimbursement from the GEC. Until the GEC reimburses these expenditures, they are non-qualified campaign expenses subject to repayment. The proposed Final Audit Report includes an initial determination that the Committee make a pro rata repayment of \$335,791.3/^{3/} While we concur with the proposed repayment determination, our analysis of this issue differs from that of the Audit Division.

Expenditures made in connection with a primary candidate's campaign for nomination prior to the candidate's date of ineligibility are qualified campaign expenses provided that the expenditures do not constitute a violation of the law. 11 C.F.R. § 9032.9(a). Expenses incurred after a candidate's date of ineligibility are non-qualified except to the extent permitted under 11 C.F.R. § 9034.4(c)(3) for winding-down costs. 11 C.F.R. § 9034.4(b)(3).

The Committee argues that the "Commission has in the past used a bright-line test based on the date of a candidate's nomination, not a subjective review of content, to allocate expenses between the primary and general elections." Response to Interim Audit Report dated July 6, 1994, at 18. Thus, the Committee allocated expenditures between the primary and general elections based on whether

^{2/} State primary elections or caucuses were held through June 9, 1992. The candidate's date of ineligibility was August 20, 1992.

^{3/} The Committee's repayment ratio for non-qualified campaign expenses is 26.1483%. The proposed Final Audit Report notes that, for purposes of calculating the repayment, the original total of \$1,641,246 has been reduced because the GEC reimbursed some of the funds and the Committee paid for some expenditures after the last day that matching funds were present in the Committee's accounts. Thus, these funds are not subject to repayment.

they were incurred before or after August 20, 1992, the date that the candidate accepted the nomination. As support for its position, the Committee argues that the Commission's decision in the Reagan Bush '84 Primary Committee audit permits the Committee to fund any general election expenses as long as the expenses were incurred prior to the candidate's date of ineligibility.^{4/} See Final Audit Report on Reagan Bush '84 Primary (approved July 7, 1986).

Moreover, the Committee contends that certain expenditures were part of a "pre-convention strategy" intended to combat dissension in the party, improve the candidate's standing in the polls, and "build overall excitement during the Convention." Response at 20-25. The Matalin affidavit attached to the Committee's response asserts that these expenditures were necessary to dispel dissension within the party and convince convention delegates of the viability of President Bush's candidacy.^{5/} The Committee further asserts that certain expenditures should be considered qualified campaign expenses even under what the Committee terms an "excessively restrictive standard." Response at 25.

^{4/} The Committee cites Advisory Opinion ("AO") 1978-99 to support its contention that an expenditure need not exclusively benefit the campaign for nomination to be a qualified campaign expense. In AO 1978-99, the Commission permitted a committee to report a debt incurred prior to the date of the primary election, for materials to be used in both the primary and general elections as a primary election debt. This opinion is not on point. The determination of whether an expenditure may be considered part of a committee's primary debt for Title 2 reporting purposes has no bearing on whether an expenditure is a qualified campaign expense of a publicly-financed presidential campaign. Indeed, the Commission has more recently confirmed that determining whether an expenditure is related to the primary or general election is based on both the timing and the purpose of the expenditure. See AO 1984-15.

^{5/} The affidavit from Mary Matalin, the Committee's Deputy Campaign Manager for Political Affairs, concerned campaign developments and strategy during the summer of 1992. Ms. Matalin stated that prior to the Republican convention, President Bush was substantially behind the Democratic nominee in the polls and faced opposition from within his own party, including calls for him to change his Vice Presidential running mate, or to step down himself. Ms. Matalin contends that because some delegates were not legally bound to cast their votes for him, President Bush ultimately had to convince convention delegates that if nominated, he would be successful in the general election.

A "bright line test" based solely on the date that an expenditure is incurred has never been applied by the Commission. In relying on this test, the Committee focuses on only one of the two key elements for assessing qualified campaign expenses. It is not enough merely for an expenditure to be incurred prior to the candidate's date of ineligibility to be considered a qualified campaign expenditure. To be qualified, an expenditure must also be made in connection with a primary candidate's campaign for the nomination. 11 C.F.R. § 9032.9(a). Thus, the correct standard for determining whether an expenditure is a qualified campaign expense relies on both the timing of the expenditure and the nature of the expenditure. See AO 1984-15.

We believe that the decision in the Reagan Bush Audit, which was based on the particular facts in that case, does not support the Committee's position. See Final Audit Report on Reagan Bush '84 Primary (approved July 7, 1986). In the Reagan Bush audit, the Commission concluded that certain specific expenditures for polling, consulting and voter registration incurred prior to the candidate's date of ineligibility and apparently related to the general election campaign could be considered qualified campaign expenses of the primary committee. However, the Reagan Bush general committee also reimbursed the primary committee \$64,000 for telemarketing expenditures incurred prior to the candidate's date of ineligibility, thus demonstrating that the timing of an expenditure alone does not determine whether it is related to the primary or general election. Final Audit Report on Reagan Bush '84 Primary, (approved July 7, 1986). Contrary to adopting a "bright line" test, this precedent supports examining all of the particular facts surrounding an expenditure.

Moreover, matters concerning coordinated party expenditures, which involve publicly-financed presidential campaigns and expenditure limitations, are analogous to the issue of qualified campaign expenses presented here. In situations involving coordinated party expenditures, the Commission has considered not only the timing, but also the purpose of expenditures when determining to which election an expenditure should be attributed. AO 1984-15. For example, in AO 1984-15, the Commission considered whether the purpose of expenditures was to influence the general election campaign in order to determine if the expenditures were coordinated party expenditures. The Commission noted that while "timing is relevant," coordinated party expenditures are not restricted to the time period between the nomination and the general election, and it would be inconsistent with the purpose of the limitation on coordinated expenditures to "permit expenditures made prior to nomination but with the purpose and effect of influencing the outcome of the

presidential general election to escape this limitation." AO 1984-15.

It is possible that some of the expenditures at issue were intended, in part, to build excitement for the Convention and secure the candidate's nomination. For example, if, as the Committee contends, state offices were actually used to disseminate information to delegates prior to the convention, the expenditures for the offices may have been, in part, qualified campaign expenses. Where an expenditure benefits both the general and primary elections, it would be an equally incorrect application of a "bright line test" to allocate the entire expenditure to the general election as it would be to allocate it to the primary election. Rather, such an expenditure should be allocated reasonably between both committees. For some of the expenditures in this case, the Committee's arguments that the expenditures were related to the convention could in fact justify such an allocation if supported by evidence. However, even for these expenditures, the evidence does not justify an allocation between the Primary Committee and the GEC other than that made by the Audit Division.6/

Most of the expenditures at issue have no apparent connection to the nomination, aside from the Committee's assertion that they were part of a "pre-convention strategy," but appear instead to be related solely to the general election. For example, the Primary Committee paid for a full page advertisement in five newspapers on July 29, 1992, after Ross Perot announced he would not run for President. The advertisement appealed for the votes of Perot supporters in the upcoming election. Although this advertisement appeared before the Republican convention, the timing and nature of the advertisement indicates that it was intended to sway Perot supporters for the general election.

In addition, there is ample evidence that the expenditures at issue were related to the general election.7/ Many of the expenditures, incurred in July and August 1992,

6/ In order to support an allocation of a specific expenditure between the Committee and the GEC, the Committee would need to provide documentation such as memoranda, invoices, or other documentation demonstrating the extent that the activity in the state offices was related to preparing for the Convention.

7/ Indeed, the expenditures described in the report appear to be general election expenses incurred prior to the date of ineligibility, which are permissible under 11 C.F.R. § 9003.4(a)(1). The expenditures were incurred during July and August, 1992, a time period when start up expenditures for the general election campaign were likely.

appear intended to establish an infrastructure of office space, equipment and materials to be used in the forthcoming general election campaign.^{8/} In addition, the Committee paid for polls related to the general election that contained questions concerning the November election and potential candidates George Bush, Bill Clinton, and Ross Perot. Similarly, direct mail and advertising expenditures were related to preparing for the general election rather than to the primaries or the convention. The direct mail featured pictures of Bush and Clinton and discussions of their positions and records on issues. One "Marilyn Quayle" letter sent on August 4, 1992 discussed kicking off the re-election campaign, and provided a volunteer hotline number active through Labor Day. The Committee has not demonstrated that the advertisements at issue have any connection to the Republican convention.

Thus, most of the expenditures appear to be related to continuing the campaign effort into the general election period by obtaining office space, equipment, materials, poll data, volunteers, and supporters, rather than to ensuring the candidate's nomination. 11 C.F.R. § 9032.9(a). Indeed some of the expenditures, such as the Perot advertisement, seem calculated to secure votes for the November election. Therefore, these expenditures are non-qualified and must be reimbursed by the GEC. If the GEC does not reimburse the Committee for these funds, the unreimbursed expenditures paid by the Committee are subject to a pro rata repayment of \$335,791.

Finally, the Committee asserts that certain palm cards and brochures were shipped to and distributed at the Convention and thus were qualified campaign expenses even under our "excessively restrictive standard." Response at 25. While some questions remain concerning the use of these expenditures, however, given the Committee's identification of which specific brochures and palm cards were used at the Convention, we believe that these expenditures should be considered qualified campaign expenses and removed from the amount subject to repayment.

^{8/} These expenditures include the purchase of miscellaneous campaign materials such as flags, hats, brochures and signs which were shipped to various state offices in July and August 1992; the re-opening in July and August 1992 of state offices that had been closed since the primary elections and subsequently remained open through the general election; and the purchase and lease of computer equipment, software and related supplies. The Committee paid the costs for these items through August 20, 1992 and the GEC paid the exact same types of costs following that date.

In conclusion, we believe that the Committee's proposed "bright line" standard would enable a primary committee to use private contributions and public matching funds to pay a portion of the general election public campaign expenses, thus circumventing the general election expenditure limitation and the law's prohibition on receipt of private contributions by publicly funded general election candidates. 2 U.S.C. § 441a(b)(1)(B); 26 U.S.C. § 9003(b)(1) and (2). Moreover, such an interpretation is inconsistent with section 9003.4(a)(1), which permits general election campaigns to incur certain expenses prior to the date of the nomination. This provision was "designed to permit a candidate to set up a basic campaign organization before the expenditure report period begins." Explanation and Justification, 45 Fed. Reg. 43375 (June 20, 1980). This regulation would not be necessary if all expenditures made prior to the date of ineligibility were qualified campaign expenses of the primary committee, even if the expenditures related to the general election. This Office does not advocate that the Audit staff question all expenditures made prior to the date of ineligibility that may have proven incidentally beneficial to the general election campaign. However, where, as here, expenditures are made within two months of the date of ineligibility and appear to be primarily related to the general election, we believe the expenditures should be subject to an analysis regarding their allocation. Here, we believe that such an analysis supports the Audit Division's allocation.

III. OTHER REPAYMENT MATTERS (III. D., E., F.)

We concur with the Audit Division's finding that the Committee received matching funds in excess of its entitlement totaling \$981,153. We note that after the Interim Audit Report, the Audit Division made adjustments based on the elimination of a \$259,636 payable for air travel and the GEC's payment of \$190,000 for certain Primary Committee non-capital assets. These adjustments substantially increased the amount in excess of the entitlement. In addition, this amount may change based on the resolution of the pre-funding issue. Any matching funds received in excess of the entitlement must be paid to the Treasury. 26 U.S.C. § 9038(b)(1). Therefore, we concur with the initial repayment determination that the Committee must repay \$981,153 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1).

Moreover, we concur with the initial determination that the Committee pay \$19,194 to the United States Treasury for stale-dated checks. The Committee has already made this payment. Finally, we concur with the Audit Division's conclusion that the Committee has not exceeded the overall expenditure limitation.

IV. EXCESSIVE CONTRIBUTIONS FROM STAFF ADVANCES (II. D.)

The Interim Audit Report found that an individual, Robert B. Holt, volunteered his own fundraising services, and advanced \$12,598 in excessive funds for travel, subsistence, and campaign-related goods and services. These expenses were eventually reimbursed. The Interim Audit Report recommended that the Committee show that these advances were not excessive by demonstrating that portions were either exempt, pursuant to 11 C.F.R. § 100.7(b)(8), or by demonstrating that the individual was a "commercial vendor," pursuant to 11 C.F.R. § 116.3.

The Committee contends that Mr. Holt was a commercial vendor, who provided his fundraising activities on a volunteer basis, and sought "payment for travel and telephone expenses." The Committee argues that Mr. Holt's payments for travel and telephone should be treated under section 116.3, as extensions of credit by a commercial vendor, despite the fact that Mr. Holt was volunteering his services. The Committee further contends that the Audit staff's interpretation of section 116.3 raises First Amendment issues by restricting the campaign's rights of speech and association. It argues that the auditors' disparate treatment of volunteer commercial vendors from paid vendors imposes "an unjustifiable burden" on a campaign's acceptance of such volunteer services. Finally, the Committee contends that even if Mr. Holt were deemed to be a volunteer, his travel expenses should not be considered contributions since they were reimbursed within the time period given in section 116.5(b).9

9/ The Committee also asserts that the Commission's Advisory Opinions ("AO") 1980-42 and 1982-4 allow committees to reimburse volunteers for expenses incurred for the campaign without in-kind contributions resulting. Reliance on these opinions is misplaced, however, since they were issued before the promulgation of 11 C.F.R. § 116.5 by the Commission in 1990. In addition, while both opinions allow committees to make direct or prior payments for volunteer expenses, they do not state that committees may reimburse staff advances without creating in-kind contributions. To the contrary, AO 1982-4 held that materials used by volunteer carpenters, plumbers and other tradesmen "which were donated to the Committee must be reported as an in-kind contribution to the Committee." Id. at 3.

Further, the Committee incorrectly argues that AO 1991-37 allowed a campaign "to be charged for expenses while receiving accounting and other consultation services as an in-kind contribution." Response at 10. While the Commission stated in AO 1991-37 that it would be acceptable for a campaign to pay for travel related expenses incurred by such accounting staff, it "d[id] not express an opinion on whether . . . initial payment [by

The Commission's limitation on staff advances does not violate the First Amendment. This regulation was implemented to carry out the FECA's limitations on contributions,^{10/} and the United States Supreme Court has held that the FECA's contribution limitations are neither overbroad, nor unconstitutional. Buckley v. Valeo, 424 U.S. 1, 29, 35 (1976). The Court, inter alia, noted that such restrictions serve the FECA's primary purpose of limiting "the actuality and appearance of corruption resulting from large individual financial contributions." Id. at 26. Indeed, the Court expressly said that volunteers' incidental expenses for a campaign, such as travel or food or beverages, should be treated as contributions in order to "foreclose . . . an avenue of abuse without limiting actions voluntarily undertaken by citizens." Id. at 37. The "ultimate effect [of such advances] is the same as if the person had contributed the dollar amount to the candidate." Id. at 36-37.

The Committee's argument that the Commission should treat a paid commercial vendor's expenses in a similar manner to a volunteer vendor's expenses is equally meritless. The distinction between the two types of expenses is that the former is incurred in the ordinary course of business, while the latter is incurred on behalf of a campaign, and as such, must be guarded against appearances of impropriety. Mr. Holt's advances were in-kind contributions, and were subject to the contribution limitations.

Further, the Committee's argument that the regulations impose an unjustifiable burden on acceptance of volunteer services is also unpersuasive. A commercial vendor who wishes to volunteer his services may do so without restriction. See 11 C.F.R. § 100.7(b)(3). However, if a commercial vendor wishes to obtain reimbursement for goods and services or for others' travel and subsistence under the theory that he is a "commercial vendor," then he must prove he is one. Under section 116.1(c), a commercial vendor "means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods and services." The Committee has failed to prove that Mr.

(Footnote 9 continued from previous page)
the volunteer accounting staff, with later reimbursement by the campaign] would constitute an in-kind contribution by that employee." AO 1991-37 at 7.

^{10/} A contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i).

Holt is actually a fundraiser in his business. Further, if he were one, then pursuant to the Commission's regulations, any expenses incurred or extensions of credit made for a committee must be within "the ordinary course of the commercial vendor's business and . . . the terms . . . [must be] substantially similar to extensions of credit to nonpolitical debtors." 11 C.F.R. § 116.3. As already admitted by Mr. Holt, he volunteered his fundraising services to the Committee. Consequently, unless Mr. Holt provides evidence to show that he provides fundraising services without charge within "the ordinary course" of his business, it appears that Mr. Holt was a volunteer, and not a vendor.

Finally, the Committee argued that Mr. Holt's expenses are not contributions because they were reimbursed, pursuant to 11 C.F.R. § 116.5(b). However, the regulations clearly provide that a person can only be reimbursed for his or her own transportation and subsistence expenses, and not for others. Therefore, the amounts that Mr. Holt paid for others' travel and subsistence should be considered an in-kind contribution.



FEDERAL ELECTION COMMISSION

AK005807

December 27, 1994

Mr. J. Stanley Huckaby, Treasurer
Bush-Quayle '92 Primary Committee, Inc.
228 South Washington Street
Suite 200
Alexandria, VA 22314

Dear Mr. Huckaby:

Attached please find the Final Audit Report on Bush-Quayle '92 Primary Committee, Inc. The Commission approved this report on December 27, 1994. As noted on page 3 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR 9038.2(c)(1) and (d)(1), the Commission has made an initial determination that the Candidate is required to repay to the Secretary of the Treasury \$700,049 within 90 days after service of this report (March 30, 1995). Of this amount, \$19,194 has been repaid.

Should the Candidate dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide the Candidate with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (January 30, 1995), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(3) permits a candidate who has submitted written materials to request an opportunity to make an oral presentation in open session based on the legal and factual materials submitted.

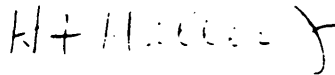
The Commission will consider any written legal and factual materials submitted by the Candidate within the 30 day period in making a final repayment determination. Such materials may be submitted by counsel if the Candidate so elects. If the Candidate decides to file a response to the initial repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If the Candidate does not dispute this initial determination within the 30 day period provided, it will be considered final.

Letter to J. Stanley Huckaby
Page 2

The Commission approved Final Audit Report will be placed on the public record on December 29, 1994. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Tom Nurthen of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



 Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated



FEDERAL ELECTION COMMISSION
WASHINGTON, D. C. 20543

AK005807

December 27, 1994

The Honorable George Bush
c/o Mr. J. Stanley Huckaby
Huckaby & Associates
228 South Washington Street
Suite 200
Alexandria, VA 22314

Dear Mr. Bush:

Attached please find the Final Audit Report on Bush-Quayle '92 Primary Committee, Inc. The Commission approved this report on December 27, 1994. As noted on page 3 of this report, the Commission may pursue any of the matters discussed in an enforcement action.

In accordance with 11 CFR 9038.2(c)(1) and (d)(1), the Commission has made an initial determination that you are required to repay to the Secretary of the Treasury \$700,049 within 90 days after service of this report (March 30, 1995). Of this amount, \$19,194 has been repaid.

Should you dispute the Commission's determination that a repayment is required, Commission regulations at 11 CFR §9038.2(c)(2) provide you with an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice (January 30, 1995), legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. Further, 11 CFR §9038.2(c)(3) permits a candidate who has submitted written materials to request an opportunity to make an oral presentation in open session based on the legal and factual materials submitted.

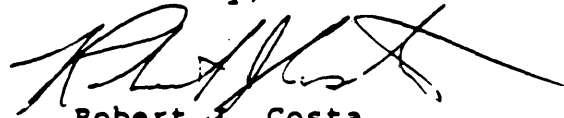
The Commission will consider any written legal and factual materials submitted by you within the 30 day period in making a final repayment determination. Such materials may be submitted by counsel if you so elect. If you decide to file a response to the initial repayment determination, please contact Kim L. Bright-Coleman of the Office of General Counsel at (202) 219-3690 or toll free at (800) 424-9530. If you do not dispute this initial determination within the 30 day period provided, it will be considered final.

Letter to The Honorable George Bush
Page 2

The Commission approved Final Audit Report will be placed on the public record on December 29, 1994. Should you have any questions regarding the public release of this report, please contact Ron Harris of the Commission's Press Office at (202) 219-4155.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Tom Nurthen of the Audit Division at (202) 219-3720 or toll free at (800) 424-9530.

Sincerely,



Robert J. Costa
Assistant Staff Director
Audit Division

Attachment as stated

CHRONOLOGY

BUSH-QUAYLE '92 PRIMARY COMMITTEE, INC.

Pre-audit Inventory Commenced	12/07/92
Audit Fieldwork	1/19/93-9/10/93
Interim Audit Report to the Committee	4/04/94
Response Received to the Interim Audit Report	7/06/94
Final Audit Report Approved	12/27/94

Press

FEDERAL ELECTION COMMISSION



FEDERAL ELECTION COMMISSION JUL 12 1 52 PM '94 AK005176

July 12, 1994

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REPAYMENT OF \$22,300 RECEIVED FROM BUSH-QUAYLE '92
PRIMARY COMMITTEE, INC.

This informational memorandum is to advise you of a \$22,300 payment received from Bush-Quayle '92 Primary Committee, Inc. (the Committee). The check represents a payment by the Committee for unresolved excessive contributions.

Attached is a copy of the check and the receipt showing delivery to the Department of the Treasury.

If you have any questions concerning this matter, please contact Ray Lisi at 219-3720.

Attachments as stated

950/01941:4

BUSH-QUAYLE '92 PRIMARY
COMMITTEE, INC.
FUND RAISING ACCOUNT
228 S. WASHINGTON STREET, SUITE 200
ALEXANDRIA, VA 22314



50370

July 6 1994

15-154-540

PAY Twenty-Two Thousand Three-Hundred and 00/100***** DOLLARS \$ 22,300.00

TO
THE
ORDER
OF

United States Treasury

Kurt A. Davis
[Signature]

#050370# ⑆054001547⑆ 20063256#12

0.597019415



FEDERAL ELECTION COMMISSION

WASHINGTON, D. C. 20543

July 11, 1994

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on July 11, 1994, from the Federal Election Commission (by hand delivery), a check drawn on Franklin National Bank (Check #50370) in the amount of \$22,300. The check represents a payment from Bush-Quayle '92 Primary Committee, Inc. for unresolved excessive contributions.

The payment should be deposited into the General Fund of the U. S. Treasury.

Bush-Quayle '92 Primary Committee, Inc.
Amount of Payment: \$22,300

Presented by:

Received by:

Gregory S. Byrd
for the
Federal Election Commission

FRANK J. GILBERT
for the
United States Treasury

0577019416



FEDERAL ELECTION COMMISSION

PT 200
FEDERAL ELECTION COMMISSION
STAFF
Aug 9 9 50 AM '94
AK005234

August 9, 1994

MEMORANDUM

TO: THE COMMISSIONERS

THROUGH: JOHN C. SURINA
STAFF DIRECTOR

FROM: ROBERT J. COSTA
ASSISTANT STAFF DIRECTOR
AUDIT DIVISION

SUBJECT: REPAYMENT OF \$2,326 RECEIVED FROM BUSH-QUAYLE '92
PRIMARY COMMITTEE, INC.

This informational memorandum is to advise you of a \$2,326 payment received from Bush-Quayle '92 Primary Committee, Inc. (the Committee). The check represents a payment by the Committee for excessive contributions received from a joint fundraiser.

Attached is a copy of the check and the receipt showing delivery to the Department of the Treasury.

If you have any questions concerning this matter, please contact Ray Lisi at 219-3720.

Attachments as stated

95070194111

**BUSH - QUAYLE '92 PRIMARY
COMMITTEE, INC.**
FUND RAISING ACCOUNT
225 S. WASHINGTON STREET, SUITE 200
ALEXANDRIA, VA 22314



50372

July 25 19 94

13-134 500

PAY Two-Thousand Three-Hundred Twenty-Six and 00/100***** DOLLARS \$ 2,326.00

TO
THE
ORDER
OF

United States Treasury

K. A. Davis
Lisa R. Luster

⑈050372⑈ ⑆⑆054001547⑆ 20063258⑈12

BUSH-QUAYLE '92
PRIMARY COMMITTEE, INC.
FUND RAISING ACCOUNT

DETACH AND RETAIN THIS STATEMENT
THE ATTACHED CHECK IS A PAYMENT OF ITEMS DESCRIBED BELOW
IF NOT CORRECT PLEASE NOTIFY US PROMPTLY - NO RECEIPT DESIRED

DELUXE - FORM WVCP-3 V-3

Received in Audit 7/25/94

DATE	DESCRIPTION	AMOUNT
7/25/95	Repayment for joint fundraiser, as per FEC audit of the Republican Leadership Fund	-2,326.00

950701941



FEDERAL ELECTION COMMISSION
WASHINGTON, D. C.

August 8, 1994

RECEIPT FROM THE
UNITED STATES DEPARTMENT OF TREASURY
FOR A
PAYMENT TO THE GENERAL FUND OF THE U. S. TREASURY

Received on August 8, 1994, from the Federal Election Commission (by hand delivery), a check drawn on Franklin National Bank (Check #50372) in the amount of \$2,326. The check represents a payment from Bush-Quayle '92 Primary Committee, Inc. for excessive contributions received from a joint fundraiser.

The payment should be deposited into the General Fund of the U. S. Treasury.

Bush-Quayle '92 Primary Committee, Inc.
Amount of Payment: \$2,326

Presented by:

Received by:

Ernie S. Marsh
For the
Federal Election Commission

James R. ...
for the
United States Treasury

959/0194105



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20463

DATE & TIME TRANSMITTED: TUESDAY, MARCH 21, 1995 4:00

BALLOT DEADLINE: FRIDAY, MARCH 24, 1995 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

SUBJECT: BUSH-QUAYLE '92 PRIMARY COMMITTEE,
INC. REQUEST FOR AN ORAL
PRESENTATION (LRA #425). MEMORANDUM
TO THE COMMISSION DATED MARCH 21,
1995.

I approve the recommendation(s).

I object to the recommendation(s)

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

95070124



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20543

RECEIVED
FEDERAL ELECTION COMMISSION
COMMUNICATIONS SECTION

MAR 21 3 34 PM '95

March 21, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble
General Counsel

By: Kim Bright-Coleman *KBC by GRB*
Associate General Counsel

Kenneth E. Kellner *KK*
Assistant General Counsel

Delanie DeWitt Painter *DDP*
Attorney

Jane Whang *JW*
Attorney

SUBJECT: Bush-Quayle '92 Primary Committee, Inc.,
Request for an Oral Presentation (LRA # 425)

The Commission approved the Final Audit Reports on the Bush-Quayle '92 Primary Committee, Inc. ("Primary Committee"), the Bush-Quayle '92 General Committee, Inc. ("GEC"), and the Bush-Quayle '92 Compliance Committee, Inc. ("Compliance Fund") on December 27, 1994. On March 1, 1995, this Office received the responses of the Primary Committee, the GEC and Compliance Fund to the Final Audit Report and repayment determinations. Attachments 1 and 2. In its response, the Primary Committee requests the opportunity to make an oral presentation before the Commission with respect to the repayment determination pursuant to 11 C.F.R. § 9038.2(c)(3).¹ We recommend that the Commission grant the

¹ The GEC and Compliance Fund response also requests an oral presentation. However, staff of this Office discussed the responses with Keith Davis, the Assistant Treasurer of the Primary Committee, GEC and Compliance Fund, who clarified that the committees are seeking only one oral presentation, by the Primary Committee, which will address issues that also have an impact on the GEC.

9507019413

Memorandum to the Commission
Bush-Quayle '92 Primary Committee, Inc.,
Request for an Oral Presentation (LRA # 425)
Page 2

Primary Committee's request for an oral presentation and schedule the presentation for May 17, 1995 at 10:00 a.m.

The Commission's regulations provide publicly funded candidates with the opportunity to respond to an initial repayment determination by submitting written legal and factual materials to demonstrate that no repayment, or a lesser repayment, is appropriate. 11 C.F.R. § 9038.2(c)(2). In addition, a candidate may request the opportunity to address the Commission in open session. 11 C.F.R. § 9038.2(c)(3). The Commission may grant this request by an affirmative vote of four of its members, and inform the candidate of the date and time set for the oral presentation. 11 C.F.R. § 9038.2(c)(3).

The Primary Committee's response primarily focuses on the issue of non-qualified campaign expenses arising from general election related expenses paid for by the Primary Committee. We believe that an oral presentation, with questions from Commissioners and staff, may help the Commission in reaching a final repayment determination.

If the Commission grants the request, we propose that procedures similar to those used for previous presentations should be followed. Prior to the date of the presentation, the Office of General Counsel will prepare an analysis of the issues presented. This analysis will be provided to the Commission and the Committee. This Office will also prepare an agenda document containing materials relevant to the Committee's oral presentation.

At the presentation, the Chairman will make an opening statement. The Committee will then be allotted 30 minutes to make a presentation on the issues raised in its response. Following the presentation, individual Commissioners, the General Counsel, and the Audit Division may ask questions. If the Primary Committee wishes to submit any additional materials for Commission consideration, the materials should be submitted to the Office of General Counsel within five days following the presentation. The letter to the Primary Committee will delineate these procedures.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the request by the Bush-Quayle '92 Primary Committee, Inc. to make an oral presentation as provided in 11 C.F.R. § 9038.2(c)(3);
2. Set the date for the oral presentation for May 17, 1995; and

9507019414

Memorandum to the Commission
Bush-Quayle '92 Primary Committee, Inc.,
Request for an Oral Presentation (LRA # 425)
Page 3

3. Approve the appropriate letter.

Attachments

1. Response to the Final Audit Report and Request for an Oral Presentation by Bush-Quayle '92 Primary Committee, Inc. (Attachments deleted).
2. Response of Bush-Quayle '92 General Committee, Inc., and Bush-Quayle '92 Compliance Committee, Inc.

950/0194105

BUSH 92 QUAYLE
★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Whang

Stan Huckaby, Treasurer

March 1, 1995

VIA HAND DELIVERY

Ms. Jane Whang
Staff Attorney
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Primary Committee Audit Report

Dear Ms. Whang:

This letter together with the attached exhibits constitutes the response of Bush-Quayle '92 Primary Committee, Inc. (the "Primary Committee" or the "Committee") to the Audit Report of the Committee dated December 27, 1994 (the "Report").^{1/} By letter dated January 30, 1995, the Commission granted an extension of time until March 1, 1995, to submit a response.

Pursuant to 11 C.F.R. § 9038.2(c)(2), the Committee's response is limited to demonstrating that "no repayment, or a lesser repayment, is required." The Committee reserves the right to respond to any issue raised by the Commission in other proceedings.^{2/} The repayment issues are addressed in the order raised in the Report.

The Committee requests an opportunity to address the Commission in open session.

^{1/} The Committee also incorporates by reference its response dated July 6, 1994, to the Interim Audit Report.

^{2/} Certain findings of the Audit Report do not appear to constitute "repayment issues" and for that reason are not addressed in this response.

259 / 0194116

cc: [unclear]

Ms. Jane Whang
March 1, 1995
Page 2

I. FINDINGS AND RECOMMENDATIONS -- REPAYMENT MATTERS

A. Determination of Net Outstanding Campaign Obligations

The determination of the Primary Committee's net outstanding campaign obligations depends, of course, on resolution of issues raised in the Report. Based on the positions set forth in this Response, the Committee respectfully submits that no repayment is or should be required.

B. Calculation of Repayment Ratio

This section does not require a response from the Committee.

C. Apparent Non-qualified Campaign Expenses

The Commission has initially determined that 50 percent of each of a series of Committee expenditures totalling \$1,539,895 challenged by the audit staff should have, but not yet have, been paid by the Bush-Quayle '92 General Committee, Inc. (the "General Committee"). The expenditures include (i) polls/focus group surveys, direct mail, and campaign materials; (ii) print media; (iii) leased office space; and (iv) equipment. All of these expenditures were made prior to President Bush's date of ineligibility ("DOI") of August 20, 1992, when he received the nomination of the Republican Party.

For the reasons set forth below, as well as in the Committee's response to the Interim Audit Report, the Committee respectfully submits that the challenged expenditures were treated properly by the Committee as qualified primary campaign expenses and that, regardless of the standard the Commission applies in the future, the Committee's approach was appropriate in light of the laws, regulations, and Commission opinions in effect at the time.

- 1. The Commission Should Use a Bright Line Approach, Deeming Expenditures Before the Date of Nomination To Be Qualified Campaign Expenses of the Primary Committee.**

The Presidential Primary Matching Payment Account Act defines a "qualified campaign expense" as any payment which (i) is made within the period of a candidate's eligibility; (ii) is made

Ms. Jane Whang
March 1, 1995
Page 3

"in connection with his or her campaign for nomination"; and (iii) does not otherwise violate the law. 26 U.S.C. § 9032(9). There is no dispute that the expenditures at issue were made within the time period for the primary campaign and did not otherwise violate the law. And the uncontroverted evidence presented by the Committee -- through the Declaration of Mary Matalin attached to the Committee's Response to Interim Audit Report, the Declaration of David Carney attached hereto as Exhibit 1, and numerous contemporaneous media accounts -- demonstrates that the challenged expenditures had a direct and substantial connection to the campaign for the nomination.

In contrast, the expenditures do not qualify for treatment as qualified campaign expenses of the general election committee. The general election regulations define "qualified campaign expense" to mean any expenditure not otherwise unlawful incurred to further a candidate's campaign for President or Vice President, but that also is:

"Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period." 11 C.F.R. § 9002.11(a)(2) (emphasis added).

Thus, while expenditures incurred prior to the date of nomination may be payable by the general election committee, they are payable by the general committee only if they are for goods or services "used during such" general election period. While it is possible for the staff to speculate that certain polling or focus group information was "used during" the general election period, there is no evidence in the record to prove that point, and there is much evidence to the contrary. Moreover, the campaign carefully allocated rental payments between the primary and general committees. The challenged rental payments for state office space relate only to rents paid for space used prior to the nomination, not "during" the general period, and accordingly, such rental payments are clearly not qualified campaign expenses of the general committee. The same principles apply to the challenged print media and equipment charges.

Based on these regulations, which distinguish expenditures based on when they were incurred, the Committee respectfully submits that the Commission should use a bright-line test based on the candidate's DOI to determine when expenditures may no longer be attributed to the primary campaign. The reasons for using this approach were set forth in the Committee's response

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Ms. Jane Whang
March 1, 1995
Page 4

to the Interim Audit Report as well as in the comments recently submitted by the Republican National Committee ("RNC") and the Democratic National Committee ("DNC") in connection with the Commission's Notice of Proposed Rulemaking ("NPRM"). 59 Fed. Reg. 51006.^{2/}

The position taken by the DNC is identical to the one advocated by the Bush-Quayle '92 Primary Committee: "In our view, for several reasons, the Commission should adopt a rule that expenses incurred before the date of ineligibility (i.e., on or before the last date of the national nominating convention) for goods or services used before the DOI, should be considered qualified campaign expenses for the primary." Letter from Joseph E. Sandler to Susan Propper dated January 9, 1995, at p. 15 (emphasis in original) (attached as Exhibit 3 hereto). The DNC continued:

"No one looking at this statutory scheme could reasonably conclude that the Congress intended the Commission to undertake subjective, candidate-by-candidate, case-by-case analyses of when the candidate 'began to focus' on the general election or when the general election period 'really' began based on some audit staffer's personal view of the course of presidential politics during a particular year . . . [T]he Congress adopted a simple, objective, bright line test for determining which expenses were for the primary and which for the general election: expenses incurred before DOI for goods and services used before DOI are primary expenses, period. That is the approach that should be adopted by the Commission." Id. at 15-16.

These comments further support the Committee's arguments that the standard applied by the Commission in its Initial Determination is unsupported by law, is not administratively feasible, will wreak havoc on presidential campaigns of both parties, and will inevitably lead to inconsistent and unfair results. The Report applies the 50/50 allocation rule to a group of expenditures identified by the audit staff on an ad hoc basis more than a year after the primary campaign ended. The Committee had no way to know in 1992 which expenses might be challenged. Similarly, if the Commission applies this approach to the 1996 election cycle, the candidates will have no way to determine at

^{2/} These comments are included as Exhibits 2 and 3, respectively, and are incorporated in this response.

Ms. Jane Whang
March 1, 1995
Page 5

the time which expenditures might be subject to a 50/50 allocation.

To take an example, the Report criticizes a California Statewide Poll that contained questions asking respondents to rate the probability that they would vote in November for "George Bush, Bill Clinton, Ross Perot, Don't know, Refused/NA." Report at 27. However, candidates ask identical questions from the outset of their campaigns. (Samples of such questions are included as Exhibit 4.) For example, on January 28, 1992, the Committee conducted a poll that asked "If the Presidential election were being held today and George Bush was the Republican candidate and Bill Clinton was the Democratic candidate, would you be voting for Bush or Clinton?". Exhibit 4 at 4. Similarly, in December 1991, the Committee conducted a poll asking "If the presidential election were being held today and George Bush was the Republican candidate and Mario Cuomo was the Democratic candidate, would you be voting for Bush or Cuomo?" Exhibit 5 at 9. There is no principled reason why these polls should be treated as primary campaign expenses while polls asking the same questions conducted in the summer should be treated as "hybrid" expenses and split 50/50 between the primary and general election campaigns. Rather, the audit staff has arbitrarily selected a date -- June 26, 1992 -- as the date after which horse race polls would be presumed to benefit the general election campaign, even though an identical poll taken a day before would not be subject to that presumption. While an arbitrary date may be necessary, we respectfully but strongly urge that the date be the DOI, a date which a candidate can objectively ascertain during the campaign.

Further, as discussed below, the bright line test was employed in the audit of the 1984 Reagan-Bush campaign. Similarly, the Commission allowed the Clinton for President 1992 primary campaign to treat equipment purchases made up to the Democratic National Convention as primary expenditures.^{4/} Nevertheless, the Commission is requiring the Bush-Quayle '92 Primary Committee to treat equipment purchases made prior to the Republican National Convention as 50 percent primary and fifty percent general expenditures. Such disparate results are inevitable under the ad hoc approach in the Report.

^{4/} The equipment was then sold to the general election campaign committee at 60 percent of its purchase price.

2. The Committee's Interpretation of the
Legal Standard was Reasonable

At the outset of the primary campaign, the Committee undertook an investigation of the applicable laws, regulations, audit reports, and advisory opinions pertaining to the appropriate characterization of expenditures as primary and general election expenses. Both the statute and the Commission's regulations indicate without any further explanation that a qualified campaign expense need only be made "in connection with [the candidate's] campaign for nomination . . ." 11 C.F.R. § 9032.9(a) (emphasis added). There is no requirement that the expenditure be made exclusively, or even primarily, for the benefit of the primary campaign. Moreover, the Commission had applied this language in the past to include expenditures made up to the date of a party's nomination of a candidate for President (i.e., the DOI), even when there was only the most tenuous of connections to the candidate's campaign for nomination. While the Commission regulations allowed for some general election expenditures prior to the DOI, they were limited to expenditures for goods or services "for use during the expenditure report period." ~~11 C.F.R. § 9003.4(a)(1)~~ (emphasis added). Thus, the Committee adopted a bright-line approach using the DOI to divide expenses between the Primary Committee and the General Committee.^{5/}

The Committee's approach was modelled in large part on the Commission's treatment of the 1984 primary campaign of President Reagan where precisely this issue arose.^{5/} In that audit, the audit staff challenged voter registration, polling, and political consulting expenditures made after the primaries and caucuses had ended, but before the DOI. The audit staff contended that these expenditures "appeared to benefit the candidate's

^{5/} Accordingly, on-going expenses, such as leases, printed material, office supplies, and the like, were allocated to the Primary Committee prior to August 20, 1992, and to the General Committee after that date (monthly leases were pro-rated). Equipment valued at \$2,000 or more and purchased prior to the DOI was transferred to the General Committee at 60 percent of its purchase price. Equipment valued at less than \$2,000 was transferred to the General Committee, with the exception of three payments made by the General Committee to the Primary Committee totalling \$290,000 for the partial sale of non-capital assets.

^{5/} At the December 8, 1994, Commission meeting, now Vice Chairman Elliott observed the applicability to this case of the Commission's decision in the audit of the 1984 Reagan-Bush campaign. Tr. at 17 (Exhibit 6).

Ms. Jane Whang
March 1, 1995
Page 7

general election campaign only" and that they were therefore not made "in connection with his nomination for election." Federal Election Commission, Final Audit Report: Reagan-Bush '84 (The Candidate's Primary Committee), July 10, 1986 at 3. (Exhibit 7) (emphasis in original).

0 5 9 7 0 1 2 4 1 7 2

The Reagan-Bush campaign responded by arguing that (i) the statute required only that primary expenditures be made before the DOI; (ii) the audit staff's challenge conflicted with the Commission's required deference to a candidate's spending determinations; and (iii) expenditures made after the delegate selection process are entitled to the same deference as those made before. Id. at 5-6. The audit staff found these arguments unpersuasive and argued that expenditures, such as voter registration expenses made after a state's primary/caucus, "can only influence the . . . general election." Id. at 7. In sharp contrast to the audit staff's views, the Commission accepted the campaign's arguments and found that the expenses "were made in connection with the candidate's campaign for nomination for election and are therefore qualified campaign expenses." Id.^{1/} ~~The Committee respectfully submits that voter registration~~ expenditures in a state after that state's primary has taken place have less connection to the campaign for nomination than any of the expenditures at issue here.

Although the Report acknowledges this finding, Report at 42, the Report relies on the fact that the Reagan-Bush Primary Committee made four expenditures prior to the candidate's DOI totalling \$64,000 that were subsequently reimbursed by the Reagan-Bush General Committee. The Report suggests that this fact establishes that the Commission has looked at the relative benefits or purposes and not just the DOI in deciding whether an expenditure can be treated as a primary campaign expense. The Committee respectfully submits that this suggestion is erroneous for several reasons.

As an initial matter, the Report mischaracterizes the \$64,000 expenditures from the 1984 campaign. These expenditures included, for example, phone deposits for phone services that were apparently used during the general election campaign period and were thus fairly attributable to the general election campaign. Report at 42. More generally, the Committee understands that all of the \$64,000 in expenditures were for goods and services actually used during the general election campaign. See 11 C.F.R.

^{1/} Significantly, the General Counsel's office indicated at the December 8 meeting that "We don't believe the law has changed" since the 1984 election cycle. Tr. at 16 (Exhibit 6).

Ms. Jane Whang
March 1, 1995
Page 8

§ 9002.11 (qualified general election campaign expenses include those incurred "before the beginning of such period . . . to the extent such expenditure is for . . . services . . . to be used during such period.") (emphasis added).^{1/} In contrast, none of the Bush-Quayle '92 expenditures at issue here were for services used during the general election campaign.

Second, the Reagan-Bush campaign chose to treat the \$64,000 in expenditures as general election expenses. The Commission never ruled on whether those expenditures were solely attributable to the general election campaign; the voluntary actions of the Reagan-Bush campaign obviously do not stand as Commission precedent. Undoubtedly, certain expenditures will benefit both the primary and the general election efforts. As both the Commission staff and the Commissioners made clear at the hearing on December 8, 1994, a Committee may itself choose to attribute certain of these campaign expenses to the general election campaign when it is not required to do so.^{2/} The issue here is whether the Committee must treat the challenged expenditures as general election campaign expenses.

Finally, the 1984 Reagan-Bush campaign's voluntary treatment of the \$64,000 in expenditures does not undermine the Commission's actual ruling on voter registration lists, advertising, and similar expenses by the Reagan-Bush campaign. There is no principled reason why the Commission should allow voter registration expenditures made after a primary -- for which it is extraordinarily difficult to find a direct connection to the nomination -- to be treated as primary campaign expenses in 1984, while requiring the polling and print media expenses made by the Bush-Quayle Committee -- for which the Commission has ample evidence establishing their direct relationship related to the campaign's effort to shore up President Bush's bid for the nomination -- to be treated as general election campaign expenses in 1992. At most, the report of the 1984 Reagan-Bush campaign would stand for the proposition that a campaign could choose

^{1/} Indeed, the Commission specifically examined "when these services were used" before allowing them to be treated as qualified general election expenses. Federal Election Commission, Final Audit Report: Reagan-Bush '84 General Election Committee, May 11, 1987 at 17 (emphasis added). (Exhibit 8).

^{2/} The Chairman observed that "It doesn't work the other way. If [the campaign says] that they're general election related, we don't require them to allocate it 50 percent to the primary." Tr. at 41. The audit staff generally agreed, but noted that "we're not dealing with that right now." Id.

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Ms. Jane Whang
March 1, 1995
Page 9

whether to attribute such expenditures to the primary or the general election expenses. In any event, the report certainly does not support a 50/50 allocation.^{18/}

Another argument by the audit staff warrants correction. During the December 8, 1994, Commission hearing, the audit staff stated that the Bush-Quayle Primary Committee had initially paid for expenses totalling \$37,000 that were later paid by the General Committee, and based on this fact suggested that the Committee had itself failed to follow a bright line approach. Tr. at 37 (Exhibit 6). Nothing could be further from the truth. As the Report itself makes clear, the \$37,000 in expenditures were for advertisements ordered prior to the DOI that were intended to appear -- to be "used" -- after the DOI. Each advertisement bore the General Committee's disclaimer. Although the Primary Committee paid for them by mistake, it obtained prompt and full reimbursement from the General Committee as soon as the error was detected. Thus, the Committee's actions were fully consistent with the bright line approach reflected in the regulations and Commission precedent..

Several other facts underscore the lack of any substantial precedent to support the approach adopted in the Report. First, a review of the Commissioners' discussion at the December 8 meeting makes abundantly clear that the Commission was struggling to fashion a new standard. See Exhibit 6. Indeed, it is indisputably clear that the Commission has never applied a 50/50 split of certain expenses between the primary and general election

^{18/} The Report also seeks to distinguish two other Commission opinions indicating that expenditures made during a primary campaign that might also benefit the general election campaign can nonetheless be paid by the primary campaign. See also Adv. Op. 1975-9, Fed. Election Camp. Fin. Guide (CCH) § 5110 at 10,035 (1975) (holding expenditures during primary by unopposed candidate "allocable to that primary election rather than to a subsequent general election"); Adv. Op. 1978-99, Fed. Election Camp. Fin. Guide (CCH) § 5387, at 10,396 (1979) (campaign materials ordered and received only one day before the primary election, which were used both in the primary election and the general election, may be treated as primary campaign expense). The Report's observation that these Advisory Opinions were not rendered to publicly financed campaigns does not serve as a valid distinction, since the campaigns at issue -- just like the Committee here -- had an obligation to segregate their primary and general campaigns for purposes of contribution limitations as well as contribution and expenditure reporting.

Ms. Jane Whang
March 1, 1995
Page 10

campaigns. Any new standard should, we submit, be applied prospectively only.

Second, and perhaps most tellingly, the Commission's decision to issue a notice of proposed rulemaking ("NPRM") on this issue reflects an understanding that the Commission has not previously adopted the approach used in either the Interim or the Final Reports. 59 Fed. Reg. 51006. The NPRM indicates that the approach set forth therein "reflects the Commission's experience in administering this program during the 1992 election cycle" and addresses a lack of "specific guidance" in this area. *Id.* at 51006 and 51011. If the law were as clear in 1992 as the Report would seem to indicate, the NPRM would have been unnecessary.

Therefore, under the law, regulations, and precedents available at the time, it was reasonable for the Committee to conclude that any campaign-related expenditure made prior to the DOI could be treated as a qualified primary campaign expense. Moreover, even assuming some review of the purpose of the expenditure, the Commission should, at most, consider whether there is a plausible connection between the expenditure and the candidate's campaign for nomination. If there is such a connection, then the expenditure can properly be treated as a Primary Committee expense. As previously demonstrated and as amplified below, the expenditures at issue clearly meet this test.

3. The Challenged Expenditures Were Made
in Connection With the Campaign for
Nomination

Even under the standard apparently applied by the Commission in the Report, the challenged expenses are properly payable by the Primary Committee.⁴¹ The Commission acknowledged the connection between the challenged expenditures and the fight for the nomination in making its initial determination at the December 8 meeting. In moving for the 50/50 allocation, Commissioner Thomas observed that "the Committee [has made] the demonstration . . . that there is a primary component to these [expenditures.]" Tr. at 40 (emphasis added). Chairman Potter concurred when he stated that "all these expenditures have some

⁴¹ The Report does not make clear whether the connection between the expenditure and the primary campaign must be exclusive, primary, substantial, significant, or the some other adjective. The Committee contends that, under the particular circumstances faced by the Bush-Quayle campaign, the connection was both direct and substantial.

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Ms. Jane Whang
March 1, 1995
Page 11

primary component, that's obviously what Commissioner Thomas' motion takes into account. . . ." Tr. at 41 (emphasis added).^{12/} The Committee respectfully submits that this connection is sufficient to qualify the expenditures as primary expenses under the standard set forth in the statute and regulations.

Nevertheless, several Commissioners indicated at the December 8 meeting that they would like to see the Committee elaborate on the connection between the challenged expenditures and the campaign for nomination. Assuming, arguendo, that the law requires an additional showing, the Committee is submitting herewith additional materials addressing this issue. As the Committee explained at some length in its response to the Interim Audit Report, the expenditures at issue were part of the overall effort by the Bush-Quayle campaign to shore up support for the nomination and to forge a party platform that would receive enthusiastic support from the delegates at the Convention.

Mary Matalin, the Political Director of the campaign, described in her declaration how the commanding lead that Bill Clinton had taken in the polls and the distractions caused by Ross Perot shook the confidence of Republican delegates and leaders. She described how the polls, surveys, printed materials, and the like were designed to convince Republican delegates enthusiastically to support the Bush-Quayle ticket. These efforts provided guidance to the campaign in building the platform as well as ammunition for use in persuading convention delegates. Although the Report suggests that attempts to raise President Bush's standing "with all voters" indicates that the expenditures solely benefitted the general election campaign, Report at 45, the staff's suggestion that any campaign for a party's presidential nomination could or should ignore the candidate's appeal to the overall electorate is, we respectfully submit, nonsense.^{13/}

David M. Carney, Political Director and Director of Political Affairs for the Committee, explains in his attached

^{12/} Vice Chairman Elliott also explicitly acknowledged the connection between the challenged expenditures and the campaign for the nomination. See Tr. at 21 and 36.

^{13/} It would be no response to suggest that a primary committee should hold funds in reserve so that, in similar circumstances, it could advance money on behalf of the general committee for later repayment. Requirement of such a "reserve" would effectively lower the spending limitations on primary campaigns without statutory authorization, and raise a host of other issues.

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declaration that the period between the primaries and the Republican Convention was characterized by often frenetic campaign activity, all designed to ensure the proper atmosphere and results at the national convention. The declaration is included at Exhibit 1.

Two platform issues illustrate the need for the campaign to continue its efforts on both the national and the state levels. First, a sizeable pro-choice movement in the Republican Party sought to remove the pro-life plank from the party's platform. A pro-life faction led in significant part by supporters of Patrick Buchanan -- who had yet to relinquish his campaign for the nomination -- was adamantly opposed to any concessions on the abortion issue. The rift threatened the unity of the party itself. Both sides engaged in intense lobbying at the state level, during the platform committee meetings in July and August, and at the Convention itself. When it became apparent that the pro-life plank would remain, the Republicans for Choice vowed to take the fight to the Convention floor for debate and vote prior to the delegate vote on the presidential nomination. A floor ~~fight on an emotional platform issue such as abortion would have~~ been disastrous for the campaign. Carney Decl. at ¶¶ 7-9.

As described in the news articles included as Exhibit 9 to the response, the Republicans for Choice began a grass roots campaign to garner support for the pro-choice position at the Convention.¹⁴ These efforts included lobbying delegates individually and in meetings and led up to a six-state caravan to the Convention that began in late July. Under Rule No. 8 of the Rules of the Republican Party, this group needed a majority of delegates in only six states to bring the issue to the Convention floor. The Committee, through Mr. Carney and others, worked to prevent such a disastrous floor fight. Campaign personnel in state offices would monitor the local delegates and alert the national office about meetings and other significant developments. Where possible, campaign personnel, including Mr. Carney, would intervene to diffuse the situation and/or to try to persuade delegates not to join an opposition group at the Convention. Carney Decl. at ¶¶ 10-11.

Second, the "no-new-taxes" issue presented another serious controversy. The pledge by President Bush in 1988 not to

¹⁴ For example, the Los Angeles Times reported on July 28 that "Republican women who favor abortion rights Monday kicked off a pre-convention campaign to change the GCP platform, warning that it would be 'political suicide' for the party to continue its strong anti-abortion stance." Exhibit 9 at 15.

Ms. Jane Whang
March 1, 1995
Page 13

raise taxes and the subsequent 1990 tax increase led to a dispute over how to handle this issue in 1992. One faction sought to denounce the 1990 decision and to reaffirm the no-new-taxes pledge with even greater force in a new platform plank. Another group, including the Committee, sought to down-play this issue to avoid accentuating its importance in the minds of voters. This group sought to prevent any mention of the issue in the platform adopted by the Convention. The dispute is described in Mr. Carney's declaration as well as in numerous news articles included as Exhibit 10 to this response. Carney Decl. at ¶ 13. As with the abortion issue, intense lobbying by both factions took place at the local level, at the platform committee meetings, and at the Convention itself.^{15/}

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Although much of the campaign's effort was targeted at the struggle over the platform, the campaign also was aware that under Republican Party rules no delegate is "committed" to a candidate and that no candidate is guaranteed the nomination until it is actually made. Both the Republican and Democratic Party rules throw into question whether any delegate can be legally bound at the Convention. ~~See Comments from RNC (at p. 23) and DNC (at p. 15-17) (Exhibits 2 and 3).~~ Indeed, in its recent NPRM, the Commission acknowledged that "a candidate who appears to have secured the nomination early in the campaign may in fact fail to obtain it" 59 Fed. Reg at 51013.^{16/}

All of the expenditures challenged in the Report were integral parts of the campaign's efforts to forge an acceptable

^{15/} The importance of this issue is demonstrated by the defection of prominent Republicans in Orange County, California just after the Convention. The story as reported in the Los Angeles Times on August 22, 1992, and included as Exhibit 11 indicated that one of the key reasons for the defection was the no-new-taxes issue. It was precisely this kind of intra-party disaffection at the Convention that the Committee sought to minimize through its efforts over the summer.

^{16/} The Commissioners may also recall that Nelson Rockefeller began a campaign for the Republican nomination in 1968 too late to enter the state primaries. A similar crisis of confidence raised the possibility that he could take the nomination from Richard Nixon. His entry and ultimate withdrawal turned on polls showing the likelihood that Nixon or Rockefeller would win in the November election. These events are described in Michael Wheeler's Lies, Damn Lies, and Statistics at pp. 119-22 (1976) (an evaluation of the significant roll that public opinion polls have in our society).

Ms. Jane Whang
March 1, 1995
Page 14

resolution of the platform issues and to bolster support of the Bush-Quayle ticket at the Convention. The polls, surveys, and focus groups helped guide the campaign in formulating the platform as well as in persuading delegates that they should enthusiastically support the nomination of President Bush and Vice President Quayle.

For example, the national survey conducted on July 6-8, 1992, included 10 questions concerning Vice President Quayle asking, among other things, whether President Bush should "Replace Dan Quayle as his running mate" and whether the respondent "approve[s] or disapprove[s] of the way Dan Quayle is handling his job as Vice President?" (Exhibit 12 at 3, 16, and 22-23). A July 24-26, 1992, poll examined "thoughts people might have if George Bush replaced Dan Quayle as his running mate." (Exhibit 13 at 5). Similarly, other questions in the challenged polling efforts asked whether respondents were pro-life, in-between, or pro-choice on the abortion issue. (Exhibit 14 at 5). The polls also sought to measure the effect of Governor Clinton's and Ross Perot's pro-choice stand on abortion. (Exhibit 12 at 17 and 21; Exhibit 14 at 9). These results were important to the decision by President Bush to continue with Vice President Quayle as his running mate and in the platform struggle with Republicans for Choice.^{17/}

While the abortion and no-new-taxes issues are two prominent examples, the Republican Party platform is a sweeping document that sets forth the Party's position on a wide range of topics, including the family, education, health care, the homeless, older Americans, cultural values, diversity, crime, international relations, the economy, job creation and security, national defense, taxes, deregulation, government spending, international trade, science and technology, agriculture, reform of the legal system, and property rights. (Exhibit 15). The polls and surveys challenged by the Commission provided the Committee with valuable information to determine which issues to include in the platform and how best to present them.

Furthermore, the reopening of the state offices was necessary not only to coordinate planning for the Convention, but also to monitor delegates and to counter the insurgencies on platform issues. For example, the only state office specifically mentioned in the Report was located in Connecticut; Connecticut was one of the key states in the dispute over the abortion issue. The need for constant communication with the state delegates may

^{17/} Republicans for Choice was arguing, for example, that a majority of Republicans were pro-choice on the basis of poll results. (Exhibit 9 at 16).

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Ms. Jane Whang
March 1, 1995
Page 15

best be illustrated by the efforts of the Committee during the Convention itself. The Committee had over 50 people assigned to stay with and monitor delegates to prevent defections. Many of these people worked around the clock for 48 or more hours in an effort to ensure a favorable outcome on these and other important issues. These efforts at the Convention were a continuation of the efforts that took place over the summer. Carney Decl. at ¶ 12.

In short, the polls, focus groups, print media, office leases, and equipment expenditures were part of the overall build-up of excitement for the Convention and were therefore made "in connection with the campaign for nomination."

As a final consideration, Mr. Carney observes that some of the challenged expenditures, particularly the polls and focus groups, did not provide a significant benefit to the General Committee. In a Presidential campaign in particular, events move so quickly that the useful life of a poll is no more than 10-14 days. Carney Decl. at ¶ 5. Indeed, numerous polls were published in the national media every week. The Commission staff acknowledged the rapid obsolescence of poll results at the December 8 meeting,^{18/} and further acknowledgement is found in the Commission's regulations. 11 C.F.R. § 106.4(g). The polls reflected by the challenged expenditures were taken in June, July, and early August.^{12/} They would have provided no significant value to the campaign after August 20.^{20/}

^{18/} In response to a question from Commissioner McDonald, the audit staff stated that "I think there's various articles and statements made and Commission regulations that they decrease in value sharply after, well depending, seven days, ten days, two weeks." Tr. at 20.

^{12/} The Report indicates on page 31 that the "majority" of polls and focus groups occurred between June 26 and August 31. The Commission should be aware that it is perhaps the majority of challenged polling expenses that occurred in that period, but not the majority of polling expenses during the entire primary campaign period.

^{20/} The "50/50 split" does not accurately apply the polling regulations. If both the primary and general committee are deemed to be responsible for the polling expenses, any benefit to the general committee would need to be further reduced by at least another 50% to reflect the obsolescence of the polls. See 11 C.F.R. § 106.4(g)(1).

ATTACHMENT 1
PAGE 15 OF 15

9507012420

Public Records

RECEIVED
FEDERAL ELECTION COMMISSION
COMMISSION
ST. PETERSBURG



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR 22 3 39 PM '95

March 22, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina *JCS*
Staff Director

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

By: Kenneth E. Kellner *KEK by GAO*
Assistant General Counsel

~~Delanie DeWitt Painter *DWP by GAO*~~
Attorney

Jane J. Whang *JW*
Attorney

SUBJECT: Bush-Quayle '92 Primary Committee, Inc.,
Request for Oral Presentation (LRA #425)

On March 21, 1995, this Office circulated to the Commission a memorandum recommending that the Commission grant an oral presentation to the Bush-Quayle '92 Primary Committee ("Primary Committee"). Please find attached for your review the last two pages that were missing from Attachment 1 of the memorandum.

Attachment as stated.

957701942

Ms. Jane Whang
March 1, 1995
Page 16


D. Matching Funds Received in Excess of Entitlement

The Commission initially determined that the Committee received matching funds in excess of entitlement amounting to \$485,631 that should be repaid to the government. This finding stems from the Commission's initial determination in Section C above. If the Commission finds, as the Committee contends that it should, that the challenged expenditures were properly paid by the Primary Committee, then the Committee would not have received any matching funds in excess of its entitlement, there would be no repayment for non-qualified expenses, and the Committee thus would have no remaining repayment amount required.

E. Stale Dated Checks

As stated in the Report, at page 48, the Committee paid the recommended amounts to the United States Treasury on October 21, 1993 and July 25, 1994.

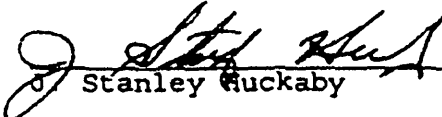
Respectfully submitted,


J. Stanley Huckaby
Treasurer

9507019426

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed in Washington, D.C. on this 1st day of March 1995.


Stanley Ruckaby

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Public
Records



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20461

DATE & TIME TRANSMITTED: MONDAY, JANUARY 23, 1995 11:00

BALLOT DEADLINE: THURSDAY, JANUARY 26, 1995 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

SUBJECT: BUSH-QUAYLE '92 PRIMARY COMMITTEE, INC.,
BUSH-QUAYLE '92 GENERAL COMMITTEE, INC., AND BUSH
QUAYLE '92 COMPLIANCE COMMITTEE, INC. REQUESTS FOR
EXTENSIONS OF TIME TO RESPOND TO FINAL AUDIT
REPORTS (LRA # 425). MEMORANDUM TO THE COMMISSION
DATED JANUARY 20, 1995.

9507019421

- () I approve the recommendation(s)
- () I object to the recommendation(s)

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
WASHINGTON DC 20541

January 20, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina *JCS*
Staff Director

FROM: Lawrence M. Noble
General Counsel

BY: Kim Bright-Coleman *KBC*
Associate General Counsel

Kenneth E. Kellner *KEK*
Assistant General Counsel

Delanie DeWitt Painter *DDP*
Attorney

SUBJECT: Bush-Quayle '92 Primary Committee, Inc.,
Bush-Quayle '92 General Committee, Inc., and Bush
Quayle '92 Compliance Committee, Inc. Requests for
Extensions of Time to Respond to Final Audit
Reports (LRA # 425)

The Commission approved the Final Audit Reports on the Bush-Quayle '92 Primary Committee, Inc. ("Primary Committee"), the Bush-Quayle '92 General Committee, Inc. ("GEC"), and the Bush Quayle '92 Compliance Committee, Inc. ("Compliance Fund") on December 27, 1994.

The Commission sent the Final Audit Reports to the Primary Committee, GEC and Compliance Fund on December 27, 1994. Thus, the Committees' written responses to the Commission's initial repayment determinations are due on January 30, 1994. In a letter dated January 11, 1995, the Committees requested a 30 day extension of time, until March 1, 1995, to respond to the Final Audit Reports and initial repayment determinations. Attachment 1.

The Commission made an initial determination that the Primary Committee must pay \$841,850 to the United States Treasury. This amount includes repayments of \$485,631 for matching funds received in excess of the Primary Committee's

950701942

Memorandum to the Commission
Requests for Extensions of Time
to Respond to Final Audit Reports
Bush-Quayle '92 Committees (LRA # 425)
Page 2

entitlement, and \$195,224 for apparent non-qualified campaign expenses ^{1/}; and payments of \$141,801 for apparent unresolved excessive contributions and \$19,194 for stale-dated checks. Because the Primary Committee has already paid \$160,995 for the excessive contributions and stale-dated checks, the amount now due is \$680,855.

Moreover, the Commission made an initial determination that the GEC and Compliance Fund must pay a total of \$29,775, consisting of: \$19,023 for GEC stale-dated checks; \$2,086 for a gain on an insurance settlement; and \$8,666 for Compliance Fund stale-dated checks. Because the GEC and Compliance Fund have already paid these amounts to the United States Treasury, the amount due is \$0. In addition, the Final Audit Report concluded the GEC made expenditures in excess of the expenditure limitation totaling \$553,258, but these expenditures may be reimbursed by the Compliance Fund.

The Office of General Counsel recommends that the Commission grant the requested extensions of time. Although the Committees' letter does not discuss the specific reasons for the extension request, we believe that the request is reasonable because Counsel for the Committees must prepare responses to two Final Audit Reports simultaneously.^{2/} Accordingly, the responses would be due by close of business on March 1, 1995.

RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Grant the requests of the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc., and the Bush Quayle '92 Compliance Committee, Inc. for an additional 30 days to respond to the Final Audit Reports and initial repayment determinations; and
2. Approve the appropriate letter notifying the Committee of the Commission's decision.

Attachments

1. Letter from Thomas O. Barnett dated January 11, 1995.

^{1/} This amount will be adjusted if the the GEC reimburses the Primary Committee for general election expenditures paid for by the Primary Committee.

^{2/} We note that the Committees requested and were granted extensions of time to respond to the Interim Audit Reports.

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CABLE COVLING

THOMAS O. BARNETT

DIRECT DIAL NUMBER

12021 662-5407

Painter
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BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE 32-2-512 8880

TELEFAX 32-2 502-598

January 11, 1995

BY HAND

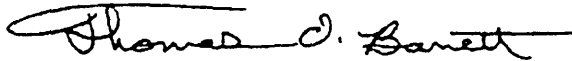
Kim L. Bright-Coleman
Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Final Audit Reports -- Bush-Quayle '92

Dear Ms. Bright-Coleman:

Confirming your conversation with Bobby Burchfield, this letter constitutes a formal request for a 30-day extension of time for Bush-Quayle '92 Primary Committee, Inc., Bush-Quayle '92 General Committee, Inc., and Bush-Quayle '92 Compliance Committee, Inc. (the "Committees") to comment on or respond to the final audit reports dated December 27, 1994, for each of the respective Committees. We calculate that the responses currently are due January 30, 1995, and that a 30-day extension would require the Committees to respond prior to or on March 1, 1995.

Sincerely,



Thomas O. Barnett

9597019424

Attachment 1

change

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Bush-Quayle '92 Primary Committee,)
 Inc., Bush-Quayle '92 General Committee,) Agenda Document #95-82
 Inc., and Bush-Quayle '92 Compliance)
 Committee, Inc. - Proposed Final)
 Repayment Determinations and Statement)
 of Reasons (LRA #425).)

CERTIFICATION

I, Delores Hardy, recording secretary for the Federal
 Election Commission open meeting on Thursday, August 3, 1995,
 do hereby certify that the Commission took the following
 actions with respect to Agenda Document #95-82:

1. Failed in a vote of 3-3 to pass a motion
 to approve the recommendations as submitted
 in Agenda Document #95-82, subject to
 including all 33 offices as primary
 qualified campaign expenses.

Commissioners Aikens, Elliott, and Potter
 voted affirmatively for the motion;
 Commissioners McDonald, McGarry, and
 Thomas dissented.

2. Failed in a vote of 3-3 to pass a motion to
 approve the recommendations, as submitted
 in Agenda Document #95-82.

Commissioners McDonald, McGarry, and Thomas
 voted affirmatively for the motion;
 Commissioners Aikens, Elliott, and Potter
 dissented.

(continued)

9507019410

Federal Election Commission
Certification for Bush-Quayle '92
Primary Committee, Inc., Bush-Quayle
'92 General Committee, Inc., and
Bush-Quayle '92 Compliance Committee,
Inc. - Proposed Final Repayment
Determinations and Statement of
Reasons (LRA #425).
Thursday, August 3, 1995

Page 2

3. Decided by a vote of 6-0 to approve the recommendations, as submitted in Agenda Document #95-82, except reduce the amounts, as appropriate, by the cost of the state offices which had been included in those numbers, pursuant to the meeting discussion.

Commissioners Aikens, Elliott, McDonald, McGarry, Potter and Thomas voted affirmatively for the decision.

Attest:

August 4, 1995
Date

Delores Hardy
Delores Hardy
Administrative Assistant

95070194

Press



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20542

DATE & TIME TRANSMITTED: MONDAY, AUGUST 14, 1995 11:00

BALLOT DEADLINE: THURSDAY, AUGUST 17, 1995 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

SUBJECT: PROPOSED FINAL REPAYMENT DETERMINATIONS
AND STATEMENT OF REASONS - BUSH-QUAYLE
'92 PRIMARY COMMITTEE, INC. BUSH-QUAYLE
'92 GENERAL COMMITTEE, INC., AND BUSH-
QUAYLE '92 COMPLIANCE COMMITTEE, INC.
(LRA #425). MEMORANDUM TO THE COMMISSION
DATED AUGUST 11, 1995.

I approve the recommendation(s)

I object to the recommendation(s)

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION

950701931



FEDERAL ELECTION COMMISSION

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

AUG 11 3 45 PM '95

August 11, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

FROM: Lawrence M. Noble *LMN by KBC*
General Counsel

Kim Bright-Coleman *KBC*
Associate General Counsel

Kenneth E. Kellner *KEK by KBC*
Assistant General Counsel

Delanie DeWitt Painter *DWP by KBC*
Attorney

Jane J. Whang *JW*
Attorney

SUBJECT: Proposed Final Repayment Determinations and
Statement of Reasons - Bush-Quayle '92 Primary
Committee, Inc., Bush-Quayle '92 General Committee,
Inc., and Bush-Quayle '92 Compliance Committee,
Inc. (LRA # 425)

I. INTRODUCTION

On August 3, 1995, the Commission approved the proposed Statement of Reasons supporting final repayment and payment determinations on the Bush-Quayle '92 Primary Committee ("the Primary Committee"), the Bush-Quayle '92 General Committee, Inc. ("the GEC") and the Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Fund") as submitted in Agenda Document #95-82. However, the Commission directed this Office to make specific amendments related to the Committees' state offices.^{1/} Attached for the Commission's approval is an amended draft Statement of Reasons supporting

^{1/} The attached Statement is being circulated for the Commission's vote in order for a certification containing the final repayment determination figures to be issued.

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the revised repayment determinations.² In addition to the specific changes directed by the Commission, other minor changes were made to make the draft consistent with the Commission's amendments.^{3/}

In the event that the Commission objects to this draft, we request that this document be placed on the open session agenda for August 17, 1995.

II. REVISED STATEMENT OF REASONS

On August 3, 1995, the Commission considered the draft Statement of Reasons and the Office of General Counsel's recommendations. Specifically, in the draft Statement of Reasons, this Office recommended that the Commission consider the expenditures for leased office space, equipment and materials associated with the 11 state offices discussed in the Larson and Dudley declarations to be qualified primary campaign expenses, but not revise the 50/50% allocation of expenditures related to the remaining 22 state offices. A motion to consider 100% of the expenditures related to all 33 state offices to be qualified campaign expenditures of the primary campaign failed by a three to three vote. Subsequently, a motion to approve this Office's recommendations also failed by a three to three vote. The affirmative vote of four members is required for the ~~Commission to take any action under the Presidential Primary Matching Payment Account Act or the Presidential Election Campaign Fund Act.~~ 2 U.S.C. § 437c(c). Therefore, the amounts of expenditures for leased space, equipment and materials related to all of the state offices^{4/} at issue totaling \$107,031 have been removed from the total amount of non-qualified campaign expenses.^{5/}

Based on this change, the amount of non-qualified campaign expenditures subject to repayment has been reduced to \$409,123 and the Primary Committee's pro rata repayment for the non-qualified campaign expenses has been reduced to

^{2/} Attachments 1-16 to the draft Statement were circulated to the Commission with Agenda Document #95-82, and are incorporated by reference with the attached Statement. The certification of the Commission's vote on August 3, 1995 is the only new attachment to this memorandum. See Attachment 17.

^{3/} The attached draft is marked to indicate where amendments have been made.

^{4/} The expenditures related to the national headquarters are not considered qualified campaign expenses.

^{5/} This figure reflects the total amount of expenditures for leased space, equipment and materials pertaining to the state offices. In the Final Audit Report, 50% of this amount was included as qualified primary campaign expenses.

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\$105,979. Moreover, the amount of matching funds that the Primary Committee received in excess of its entitlement has been reduced to \$216,853, based on the increased qualified campaign expenses. Therefore, we recommend that the Commission make final repayment determinations in the reduced amounts. The amount of the payment for stale-dated checks remains unchanged.

With respect to the GEC and Compliance Fund, the expenditures subject to the GEC's overall expenditure limitation have been reduced by a total of \$333,172, which reduces the amount in excess of the GEC's overall expenditure limitation to \$220,086. The draft Statement of Reasons recommends that the Compliance Fund reimburse the GEC in the amount of \$220,086, and submit documentation of the reimbursement to the Commission. The draft Statement of Reasons includes final determinations for the GEC's payment for stale dated checks and income and the Compliance Fund's payment for stale-dated checks. The amounts of these payments have not changed, and no additional payment is due from the GEC or Compliance Fund.

Therefore, the Office of General Counsel has prepared the attached draft Statement of Reasons supporting a final determination that the Primary Committee must repay \$323,832 (\$106,979 + \$216,853) to the United States Treasury. The draft Statement of Reasons also includes a final payment determination of \$19,194 for stale-dated checks, which the Committee has already paid to the United States Treasury. Moreover, the draft Statement of Reasons includes final determinations that the GEC must pay \$21,109 and the Compliance Fund must pay \$8,666 to the United States Treasury. The GEC and Compliance Fund have paid these amounts.

III. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Make a final determination that the Bush-Quayle '92 Primary Committee, Inc. must repay \$216,853 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1);
2. Make a final determination that the Bush-Quayle '92 Primary Committee, Inc. must repay \$106,979 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(2);
3. Make a final determination that the Bush-Quayle '92 Primary Committee, Inc. must pay \$19,194 to the United States Treasury pursuant to 11 C.F.R. § 9038.6;
4. Make a final determination that the Bush-Quayle '92 General Committee, Inc. must pay \$19,023 to the

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United States Treasury pursuant to 11 C.F.R.
§ 9007.6.

5. Make a final determination that the Bush-Quayle '92 General Committee, Inc. must pay \$2,086 to the United States Treasury pursuant to 11 C.F.R. § 9007.2(b)(4).
6. Make a final determination that the Bush-Quayle '92 Compliance Committee, Inc. must pay \$8,666 to the United States Treasury pursuant to 11 C.F.R. § 9007.6.
7. Recommend that the Bush-Quayle '92 Compliance Committee, Inc., reimburse \$220,086 to the Bush-Quayle '92 General Committee, Inc. and submit documentation of the reimbursement to the Commission within 30 days;
8. Approve the Statement of Reasons supporting the Final Determinations; and
9. Approve the appropriate letter.

Attachment
Statement of Reasons

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
President George Bush,)
Vice President Dan Quayle)
Bush-Quayle '92 Primary Committee, Inc.,)
Bush-Quayle '92 General Committee, Inc., and)
Bush-Quayle '92 Compliance Committee, Inc.)
Final Repayment Determinations)

STATEMENT OF REASONS

On _____, 1995, the Commission made a final determination that President George Bush and the Bush-Quayle '92 Primary Committee, Inc. ("the Primary Committee") must repay \$323,832 to the United States Treasury. The Commission's determination includes a pro rata repayment of non-qualified campaign expenses related to general election expenses in the amount of \$106,979. In addition, the Commission determined that the Primary Committee must repay matching funds received in excess of its entitlement in the amount of \$216,853. Finally, the Commission made a final determination that the Primary Committee must pay \$19,194 for stale-dated checks.^{1/} 26 U.S.C. §§ 9038(b)(1) and (2); see also 11 C.F.R. §§ 9038.2(b)(1) and (2). The Primary Committee has already made a payment of \$19,194 for the stale-dated checks. Therefore, the Primary

^{1/} Throughout this Statement of Reasons, "FECA" refers to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431-455, the "Matching Payment Act" refers to the Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031-9042, and the "Presidential Election Campaign Fund Act" refers to the Presidential Election Campaign Fund Act, 26 U.S.C. § 9001-9013.

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Committee is ordered to repay \$323,832 to the United States Treasury within 30 days of receipt of this determination. 11 C.F.R. § 9038.2(d)(2).

Moreover, on _____, 1995, the Commission made a final determination that President George Bush, Vice President Dan Quayle and the Bush-Quayle '92 General Committee, Inc. ("the GEC") must pay \$21,109 to the United States Treasury, representing a gain on an insurance settlement of \$2,086 and stale-dated checks totaling \$19,023. 11 C.F.R. § 9007.6; § 9007.2(b)(4). The Commission also made a final determination that the Bush-Quayle '92 Compliance Committee, Inc. ("the Compliance Fund") must pay \$8,666 for stale-dated checks. The GEC and Compliance Fund have paid these amounts. Accordingly, ~~no additional payment from the GEC or Compliance Fund is~~ required. Moreover, the Commission recommends that the Compliance Fund reimburse \$220,086 to the GEC and submit documentation of the reimbursement to the Commission within 30 days.

This Statement of Reasons sets forth the legal and factual bases for the final repayment determinations and payment determinations for the Primary Committee, GEC and Compliance Fund. 11 C.F.R. § 9038.2(c)(4).

I. BACKGROUND

President George Bush (the "Candidate") was a candidate for the Republican presidential nomination in 1992. The Bush-Quayle '92 Primary Committee, Inc. was his authorized committee for the primary campaign. The Primary Committee received \$10,658,521 in

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public funds under the Matching Payment Act for use in the primary campaign. President Bush's date of ineligibility was August 20, 1992, the date of his nomination as the Republican party nominee. Following the Candidate's date of ineligibility, the Commission conducted an audit and examination of the Primary Committee's receipts, disbursements and qualified campaign expenses, as provided in the Matching Payment Act and the Commission's regulations. 26 U.S.C. § 9038(a); 11 C.F.R. § 9038.1(a)(1).

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President Bush and Vice President Dan Quayle were the Republican party nominees for President and Vice President for the 1992 general election. The authorized committee of President Bush and Vice President Quayle for the general election campaign was the Bush-Quayle '92 General Committee, Inc., and the Bush Quayle '92 Compliance Committee, Inc. was the campaign's legal and accounting compliance fund. The GEC received \$55,240,000 in federal funds for the general election campaign under 26 U.S.C. § 9006. Pursuant to 26 U.S.C. § 9007(a), the Commission conducted an audit and examination of the GEC and Compliance Funds' receipts, disbursements, and expenses.

The Commission approved the Interim Audit Reports on the Primary Committee, GEC, and Compliance Fund on March 24, 1994. 11 C.F.R. §§ 9038.1(c)(1), 9007.2(c); Attachments 1 and 2. The Interim Audit Reports contained the Commission's preliminary calculations of the amounts due to the United States Treasury. The Primary Committee responded to the Interim Audit Report on

July 6, 1994.^{2/} Attachment 3. The GEC and Compliance Fund responded to the Interim Audit Report on the same date. Attachment 4.

After considering the Committees' submissions in response to the Interim Audit Reports, the Commission approved the Final Audit Reports and initial repayment determinations on December 27, 1994. See 11 C.F.R. §§ 9038.1(c)(3) and (d); 9007.2(c); Attachments 5 and 6. The Final Audit Report on the Primary Committee concluded that the Primary Committee incurred \$307,249 in non-qualified campaign expenses that benefited the general election campaign.^{3/} The Commission made an initial determination that the Primary Committee must repay a pro rata portion of these non-qualified campaign expenses totaling \$195,224 to the United States Treasury.^{4/} 26 U.S.C.

§ 9038(b)(2); 11 C.F.R. § 9038.2(b)(2). In addition, the Final Audit Report contained an initial repayment determination in the amount of \$485,631 for matching funds that the Primary Committee received in excess of its entitlement. 26 U.S.C. § 9038(b)(1);

2/ On May 3, 1994, the Commission granted requests by the Primary Committee and the GEC for 45 day extensions of time to respond to the Interim Audit Reports.

3/ The GEC reimbursed \$37,301 of this amount to the Committee.

4/ The Commission's regulations provide that the amount of the repayment shall bear the same ratio to the total amount of the non-qualified campaign expenses as the amount of matching funds certified bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility. 11 C.F.R. § 9038.2(b)(2)(iii). Thus, the Primary Committee's repayment ratio for non-qualified campaign expenses is 26.1483%.

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11 C.F.R. § 9038.2(b)(1). Finally, the Commission made an initial determination that the Primary Committee must pay \$19,194 to the Treasury for stale-dated checks pursuant to 11 C.F.R. § 9038.6. The Primary Committee made this payment prior to the initial determination.^{5/}

The Final Audit Report on the GEC and Compliance Fund contained initial determinations that the GEC pay \$21,109 to the United States Treasury, representing a gain on an insurance settlement of \$2,086 and stale-dated checks totaling \$19,023. 11 C.F.R. §§ 9007.2(b)(4); 9007.6. The Commission also made an initial determination that the Compliance Fund must pay \$8,666 for stale-dated checks. The GEC and Compliance Fund have paid these amounts. The Final Audit Report further concluded that, the GEC exceeded its overall expenditure limitation by \$553,258.^{6/} The Commission, however, recognized that the Compliance Fund could reimburse the GEC for the excessive amount and eliminate any resulting repayment. Thus, the Final Audit Report stated that the Compliance Fund should reimburse the GEC and provide the Commission with documentation of the reimbursement, but did not include an initial repayment determination for this amount.

5/ The Primary Committee also made a payment to the United States Treasury in the amount of \$141,801 for unresolved excessive contributions.

6/ The Commission considered the amounts of non-qualified campaign expenses paid by the Primary Committee related to the general election to be general election expenditures and applied them to the GEC's expenditure limitation.

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The Primary Committee disputed the Commission's initial repayment determinations in its written response submitted on March 1, 1995.^{7/} Attachment 7. In its response, the Primary Committee requested the opportunity to make an oral presentation before the Commission with respect to the repayment determinations pursuant to 11 C.F.R. § 9038.2(c)(3). On March 14, 1995, the Commission granted the Primary Committee's request for an oral presentation.

The GEC also filed a response on March 1, 1995, and requested an oral presentation pursuant to 11 C.F.R. § 9007.2(c)(3).^{8/} Attachment 8. The Commission's Audit Division analyzed both responses in a memorandum dated May 4, 1995. Attachment 9. On May 10, 1995, the Commission granted the GEC's request for a joint oral presentation with the Primary Committee.

The Primary Committee and the GEC made a joint oral presentation on May 17, 1995. Attachment 10. On May 24, 1995, the Primary Committee and GEC submitted additional materials regarding matters addressed during the oral presentation. Attachment 11. The Commission's Audit Division analyzed the additional submission in a memorandum dated July 14, 1995. Attachment 12.

^{7/} The Commission granted both Committees' requests for 30 day extensions of time to respond to the Final Audit Reports on January 26, 1995.

^{8/} The GEC's response incorporated the Primary Committee's response by reference, and primarily addressed the issue of general election expenditures paid by the Primary Committee. This issue does not result in a repayment by the GEC.

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The Commission considered all materials provided by the Committees during the audit and in response to the Interim Audit Reports and the Final Audit Reports, including the oral presentation, and documentation submitted by the Committees following the oral presentation, in reaching its repayment determinations.

II. NON-QUALIFIED CAMPAIGN EXPENSES -- GENERAL ELECTION EXPENDITURES PAID BY PRIMARY COMMITTEE

A. BACKGROUND

In the Final Audit Report on the Primary Committee, the Commission made an initial repayment determination of \$195,224 based on a pro rata portion of non-qualified campaign expenses related to the general election campaign. The Primary Committee paid for certain expenditures that appeared to benefit the

Candidate's general election campaign, including polling, focus group surveys, direct mail, list rentals, shipping and materials, print media services, leased office space, and equipment. These expenditures were incurred prior to the Candidate's date of ineligibility, but after the state primary elections and caucuses.⁹ The Primary Committee and the GEC allocated expenditures between the primary and general elections based on whether they were incurred and used before or after August 20, 1992, the Candidate's date of ineligibility.

Specifically, the expenditures include polls and focus group surveys that asked questions about President Bush, the

⁹ State primary elections or caucuses were held through June 9, 1992. The Candidate's date of ineligibility was August 20, 1992.

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Democratic nominee Bill Clinton, and independent candidate Ross Perot. The invoices for these polls were dated between June 26, 1992 and August 31, 1992. For example, one California statewide poll asked voters to rate the probability that they would vote for Bush, Clinton or Perot in the general election. Attachment 15. Similarly, a New Jersey poll conducted in late July and mid-August asked individuals about the Candidate's job performance, whether "things in the country are generally going in the right direction," whom they would vote for in the general election, and whether Bush or Clinton would do a better job handling certain issues. Id.

In addition, the Primary Committee paid for direct mail pieces that featured pictures of President Bush and Bill Clinton and comparisons of their positions and record on various issues.

For instance, a letter from Marilyn Quayle dated August 4, 1992 discussed kicking off the re-election campaign and included campaign materials, a brochure comparing the two candidates and a Volunteer Hotline number active through Labor Day. Attachment 13. The Primary Committee also paid for advertisements related to the general election campaign. Most notably, the Primary Committee paid for a full page advertisement in five newspapers, including USA Today, appealing for the votes of Perot supporters after Ross Perot withdrew from the race. Attachment 14.

The Primary Committee re-opened 33 state offices in 32 states after the date of the state primary or caucus, in July and August, 1992. The Primary Committee paid the rent for these offices through August 20, 1992. For example, the Connecticut

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primary was on March 24, 1992, and the state office was closed on March 28, 1992, but re-opened from July 20, 1992 until November 19, 1992. Moreover, the Primary Committee purchased and leased computer equipment and software; again, the Primary Committee paid for equipment and software purchased before August 20, 1992, and payments for leases were divided between the Primary Committee and the GEC based on that date. In addition, the Primary Committee purchased and shipped campaign materials such as flags, bumper stickers, hats, pins, signs, brochures and shirts to state offices. The Primary Committee paid the costs incurred for purchasing and shipping these materials up to and including August 20, 1992.

In the Final Audit Reports on the Primary Committee and the GEC and Compliance Fund, the Commission allocated the apparent general election expenses approximately 50/50% between the Primary Committee and the GEC. Consequently, the 50% allocated to the Primary Committee are qualified primary campaign expenses not subject to repayment. The Commission concluded that the Primary Committee should seek reimbursement from the GEC for the remaining \$746,602 in expenditures related to the general election. Until the GEC reimburses these expenditures, they are non-qualified campaign expenses subject to repayment. Thus, the Commission made an initial repayment determination that the Primary Committee must repay \$195,224, based on a pro rata portion of the non-qualified campaign expenses.

Moreover, in the Final Audit Report on the GEC and Compliance Fund, the Commission applied the amounts of general

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election expenditures paid by the Primary Committee to the GEC's overall expenditure limitation. The Commission concluded that the GEC exceeded its overall expenditure limitation by \$553,258. Since the Compliance Fund may reimburse the GEC for the excessive expenditures, the Commission did not make an initial repayment determination for this amount. Nevertheless, any change in the amount of non-qualified campaign expenses related to the general election paid by the Primary Committee will result in an equivalent change to the GEC's expenditures subject to the overall limitation. Further, any change to the amount of general election expenditures subject to the GEC's overall expenditure limitation would change the amount of the necessary Compliance Fund reimbursement.

B. SUMMARY OF COMMITTEE RESPONSES

In their written responses to the Final Audit Reports and oral presentation, the Committees argue that the expenditures at issue were legitimate qualified campaign expenses of the primary campaign.^{10/} Attachments 7, 8, 10 and 11. The Committees contend that the Commission should use a "bright line" approach based on the Candidate's date of ineligibility, and deem all expenditures incurred and used before the date of nomination to be qualified campaign expenses of the Primary Committee. Moreover, they offer legal and practical reasons why the Commission's division of the expenditures between primary and general election

^{10/} In its written response, the GEC incorporates the Primary Committee's arguments by reference. Thus, citations to the Primary Committee's written response, represent the arguments of both the Primary Committee and the GEC.

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campaigns at the Final Audit Report stage is inappropriate. Finally, the Committees contend that even if the Commission does not adopt a "bright line" standard, the expenditures were qualified campaign expenses of the Primary Committee because they were made in connection with the Candidate's campaign for the Republican nomination.

Citing the language of the Matching Payment Act and the Commission's regulations, the Committees argue that the expenditures at issue meet the legal requirements of the term "qualified campaign expenses" as delineated at 26 U.S.C. § 9032(9) and 11 C.F.R. § 9032.9 because the expenditures were made within the time period of the candidate's eligibility and "had a direct and substantial connection to the campaign for the nomination." Attachment 7 at 3, Attachment 10 at 8-11. During the oral presentation, Counsel to the Committees defined this "bright-line test" as: "expenses incurred prior to the convention are in connection with the primary, unless they are for goods and services to be used during the general election period." Attachment 10 at 60. In determining whether an expenditure is "in connection with" the primary, the Committees contend that "the standard is use, not benefit." Id. at 9-10. The Committees base this "much less stringent test" on their interpretation of the language of the Presidential Election Campaign Fund Act and Commission regulations governing general

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election expenditures.^{11/} Id. Moreover, the Committees argue that the expenditures are not qualified campaign expenses of the general election because they were not incurred within the general election expenditure report period and were not for services, property or facilities to be used during the expenditure report period. See 11 C.F.R. §§ 9002.11(a)(2); 9003.4; Attachment 10 at 9-10.

As support for their position, the Committees argue that the Commission applied a "bright line" test in its decision in the Reagan Bush '84 Primary Committee audit. See Final Audit Report on Reagan Bush '84 Primary (approved July 7, 1986). In addition, the Committees cite several advisory opinions, Advisory Opinion ("AO") 1975-9 and AO 1978-99, to support their contention that an expenditure need not exclusively benefit the campaign for nomination to be a qualified campaign expense. Further, the Committees argue that the Commission applied a 50/50% split that had never been applied before. The Committees believe that any new standard should only be applied prospectively, and noted that the Commission was reviewing this issue in a rulemaking. See Notice of Proposed Rulemaking ("NPRM") 59 Fed. Reg. 51006 (October 4, 1994). During the oral

^{11/} Specifically, the Committees note that 26 U.S.C. § 9002(11) defines a general election qualified campaign expense as an expense "incurred within the expenditure report period" or "incurred before the beginning of such period to the extent such expense is for property, services or facilities used during such period." See 11 C.F.R. § 9002.11(a)("to be used during"); 11 C.F.R. § 9003.4 ("to be used in connection with his or her general election campaign").

presentation, Counsel to the Committees referred to proposals to include certain "bright line" standards in the rulemaking which was ongoing at that time. See e.g., Attachment 10 at 17-19.

In support of their argument that the expenditures were qualified campaign expenses of the primary campaign, the Committees submitted additional materials to demonstrate that the expenditures were part of an overall effort to shore up support for the Candidate's nomination at the Republican National Convention ("the Convention"). The Committees provided declarations from Mary Matalin and David Carney, political directors of the primary campaign, describing campaign developments and strategy prior to the Convention during the summer of 1992.¹² Attachments 3, at 60-65 and 7, at 20-23.

According to these individuals, certain expenditures were part of a pre-Convention strategy intended to combat dissension within the party, improve the Candidate's standing in the polls to convince Convention delegates of the viability of President Bush's candidacy, and build excitement for the Convention.

The Matalin declaration notes that prior to the Convention, President Bush was substantially behind the Democratic nominee in the polls and faced opposition from within his own party, including calls for him to change his Vice Presidential running mate, or to step down himself, and disputes over platform issues such as abortion. Attachment 3 at 60-65. The Matalin

¹² The Committees refer to the declaration by Ms. Matalin attached to the response to the Interim Audit Report, which is incorporated by reference in the response to the Final Audit Report. See Attachment 3 at 60-65.

declaration also describes how polls and other materials were used to solidify Convention delegate support for the Candidate by demonstrating his appeal to the overall electorate. Id. Similarly, David Carney states that campaign activity during the period between the primaries and the Convention was intended to build support for the Candidate at the Convention, and avoid conflicts over the party platform. Attachment 7 at 20-23. The attachments to the Committees' responses also include a number of news articles which describe the political climate of this period, and a copy of the Republican Party Platform. The Committees contend that because delegates were not legally bound to cast their votes for him, President Bush ultimately had to convince Convention delegates that if nominated, he would be successful in the general election. Attachment 3 at 60-65; Attachment 7 at 13, 20-23.

The Committees assert that particular expenditures at issue were "integral parts of the campaign's efforts to forge an acceptable resolution of the platform issues and to bolster support of the Bush-Quayle ticket at the Convention." Attachment 7 at 13-14; Attachment 10 at 20-23, 47-50. For example, expenditures for polls helped the campaign with the campaign platform and the question of whether to keep Vice President Quayle on the ticket. Id. Moreover, the Committees argue that the polls at issue here, which asked voters whether they would vote for President Bush, Bill Clinton, or Ross Perot in the November election, were similar to polls conducted

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throughout the campaign, including polls as early as December, 1991.^{13/}

The Committees also assert that the polls and focus groups did not provide a significant benefit to the general election campaign because numerous independent organizations have tracking polls of presidential campaigns, and "the value of polling information declines precipitously." Attachment 10 at 20. Since the rapid obsolescence of polls limited their usefulness to 10-14 days, the Committees contend, the polls at issue, conducted in June and July, 1992, would have had no significant value to the campaign after August 20, 1992.^{14/}

The Committees contend that expenditures for state offices were intended to coordinate planning for the Convention, monitor delegates, and "counter insurgencies on platform issues."^{15/} Attachment 7 at 14; Attachment 10 at 24-26, 72-75. The Committees submitted declarations from Chris Dudley, Executive Director for the state of Connecticut, and Jeffrey T. Larson, the Regional Political Advisor for the Western Region in support of their arguments. Mr. Larson was responsible for state

^{13/} The Committees supplied copies of polls taken in late 1991 and January, 1992 which they contend contain similar questions to the polls at issue.

^{14/} In addition, the Committees cite 11 C.F.R. § 106.4(g), which reduces the value of poll results by 50% 15 days after receipt, as evidence that the Commission acknowledges the rapid obsolescence of polls. The Committees argue that a 50/50% split does not take into account the obsolescence of the polls.

^{15/} The Committees note that salaries of staff who worked in the state offices are not at issue. Attachment 11 at 4.

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offices in the 12 states in the Western region. Attachment 11 at 37, and 40-41. The Dudley declaration states that activity in the Connecticut state office was related to the state convention and preparations for the national Convention such as monitoring delegates and platform issues. Attachment 11 at 37. Similarly, the Larson declaration states that activity in state offices in the Western Region was "an integral part of the preparation and build-up" for the Convention, and included selecting individual delegates; resolving challenges; preparing for and participating in state party conventions held in June and July, 1992; organizing and monitoring the state delegation; and logistical and administrative planning for the Convention.^{16/} Attachment 11 at 40-41.

~~With respect to equipment, the Committees contend that~~
there is no evidence that the equipment and campaign materials were not used by the primary campaign prior to the Candidate's date of ineligibility.^{17/} Attachment 10 at 6. The Committees assert that AO 1978-99 provides a basis to allocate all materials received by a state office prior to the date of ineligibility as primary expenditures. Finally, the Committees

^{16/} The Committees did not submit declarations or other evidence concerning the remaining 22 of the 33 state offices at issue.

^{17/} Moreover, the Committees contend that the Commission treated certain equipment purchases by the Clinton for President 1992 Primary campaign as primary expenditures sold to the general election campaign at 60% of the purchase price, which, the Committees argue, differs from the Commission's treatment of the Primary Committee's equipment expenditures.

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argue that the direct mail and advertisements in dispute were targeted at Republicans and intended to solidify support for the Candidate at the Convention. Attachment 10 at 23.

C. ANALYSIS

Expenditures made in connection with a primary candidate's campaign for nomination prior to the candidate's date of ineligibility are qualified campaign expenses provided that the expenditures do not constitute a violation of the law. 11 C.F.R. § 9032.9(a). Expenses incurred after a candidate's date of ineligibility are non-qualified except to the extent permitted under 11 C.F.R. § 9034.4(c)(3) for winding-down costs. 11 C.F.R. § 9034.4(b)(3). In addition, the Commission's regulations permit general election campaigns to incur expenses for property, services, and facilities such as polling, accounting systems, and organizational planning to be used during the expenditure report period prior to the beginning of the expenditure report period. 11 C.F.R. § 9003.4(a)(1).^{18/}

1. "Bright Line" Test

The Committees' reliance on their proposed "bright line" test is misplaced. Contrary to the Committees' assertions, prior to the Commission's recent revision of the public financing regulations for the 1996 presidential election cycle,

^{18/} This provision was "designed to permit a candidate to set up a basic campaign organization before the expenditure report period begins." Explanation and Justification, 45 Fed. Reg. 43375 (June 27, 1980). While the regulation enumerates examples of permissible expenditures incurred prior to the expenditure report period such as polling, these examples are not all-inclusive.

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the Commission did not apply a "bright line test" based solely on the date of ineligibility to determine if an expenditure is a primary qualified campaign expense.^{19/} Rather, the Commission looked at both the timing and the purpose of expenditures to determine whether they were qualified campaign expenditures.

The Committees' "bright line" standard fails to satisfy both of the two key elements for assessing qualified campaign expenses. See 26 U.S.C. § 9032(9); 11 C.F.R. § 9032.9(a). In addition to being incurred prior to the candidate's date of ineligibility, to be qualified, an expenditure must also be made "in connection with" a primary candidate's campaign for the nomination. 11 C.F.R. § 9032.9(a). The Committees' interpretation of the "in connection with" requirement relies on whether an expenditure is "used" prior to the candidate's date

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19/ The Commission recently adopted new "bright line" rules limited to "certain specific types of expenditures that may benefit both the primary and the general election. These include expenditures for polling; state or national offices; campaign materials; media production costs; campaign communications; and campaign-related travel costs." Public Financing of Presidential Primary and General Election Candidates: Final Rule, Explanation and Justification 60 Fed. Reg. 31854 at 31867 (June 16, 1995). The new rules are not uniformly based on the date an expenditure is incurred; while polling is allocated based on the date results are received, media production costs for media aired both before and after the candidate's nomination would be split 50-50% between the general and primary committees. *Id.* These revisions are new rules for the 1996 election cycle, not a codification of prior Commission policy in this area. Indeed, the adoption of the new rules necessitated the revision of 11 C.F.R. § 9003.4(a) to reflect the new rules for polling expenses. *Id.* at 15.

of ineligibility.^{20/} It is unclear, however, what would constitute sufficient "use" for an expense to be qualified under this standard. Contrary to the Committees' contention, the mere receipt of equipment or publication of an advertisement is insufficient to establish that an expenditure was used "in connection with" the primary campaign. Rather, an expenditure must be intended to have actual substantive usefulness to the primary campaign to be a qualified campaign expenditure made "in connection with" the primary campaign.

The correct standard for determining whether an expenditure is a primary qualified campaign expense relies on both the timing of the expenditure and the nature of the expenditure. See AO 1984-15. To be "in connection with" the primary campaign, a qualified campaign expenditure must be primarily related to the primary campaign. A portion of an expenditure

^{20/} The Committees base this argument on the definition of a qualified campaign expense for the general election at 26 U.S.C. § 9002(11), which provides, in part, that the expenditure may be incurred before the beginning of the expenditure report period if it is "for property, services or facilities used during such period." See 11 C.F.R. § 9002.11; § 9003.4. This definition does not apply to the issue of whether the expenditures are qualified campaign expenditures of the primary campaign. Nevertheless, the language of the cited statute and regulations also requires that a general election qualified campaign expense have some substantive relationship to the candidate's general election campaign. The Presidential Election Campaign Fund Act, at 26 U.S.C. § 9002(11), states that a qualified campaign expense is an expense incurred "by the candidate of a political party for the office of President to further his election to such office or to further the election" of his Vice Presidential running mate, "or both." See 11 C.F.R. § 9002.11. The phrase "to further his election" is equivalent to the "in connection with" language in the Matching Payment Act. 26 U.S.C. § 9032(9).

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and general elections, as a primary election debt. This opinion does not address whether such a debt would be a qualified primary campaign expense in a publicly financed campaign, but only whether an expenditure may be considered part of a committee's primary debt for Title 2 reporting purposes.

Indeed, the Commission has more recently confirmed that determining whether an expenditure is related to the primary or general election is based on both the timing and the purpose of the expenditure. See AO 1984-15 (Commission considered whether the purpose of expenditures was to influence the general election campaign in order to determine if the expenditures were coordinated party expenditures.) AO 1984-15, which involves a publicly financed presidential campaign and expenditure limitations, concluded that in situations involving coordinated party expenditures, not only the timing, but also the purpose of expenditures should be considered when determining to which election an expenditure should be attributed. While "timing is relevant," coordinated party expenditures are not restricted to the time period between the nomination and the general election, and it would be inconsistent with the purpose of the limitation on coordinated expenditures to "permit expenditures made prior to nomination but with the purpose and effect of influencing the outcome of the presidential general election to escape this limitation." See AO 1984-15.

Moreover, the "bright line" standard proposed by the Committees is inconsistent with section 9003.4(a)(1) of the regulations applicable to the 1992 election cycle, which permits

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general election campaigns to incur certain expenses prior to the date of the nomination. This regulation would not be necessary if all expenditures made prior to the date of ineligibility were qualified campaign expenses of the primary committee, even if the expenditures related to the general election.

2. Analysis of Particular Expenditures

The Committees' alternative argument is that even absent a "bright line" rule, the expenditures at issue were made "in connection with" the primary election. In support of their argument that internecine party conflicts seriously challenged President Bush's nomination and that the expenditures at issue were intended to dispel dissension, build excitement for the ~~Convention and convince delegates of the viability of the~~ Candidate in order to secure his nomination, the Committees provided declarations from four campaign officials. During the Commission's consideration of the Final Audit Reports and initial repayment determinations, the Commission acknowledged that many of the expenditures could have had some primary election component, and adopted a 50/50% division of the expenditures at issue to reflect the dual purpose of the

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expenditures.^{21/} In reaching its final determinations, the Commission reviewed the entire record for each category of expenditures separately to determine which, if any, expenditures were qualified primary campaign expenses. Based upon its review, the Commission has determined that certain expenditures for polling and focus groups were qualified campaign expenditures of the Primary Committee. Moreover, since the Commission was unable to reach an agreement of four of its members concerning the leased space, equipment and materials related to the state offices, those expenditures have been removed from the total of non-qualified campaign expenditures. Accordingly, the Commission has revised the amount of non-qualified campaign expenditures.

a. Polling

The Committees have provided evidence from campaign operatives that President Bush trailed the Democratic nominee in

^{21/} The Commission's regulations use similar solutions for other allocation issues where expenditures have a dual purpose. For example, the regulations permit primary campaigns to treat 50% of expenditures as exempt fundraising expenditures not subject to the state expenditure limitations in order to recognize the fundraising component in all expenditures. 11 C.F.R. § 110.8(c)(2); see also AO 1988-6 (Gore Presidential Committee could allocate 50% of television advertisement containing a solicitation as exempt fundraising expenditure). Moreover, the Commission's recent revision of the public financing regulations discussed herein applies a 50/50% allocation for media production costs. Public Financing of Presidential Primary and General Election Candidates: Final Rule, Explanation and Justification 60 Fed. Reg. 31854 (June 16, 1995). Finally, the Commission used the same approach in the Clinton for President audit. See Final Audit Report on Clinton for President Committee (approved December 27, 1994); Final Audit Report on Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund (approved December 27, 1994).

the polls prior to the Republican convention, and used polling to convince delegates of the viability of his candidacy. See Attachment 3 at 60-65; Attachment 7 at 20-23. Poll results could have been used, as the Committees argue, to get voter input on crucial issues such as the party platform and the question of whether to keep Vice President Quayle on the ticket.

In her declaration, Mary Matalin stated that the Primary Committee sought to persuade "Republican voters and delegates to the Convention that the Bush-Quayle ticket represented the correct policies and values and that the Bush-Quayle ticket was likely to win the election in November." Attachment 3 at 60. Thus, "our basic purpose in conducting these polls was to enable the Primary Committee to show Republican voters that George Bush could beat a likely Democratic nominee in November." Id. at 61.

Ms. Matalin further stated:

Polls, surveys and focus groups were conducted to determine why President Bush had fallen so far behind Bill Clinton in the standings and how the Primary Committee could bolster his support in the polls. At that point in time, our principal concern was to convince the Convention delegates that President Bush and Vice President Quayle would be strong candidates in the Fall.

Id. at 63 (emphasis in original).

Similarly, David Carney's declaration states that "the campaign faced one of the most difficult national conventions in recent memory," including an "open revolt" by certain Republicans in July and August, 1992. Attachment 7 at 20. The campaign tried to:

diffuse these intra-party disputes and to ensure the proper atmosphere and results at the Convention. . . . the most critical question for the delegates was whether the candidates could win in November. Thus, raising the

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Bush-Quayle ticket's standing in the polls before the Convention was a primary goal and one that was directly connected to the campaign for the nomination. The polls, surveys, and focus groups also provided guidance on platform issues. . . . [but] provided little, if any benefit to the general election campaign polling information more than about two weeks old would have been essentially worthless to the campaign.

Attachment 7 at 20-21.

The polls at issue contain some similar questions to polls the Primary Committee conducted early in the primary campaign, such as questions asking voters to choose between potential party nominees. While there are some significant differences between the polls at issue and earlier polls, such as the focus of the polls and specific questions, the similarity of the questions about voter preferences supports the Committees' contention that the polling expenses were primary qualified campaign expenses.

Moreover, the Committees contend that the polling expenditures provided only limited, insignificant benefits to the general election campaign because numerous independent organizations maintain tracking polls of presidential campaigns and the value of polling results "declines precipitously" after less than two weeks. See Attachment 10 at 20, 48. The Committees correctly note that the Commission has explicitly recognized the decrease in value of polling results after fifteen days in the regulations at 11 C.F.R. § 106.4(g). Since the rapid obsolescence of polling results limits their usefulness after 10-15 days, the polls conducted in mid-summer of 1992 would have had little value after the Candidate's date

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of ineligibility on August 20, 1992. Therefore, based on the foregoing, the Commission has determined that the polling and focus group expenditures totaling \$614,108.33 were made in connection with the primary campaign, and thus, were qualified campaign expenses. As a result, these expenditures are not subject to repayment.

b. State Offices

The Committees have also submitted evidence to support their contentions that state offices were used to plan for the Convention, disseminate information to delegates, and monitor delegates and platform issues. See Attachment 3 at 60-65; Attachment 7 at 14, 20-23; Attachment 10 at 24-26, 72-75; Attachment 11 at 37, 40-41. Specifically, the Committees submitted declarations from two campaign officials who worked with 13 state offices, which address activities in 11 of the 33 offices at issue.

The Dudley declaration describes how activity in the Connecticut state office was related to the state convention and preparations for the national Convention: "My first, and most important, task was to prepare for the state convention From the time of my arrival in Connecticut in mid-July and up to and including the National Convention in Houston, our state office was extensively involved in monitoring the delegate ratification process and maintaining contact with the state delegation." Attachment 11 at 37. Moreover, the declaration describes how state office staff "gathered information on the delegates and issues" related to the party platform, such as the

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abortion issue, and provided information to the national headquarters.^{22/} Id.

Similarly, the Larson declaration describes activity in 12 state offices in the Western Region, of which 10 are relevant to the non-qualified expenditure repayment determination, and concludes that "the campaign could not have prepared for the National Convention without the active and extensive support provided by the state campaign office personnel." Attachment 11 at 41. Mr. Larson stated: "the state offices were the point of contact between the national campaign and the state delegations and engaged in a wide range of activities." Id. State office staff "helped to prepare for the state conventions and attended the conventions as active participants" and were involved in selecting delegates who would "support President Bush generally, but who also would support his views on various platform issues." Id. Thus, they "were involved in resolving challenges to the state delegations."^{23/} Id. Moreover, the state offices "were extensively involved in the logistical and administrative planning" for the Convention. Attachment 11 at 41. In addition Mr. Larson states that state office staff:

met with delegates and helped to organize the delegation, . . . [and] were the eyes and ears of the national

^{22/} For example, "Connecticut was a key state in the struggle to avoid a floor fight" on the abortion issue, and the state office monitored the state delegation and provided information to national headquarters through the Convention. Id.

^{23/} Mr. Larson discussed several instances where supporters of other presidential candidates challenged delegate selections, and attached documentation of these challenges to his declaration. Attachment 11 at 41-47.

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campaign. State campaign personnel would meet with the state delegates and help to monitor their views on issues of importance to the campaign. The campaign was particularly concerned that dissension among the delegates would lead to a disastrous floor fight at the Convention on the Party Platform. Accordingly, the campaign spent large amounts of time and effort soliciting the views of the delegates and to persuade them to support the positions espoused by the campaign.

Id.

In a memorandum dated July 28, 1995 accompanying a draft Statement of Reasons, the Commission's Office of General Counsel recommended that the Commission determine that the expenditures for leased office space, equipment and materials associated with the 11 state offices discussed in the Larson and Dudley declarations totaling \$10,734.64 are qualified primary campaign expenses which are not subject to repayment. However, ~~the Office of General Counsel did not recommend that the~~ Commission change the 50/50% allocation of expenditures related to the remaining 22 state offices. On August 3, 1995, the Commission considered the draft Statement of Reasons and the Office of General Counsel's recommendations. A motion to consider 100% of the expenditures related to all 33 state offices to be qualified campaign expenditures of the primary campaign failed by a three to three vote. Subsequently, a motion to approve the Office of General Counsel's recommendations also failed by a three to three vote. An affirmative vote of four members is required for the Commission to take any action under the Presidential Primary Matching Payment Account Act or the Presidential Election Campaign Fund Act. 2 U.S.C. § 437c(c). Therefore, the amounts of expenditures for leased space, equipment and materials related to all of the state offices at issue totaling \$107,031 have been

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removed from the total amount of non-qualified campaign expenses.^{24/}

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c. Other Expenses

The Commission has also determined that the Committees have not provided sufficient evidence to demonstrate that the remaining expenditures were made in connection with the primary campaign. Indeed, the direct mail and advertising expenditures have no apparent connection to the nomination, but appear instead to be related to the general election.^{25/} For example, the Primary Committee paid for a full page advertisement in five newspapers on July 29, 1992 after independent candidate Ross Perot announced he would not run for President. Attachment 14. The advertisement, written as a letter from President Bush to Perot supporters, appealed for their votes in the general election: "in these days following [Perot's] withdrawal, I'm asking for your vote. Give me the chance to earn it. Over the next few months, study the two remaining candidates." Id. Although this advertisement appeared before the Convention, the

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^{24/} This figure represents the total amount of expenditures for leased space, equipment and materials with respect to the state offices. In the Final Audit Report, 50% of this amount was considered to be qualified primary campaign expenses.

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^{25/} While direct mail and advertising are not specifically listed as permissible expenditures by section 9003.4(a)(1), that section should be interpreted to permit a committee to incur expenses clearly related to setting up the general election campaign, including direct mail and advertising intended to influence potential supporters and volunteers for the general election campaign.

timing and nature of the advertisement indicates that it was intended to sway Perot supporters for the general election.

In their written responses and the oral presentation, the Committees were unable to demonstrate how this advertisement, targeted at supporters of an independent candidate, was connected to the Convention. At the oral presentation, Counsel for the Committees stated:

the Perot advertisement was intended to shore up Republican support at the convention in light of Ross Perot's impact on the race. When Mr. Perot withdrew, he had eroded the Republican base, and the advertisement in USA Today and other papers was intended to address principally the Republicans who had defected to Ross Perot.

Attachment 10 at 24. It is unclear from the record how this advertisement could affect support for the Candidate at the Convention, since it is unlikely that any Perot supporters would be Convention delegates. Moreover, the language of the advertisement explicitly refers to the general election, not the Convention.

Similarly, the Committees' argument that the direct mail at issue was targeted at Republicans does not provide a sufficient connection to the primary campaign or the Convention. The direct mail featured pictures of Bush and Clinton and discussions of their positions and records on issues. See Attachments 13 and 15. For example, the "Marilyn Quayle" letter sent on August 4, 1992 discussed kicking off the re-election campaign, and provided a volunteer hotline number active through Labor Day. The letter states: "[a] true grassroots campaign organization that includes you will make the difference in

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November. . . . Working together, we will have a victory in November." ^{26/} Attachment 13 at 2. The Committees contend that the direct mail pieces were "intraparty mailing[s]" to Republicans rather than the general public, and that the Marilyn Quayle letter "asked putative supporters of the President . . . for volunteer help with the convention and other activities." Attachment 10 at 23.

Even if the mailings were only sent to Republicans, the content of the mailings appears to be general election campaign literature comparing the positions of President Bush and Governor Clinton, the general election candidates. There is no evidence that the direct mail was targeted at Convention delegates. Moreover, the Marilyn Quayle letter appears to be intended to enlist volunteer help for the general election campaign, not to prepare for the Convention. Most of the suggested grassroots activities have no apparent connection to the Convention, and the volunteer hotline remained open through Labor Day, several weeks after the Convention. Although these pieces may have been mailed prior to the Candidate's date of

^{26/} The Marilyn Quayle letter asks for volunteer help including: asking friends to volunteer; helping the state Bush-Quayle campaign; writing letters to newspapers and calling radio talk shows; using the enclosed campaign materials; convincing former Perot supporters to support President Bush; and attending a Convention watch party. *Id.* The Convention party is the only suggested activity related to the Convention. The mailing also included a poster, bumper stickers, a paper comparing President Bush's and Governor Clinton's accomplishments and positions on issues, and a volunteer response card. The response card has a check-off list of volunteer activities such as "Work the polls" and "Distribute literature," none of which were connected to the Convention.

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ineligibility, they appear to anticipate responses by potential volunteers and supporters during the general election campaign period.

In addition, as a result of the Commission's three to three vote regarding the 33 state offices, the remaining expenditures for equipment and materials for the state offices that were incurred in July and August 1992 are not included in the amount of non-qualified campaign expenses.^{27/} These expenditures include the purchase of miscellaneous campaign materials such as flags, hats, brochures and signs which were shipped to various state offices in July and August, 1992 and the purchase and lease of computer equipment, software and related supplies. The Primary Committee paid the costs for these items through August 20, 1992, and the GEC paid for them following that date.

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Other than those expenditures related to the 33 state offices, the Primary Committee bears the burden of demonstrating that the expenditures had some connection to the primary campaign. The Committees have provided no evidence to prove that the primary campaign used the items that were not shipped to the 33 state offices for the primary campaign. For example, the Committees have not provided evidence that these materials were distributed to Convention delegates or brought to the Convention, or that computer equipment was used to monitor delegates or perform other Convention-related administrative

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^{27/} However, the Committee's expenditures for equipment and materials that were sent to the national headquarters are considered non-qualified campaign expenses.

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functions.^{28/} Based on the foregoing, the Commission has determined that the remaining expenditures for advertisements, direct mail, office space rental, equipment and materials not related to the state offices are related to the general election campaign. The Commission thus determines that the Primary Committee incurred non-qualified campaign expenses for these items totaling \$446,536.^{29/} Therefore, the Commission has made a final determination that the Primary Committee must repay \$106,979, a pro rata portion of the non-qualified campaign expenses totaling \$409,123.

With respect to the GEC, the Commission has reduced the expenditures subject to the GEC's overall expenditure limitation by \$333,172, reflecting the changes associated with polling and focus group expenses and leased office space, equipment, and materials expenses related to the state offices which the Commission has concluded were qualified campaign expenses of the

^{28/} The Committees' contention that the Commission treated equipment expenditures differently in this audit than in the Clinton for President audit is incorrect; the Commission adopted a consistent approach for both the Clinton and Bush campaigns. See Final Audit Report on Clinton for President Committee (approved December 27, 1994); Final Audit Report on Clinton/Gore '92 Committee and Clinton/Gore '92 General Election Compliance Fund (approved December 27, 1994); Final Repayment Determination on Clinton for President Committee (approved February 13, 1995). While most of the expenditures at issue were divided 50/50%, capital assets such as equipment were consistently divided in both audits using the 60/40% depreciation.

^{29/} The amount of non-qualified campaign expenses subject to repayment, \$409,123, results from adjustments to this amount for expenditures reimbursed by the GEC totaling \$37,301 and expenditures paid after March 2, 1993, the last day that the Primary Committee had public funds in its accounts.

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Primary Committee. This reduces the amount in excess of the GEC's overall expenditure limitation to \$220,086. The Compliance Fund may reimburse the GEC for this amount. The Commission recommends that the Compliance Fund reimburse the GEC and provide documentation of the reimbursement to the Commission within 30 days.

III. PRIMARY COMMITTEE RECEIPT OF FUNDS IN EXCESS OF ENTITLEMENT

During the candidate's period of eligibility, the candidate is entitled to receive public funds to the extent that the candidate received matchable contributions. 11 C.F.R. § 9034.1(a). After the candidate's date of ineligibility, the candidate is entitled to receive additional matching payments for matchable contributions received and deposited on or before

December 31 of the presidential election year provided that on the date of payment there are remaining debts reflected in the Statement of Net Outstanding Campaign Obligations ("NOCO Statement"). 11 C.F.R. § 9034.1(b). Any portion of the payments made to a candidate from the matching payment account in excess of the aggregate amount of payments to which the candidate was entitled under section 9034 shall be repaid to the Secretary of the Treasury. 26 U.S.C. § 9038(b)(1). The Commission may seek a repayment of public funds received in excess of the candidate's entitlement to the extent that payments made after the candidate's date of ineligibility are greater than the debts reflected in the NOCO Statement. 11 C.F.R. § 9038.2(b)(1)(i).

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In the Final Audit Report on the Primary Committee, the Commission determined that the Primary Committee received funds in excess of its entitlement totaling \$485,631. This amount has been revised. Based on the Commission's analysis of the Primary Committee's NOCO statement, the Primary Committee had net outstanding campaign obligations on August 20, 1992 of \$1,816,043. The Primary Committee deposited private contributions totaling \$876,527 between August 20, 1992 and March 2, 1993. The Primary Committee received matching fund payments of \$714,929 between August 20, 1992 and January 5, 1993. The Primary Committee's remaining entitlement prior to receiving the March 2, 1992 matching payment was \$224,587. The Primary Committee received matching payments of \$340,662 on March 2, 1993, which exceeded its entitlement by \$116,075. The Primary Committee received an additional matching fund payment of \$100,778 on April 2, 1993. As a result, the Primary Committee received \$216,853 in matching funds payments in excess of its entitlement.

Therefore, the Commission has made a final determination that the Primary Committee received \$216,853 in matching funds in excess of its entitlement and must repay \$216,853 to the United States Treasury pursuant to 26 U.S.C. § 9038(b)(1).

III. STALE-DATED CHECKS - PRIMARY COMMITTEE

Section 9038.6 of the Commission's regulations provides that if a committee has outstanding checks that have not been cashed, the committee should submit a check for the total amount of the outstanding checks to the United States Treasury.

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In the Final Audit Report on the Primary Committee, the Commission made an initial determination that the Primary Committee must pay \$19,194 for stale-dated checks to the United States Treasury. See 11 C.F.R. § 9038.6. The Primary Committee paid this amount to the Treasury on October 21, 1993 and July 25, 1994. Therefore, the Commission has made a final determination that \$19,194 is payable to the United States Treasury pursuant to 11 C.F.R. § 9038.6. Since the Primary Committee has made this payment, no additional payment is required.

IV. GEC AND COMPLIANCE FUND PAYMENTS

The Commission's regulations provide that if a committee has checks outstanding that have not been cashed, the Committee shall submit a check for the total amount of the outstanding checks to the United States Treasury. 11 C.F.R. § 9007.6. In addition, if a candidate receives income as a result of investment or other use of public funds, he shall pay the amount of the income to the United States Treasury. 11 C.F.R. § 9007.2(b) 4 .

The Commission made an initial determination that the GEC must pay \$19,023 to the United States Treasury for stale-dated checks. The GEC made this payment on October 21, 1993, and does not contest the payment. The Commission also made an initial determination that the GEC pay \$2,086 to the United States Treasury for income gained from an insurance settlement. The GEC notes in its response that it "disagrees . . . that the insurance settlement at issue created income" but provides no

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legal or factual arguments to support this statement.

Attachment 8 at 3-4. The GEC made the \$2,086 payment on July 6, 1994. Finally, the Compliance Fund made a payment to the United States Treasury for stale-dated checks totaling \$8,666 on October 21, 1993.

Therefore, the Commission has made a final determination that the GEC must pay \$21,109 to the United States Treasury, representing a gain on an insurance settlement of \$2,086 and stale-dated checks totaling \$19,023. 11 C.F.R. §§ 9007.2(b)(4); 9007.6. The Commission further has made a final determination that the Compliance Fund must pay \$8,666 for stale-dated checks. Since the GEC and Compliance Fund have paid these amounts they do not owe any amount to the United States Treasury.

V. CONCLUSION

For the foregoing reasons, the Commission has made a final determination that the Primary Committee must repay a pro rata portion of non-qualified campaign expenses totaling \$409,123 in the amount of \$106,979 (\$409,123 x .261483) to the United States Treasury. Further, the Commission has made the final determination that the Primary Committee must repay \$215,853 to the United States Treasury for matching funds received in excess of its entitlement. The Commission has also made a final determination that the Primary Committee must pay \$19,164 to the United States Treasury for stale-dated checks. Because the

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Primary Committee has made a payment for the stale-dated checks, the total amount due to the United States Treasury is \$323,832.

Moreover, the Commission has made a final determination that the GEC must pay \$21,109 and the Compliance Fund must pay \$8,666 to the United States Treasury. 11 C.F.R.

§§ 9007.2(b)(4); 9007.6. As noted, the GEC and Compliance Fund have made these payments and no additional payment is due from the GEC or Compliance Fund. Finally, the Commission recommends that the Compliance Fund reimburse \$220,086 to the GEC to eliminate the GEC's expenditures in excess of its overall expenditure limitation. 2 U.S.C. § 441a,b.

Attachments

1. Interim Audit Report - Primary Committee
2. Interim Audit Report - GEC and Compliance Fund
3. Primary Committee Response to Interim Audit Report dated July 6, 1994 (portions of attachments deleted)
4. GEC and Compliance Fund Response to Interim Audit Report dated July 6, 1994 (portions of attachments deleted)
5. Primary Committee Final Audit Report
6. GEC and Compliance Fund Final Audit Report
7. Primary Committee Response to Final Audit Report
8. GEC and Compliance Fund Response to Final Audit Report
9. Audit Analysis of Responses to Final Audit Reports
10. Oral Presentation Transcript
11. Submission of additional materials following oral presentation
12. Audit analysis of oral presentation and additional submission
13. Marilyn Quayle letter
14. Perot Advertisement
15. Direct mail brochures
16. California and New Jersey poll scripts
17. Certification of Commission's vote on August 3, 1995

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Public
Records



FEDERAL ELECTION COMMISSION
WASHINGTON, DC 20461

DATE & TIME TRANSMITTED: FRIDAY, SEPTEMBER 15, 1995 12:00

BALLOT DEADLINE: WEDNESDAY, SEPTEMBER 20, 1995 4:00

COMMISSIONER: AIKENS, ELLIOTT, McDONALD, McGARRY, POTTER, THOMAS

SUBJECT: PETITION OF THE BUSH-QUAYLE '92 PRIMARY COMMITTEE,
INC., THE BUSH-QUAYLE '92 GENERAL COMMITTEE, INC.
AND THE BUSH-QUAYLE '92 COMPLAINT COMMITTEE, INC.
TO STAY REPAYMENT PENDING APPEAL (LRA #425).
MEMORANDUM TO THE COMMISSION DATED SEPTEMBER 14, 1995.

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() I approve the recommendation(s)

() I object to the recommendation(s)

COMMENTS: _____

DATE: _____ SIGNATURE: _____

A definite vote is required. All ballots must be signed and dated.
Please return ONLY THE BALLOT to the Commission Secretary.
Please return ballot no later than date and time shown above.

FROM THE OFFICE OF THE SECRETARY OF THE COMMISSION



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20541

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September 14, 1995

MEMORANDUM

TO: The Commission

THROUGH: John C. Surina
Staff Director

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

Kim Bright-Coleman *KBC*
Associate General Counsel

Kenneth E. Kellner *K.E.K.*
Assistant General Counsel

~~DeLanie DeWitt Painter~~ *DWP*
Attorney

SUBJECT: Petition of the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc. and the Bush-Quayle '92 Compliance Committee, Inc. to Stay Repayment Pending Appeal (LRA #425)

I. INTRODUCTION

On August 22, 1995, the Bush-Quayle '92 Primary Committee, Inc. ("the Primary Committee"), the Bush-Quayle '92 General Committee, Inc. ("the GEC") and the Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Fund") filed petitions for review of the Commission's final repayment determinations and a joint motion to consolidate with the United States Court of Appeals for the District of Columbia Circuit. On the same date, the Committees sent a letter petitioning the Commission to "stay pending appeal the Committees' repayment of the amounts set forth in the final repayment determinations sent to the Committees on August 17, 1995" pursuant to 11 C.F.R. § 9007.4(c) and § 9038.5(c). Attachment 1. It should be noted that the letter does not petition on behalf of President George Bush, the candidate. For the reasons set forth in this memorandum, this Office recommends that the Commission deny the petition.

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II. BACKGROUND

On August 17, 1995 the Commission approved the Statement of Reasons supporting final repayment and payment determinations for the Primary Committee, GEC, and Compliance Fund.^{1/} Specifically, the Commission made a final determination that the Primary Committee must repay \$323,832 to the United States Treasury, including a pro rata repayment of non-qualified campaign expenses related to the general election in the amount of \$106,979 and a repayment of \$216,853 for matching funds that the Primary Committee received in excess of its entitlement. The Statement of Reasons also included a final determination that the Primary Committee make a payment of \$19,194 for stale-dated checks, which the Primary Committee has already paid to the United States Treasury.

Moreover, the Statement of Reasons included final determinations that the GEC must pay \$21,109 for stale-dated checks and a gain on an insurance settlement and that the Compliance Fund must pay \$8,666 for stale-dated checks to the United States Treasury. The GEC and Compliance Fund have paid these amounts. Finally, the Statement of Reasons recommended that the Compliance Fund reimburse the GEC \$182,785 in order to eliminate the GEC's expenditures in excess of its overall expenditure limitation. 2 U.S.C. § 441a(b).

III. ANALYSIS

The Primary Committee, GEC and Compliance Fund requested a stay of the final repayment determination pursuant to 11 C.F.R. § 9038.5(c)(iii).^{2/} Under this provision, a stay may be granted while judicial review is pending if a candidate meets all of the following criteria: 1) the candidate demonstrates that he or she will suffer irreparable harm in the absence of a stay; 2) the candidate has made a strong showing of the likelihood of success on the merits of the judicial action; 3) such relief is consistent with the public interest; and 4) no other party interested in the proceedings would be substantially harmed by

^{1/} The Statement of Reasons was hand delivered to counsel for the Primary Committee, GEC, and Compliance Fund on the same date.

^{2/} This provision applies to primary campaigns. The Committees also cite a similar provision for general election campaigns, at 11 C.F.R. § 9007.5(c). However, that provision does not apply here because the only outstanding repayment amount is due from the Primary Committee.

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Request to Stay Repayment Pending Appeal
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the stay.^{3/} 11 C.F.R. § 9038.5(c)(2)(iii). For the purposes of 11 C.F.R. § 9038.5(c)(2)(iii), in determining whether the candidate has made a strong showing of the likelihood of success on the merits, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.^{4/} 11 C.F.R. § 9038.5(c)(3).

We note at the outset that there is no repayment amount outstanding from either the GEC or the Compliance Fund, and therefore, it is unnecessary for those committees to seek a stay. Indeed, the GEC and Compliance Fund have no standing in this matter; the outstanding repayment at issue is due from the Primary Committee and the candidate. Accordingly, we recommend that the Commission deny the petitions for a stay made by the GEC and the Compliance Fund.

In addition, the Primary Committee has not satisfied the four elements required by 11 C.F.R. § 9038.5(c)(2)(iii) for the Commission to grant the requested stay. Its first argument is that the repayment would cause irreparable harm because the Primary Committee does not have sufficient funds to make the repayment, and the Compliance Fund would require "difficult and substantial fundraising activities" to raise the amount. Attachment 1 at 4-5. The Primary Committee contends that if it ultimately prevails on appeal, the Primary Committee and Compliance Fund would lose the fundraising expenditures needed to raise the repayment amount and will incur additional costs to refund the contributions. In support of this argument, the petitioning Committees submitted an affidavit from Assistant Treasurer Keith Davis stating that the Committees do not have sufficient funds to make the repayment and it would cost at

^{3/} The other alternatives available to candidates and their authorized committees are: 1) to place the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal, with withdrawals from the account only by joint signatures of representatives of the candidate and the Commission (11 C.F.R. § 9038.5(c)(2)(i)); or 2) to post a surety bond guaranteeing payment of the entire amount at issue plus interest (11 C.F.R. § 9038.5(c)(2)(ii)).

^{4/} The Commission's regulations are consistent with the test for determining whether a stay is warranted developed in case law in the D.C. Circuit. See Virginia Petroleum Job Ass'n v. Fed. Power Com'n, 259 F.2d. 921, 925 (D.C. Cir. 1958); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d. 841, 843-845 (D.C. Cir. 1977); see also Explanation and Justification of 11 C.F.R. § 9038.5, 52 Fed. Reg. 20673 at 20673-4 (June 3, 1987).

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least \$100,000 to raise sufficient funds to make the repayment.^{5/}
Attachment 1 at 8-10.

The foregoing does not demonstrate the requisite irreparable harm under 11 C.F.R. § 9038.5(c)(2)(iii). Since the candidate is personally liable for the full amount of the repayment, the Primary Committee may avoid incurring fundraising expenses if the candidate makes the repayment.^{6/} In any event, to establish irreparable harm, "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." Virginia Petroleum, 259 F.2d at 925. Moreover, "the possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." Id. Since the harm postulated by the Primary Committee is not inevitable absent the requested stay, and the Primary Committee may recover the repayment amount from the Commission if it prevails on the merits of its appeal, the Primary Committee has not established "irreparable harm."^{7/}

The Primary Committee also asserts that the repayment determinations "involve difficult and close legal issues" and that it has "a reasonable probability of success on the merits." Attachment 1 at 5-6; 11 C.F.R. § 9038.5(c)(2)(iii). To establish the requisite "substantial indication of probable success" on the merits of its appeal, Virginia Petroleum, 259

^{5/} Mr. Davis states that as of August 22, 1995, the Committees had the following net balances: the Primary Committee, \$5,550.63; the GEC, \$8,734.33, and the Compliance Fund, \$76,930.63.

^{6/} President George Bush, the candidate, has not petitioned for a stay. To become eligible for public funds, the candidate agreed in writing, inter alia, to pay any amounts required to be repaid under 26 U.S.C. § 9038. 26 U.S.C. § 9033(a), 11 C.F.R. §§ 9033.1, 9033.2. Moreover, 26 U.S.C. § 9038 provides that "the candidate shall pay" repayments to the United States Treasury for amounts received in excess of entitlement and non-qualified campaign expenses. 26 U.S.C. § 9038(b)(1) and (b)(2). Therefore, the candidate is personally responsible to make the repayment, and the Commission may seek payment from him.

^{7/} Moreover, the Primary Committee could mitigate the potential harm by requesting an extension of time or installment plan to make the repayment. In addition, the Primary Committee could have sought a stay on the basis of a surety bond, which would likely cost less than the full repayment amount. No evidence has been provided that the Primary Committee or the candidate would be unable to obtain or pay for a surety bond.

Memorandum to The Commission
Request to Stay Repayment Pending Appeal
Bush-Quayle '92 Committees
(LRA #425)
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F.2d at 925, the Primary Committee need not demonstrate a mathematical probability of success, but must raise serious, substantial and difficult legal questions and demonstrate that the equities are in favor of maintaining the status quo. Washington Metropolitan, 559 F.2d 841, 843-844; 11 C.F.R. § 9038.5(c)(3). "[M]aintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury." Id.

The Primary Committee has failed to demonstrate a strong probability that it will prevail on the merits of its appeal. The Commission has rejected the "bright line test" proposed by the Bush-Quayle '92 Committees. As analyzed in the Commission's Statement of Reasons, the Bush-Quayle '92 Committees have misinterpreted the Commission's regulations and precedent. Contrary to the arguments presented, the statute, applicable Commission regulations, and Commission precedents do not support application of a "bright line test" based on the candidate's date of ineligibility to determine if an expenditure is a primary qualified campaign expense. Rather, the Commission has looked at both the timing and the purpose of expenditures to determine whether they were qualified campaign expenditures made "in connection with" the primary campaign. See 26 U.S.C. § 9032(9); 11 C.F.R. § 9032.9(a). Moreover, the Commission did not apply a "bright line test" to other audits from the 1992 presidential election cycle. See Final Audit Report on Clinton for President Committee (approved December 27, 1994). While certain factual aspects of this matter, such as polling expenditures and state offices, presented close factual issues, the Commission resolved each of those close factual questions in favor of the Bush-Quayle '92 Committees. The remaining non-qualified expenditures that form the basis of the Commission's final repayment determination are clearly related to the general election campaign. Therefore, the final repayment determination does not present a "novel or admittedly difficult legal question." 11 C.F.R. § 9038.5(c)(3).

The Primary Committee also argues that a stay would not harm the government interest because the money "is not needed immediately by the United States Treasury." Attachment 1 at 6; 11 C.F.R. § 9038.5(c)(2)(iii). To the contrary, the first matching payments are due to candidates and committees eligible for public funds in the 1996 presidential elections in a mere five months. The amounts of repayments made pursuant to 26 U.S.C. § 9038 are deposited into the Matching Payment Account, the source of public funding for the 1996 presidential primary and general election campaigns and the major party nominating conventions. 26 U.S.C. § 9038(d). It is unlikely that an appellate case will be resolved before 1996. Thus, the stay could harm the interests of interested third parties, the 1996 presidential campaigns and conventions.

Memorandum to The Commission
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(LRA #425)
Page 6

Finally, the Primary Committee argues that the equities of the situation favor maintaining the status quo. Attachment 1 at 6; 11 C.F.R. § 9038.5(c)(2)(iii). To the contrary, public policy considerations favor protecting the public fisc. The requirements of the regulations are intended to protect the public treasury if the Commission's repayment determination is upheld on appeal. See Explanation and Justification of 11 C.F.R. § 9038.5, 52 Fed. Reg. 20673 (June 3, 1987). A stay unsupported by a surety bond or escrow account raises the risk that in the event the Commission prevails on the merits, the repayment will be delayed. Moreover, it creates a precedent that could encourage other campaigns to indulge in frivolous challenges to repayment determinations to delay repayment.

Therefore, since the Primary Committee has failed to establish any of the four required factors for the Commission to grant a stay under 11 C.F.R. § 9038.5(c)(2)(iii), the Office of General Counsel recommends that the Commission deny the requested stay. We recommend, however, that the Commission permit the Primary Committee and the candidate to obtain a surety bond or establish an escrow account and submit a revised request for a stay based on 11 C.F.R. § 9038.5(c)(2)(i) or (ii) within ten days. This Office's letter to the Primary Committee will suggest these alternative methods of obtaining a stay.

IV. RECOMMENDATIONS

The Office of General Counsel recommends that the Commission:

1. Deny the requests of the Bush-Quayle '92 Primary Committee, Inc., the Bush-Quayle '92 General Committee, Inc., and the Bush-Quayle '92 Compliance Committee, Inc. to stay the Commission's final determination that the Bush-Quayle '92 Primary Committee, Inc. must repay \$323,832 pending the appeal filed in the United States Court of Appeals for the District of Columbia Circuit; and
2. Approve the appropriate letter.

Attachment

1. Letter dated August 22, 1995 from Bobby R. Burchfield with attached Petitions for Review dated August 22, 1995

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August 22, 1995

VIA HAND DELIVERY

Ms. Kim Bright-Coleman
Associate General Counsel
Office of the General Counsel
Federal Election Commission
6th Floor
999 E Street, N.W.
Washington, D.C. 20463

Aug 22 5 08 PM '95

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Bush-Quayle '92 Audit Reports

Dear Ms. Bright-Coleman:

You will find enclosed a copy of three petitions for review and a joint motion to consolidate filed today on behalf of Bush-Quayle '92 Primary Committee, Inc. (the "Primary Committee"), Bush-Quayle '92 General Committee, Inc. (the "General Committee"), and Bush-Quayle '92 Compliance Committee, Inc. (the "Compliance Committee") (collectively, the "Committees") with the United States Court of Appeals for the District of Columbia Circuit.

Pursuant to 11 C.F.R. §§ 9007.4(c) and 9038.5(c), the Committees hereby petition the Commission to stay pending appeal the Committees' repayment of the amounts set forth in the final repayment determinations sent to the Committees on August 17, 1995. The Commission found as part of its final repayment determination that the Primary Committee must repay to the United States Treasury a pro rata portion of non-qualified campaign expenses in the amount of \$106,979 and matching funds received in excess of entitlement in the amount of \$216,853. Related to these repayment determinations is a Commission recommendation that the Compliance Committee reimburse the General Committee in the amount of \$182,785. As noted in the materials accompanying the Final Repayment Determination, the Committees have already repaid the other amounts.

ATTACHMENT 1
Page 1 of 21

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August 22, 1995
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I. FACTUAL AND PROCEDURAL BACKGROUND

Prior to the 1992 primary campaign season, Primary Committee personnel reviewed the law, regulations, and existing precedent concerning the proper treatment of expenditures made up to the date of ineligibility. The law and regulations state, in pertinent part, that such expenditures may be treated as primary campaign expenses if they are made "in connection with" the campaign for nomination. 26 U.S.C. § 9032(9); 11 C.F.R. § 9032(9). Neither the regulations nor Commission precedent indicated that the purpose of the expenditure must be exclusively or even primarily related to the campaign for nomination. To the contrary, Commission staff had questioned the relative benefit of certain expenditures by the Reagan-Bush campaign during the 1984 election cycle. As an example, the staff sought to treat expenditures for voter registration efforts made in states after the primaries had taken place as general election expenses. The Reagan-Bush campaign had responded that, although some of these expenditures may have benefitted the general election campaign, they were nonetheless part of a general build-up to the Republican National Convention. The Commission accepted this explanation and deemed the expenditures to be qualified primary campaign expenses. Other Commission precedents were in accord. See Adv. Op. 1975-9, Fed. Election Camp. Fin. Guide (CCH) ¶ 5110 at 10,035 (1975) (holding expenditures during primary by unopposed candidate "allocable to that primary election rather than to a subsequent general election"); Adv. Op. 1978-99, Fed. Election Camp. Fin. Guide (CCH) ¶ 5387, at 10,396 (1979) (campaign materials ordered and received only one day before the primary election, which were used both in the primary election and the general election, may be treated as primary campaign expense).

On the basis of this review, the Committees adopted a "bright-line" approach based on the date of ineligibility ("DOI"), which was August 20, 1992. The Committees treated expenditures for advertising, equipment, offices, salaries, materials, and the like as primary campaign expenses so long as they were made prior to the DOI and were connected to the campaign for nomination.

During the audit, the Commission staff adopted the same position that had been rejected by the Commission in the Reagan-Bush '84 audit. The staff selected a series of expenditures, including polling, advertising, equipment and materials, and office space that the staff contended had a larger benefit to the general election campaign and should therefore have been treated as a general election expense. The Commission initially agreed in its Interim Audit Reports issued on March 24, 1994.

Ms. Kim Bright-Coleman
August 22, 1995
Page 3

The Committees submitted responses to the Commission in which they explained the following: (i) the law and precedent indicated that the Committees' "bright-line" approach was proper, (ii) the primary benefit test applied by the Commission was inconsistent with the law and regulations, (iii) the Committees had, in any event, not received adequate prior notice of the Commission's standard, and (iv) the expenditures were nonetheless sufficiently connected to the campaign for nomination as to meet the primary benefit standard reflected in the Interim Audit Reports.

During the open meeting on December 8, 1994, the Commission expressly abandoned the primary benefit test in the Interim Audit Reports and agreed that the Committees had shown a connection between all of the challenged expenditures and the campaign for nomination. The Commission adopted a new approach, however, in which it split the challenged expenditures evenly between the Primary and General Committees. This approach does not appear in the regulations, had never been adopted in a prior audit, had not been suggested by the audit staff, and apparently arose for the first time during the meeting.

After receiving the initial final determination, the Committees submitted additional materials and made an oral presentation to the Commission further explaining the arguments mentioned above and pointing out that, regardless of whether the Commission's interpretation was permissible under the law, the Commission had not given the campaign adequate prior notice that this novel approach would be applied.

At its meetings on August 3 and 17, 1995, the Commission found that additional expenditures, such as polling and state office expenditures, could be treated entirely as qualified primary campaign expenditures, but declined to modify its repayment determinations with respect to the remaining challenged expenditures. The Committees are now seeking judicial review of this issue.

Unless the repayment requirement is stayed or extended, the Committees will have only until September 16, 1995, to raise the money to make the repayment, a process that would be difficult if not impossible to complete in that time. Further, in view of the Petitions for Review of the Commission's determinations filed by the Committees with the D.C. Circuit, the Committees would suffer irreparable harm if forced to comply with the determination prior to resolution of their appeal.

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Ms. Kim Bright-Coleman
August 22, 1995
Page 4

II. ARGUMENT

A. Requirements for Entry of a Stay

The Commission has the authority and discretion to issue a stay of its repayment determinations. See 11 C.F.R. §§ 9007.5(c) and 9038.5(c). More generally, the test for a preliminary injunction, the equivalent of a stay pending appeal, is set forth in Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921 (D.C. Cir. 1958).

The principle issue on appeal will be whether the Primary Committee acted reasonably in treating as primary campaign expenditures the cost of advertising, equipment, and materials that were used during the primary campaign period for purposes that had a connection to the campaign for nomination. For the reasons set forth below, the Committee respectfully submits that (i) requiring repayment prior to the resolution of the appeal would cause irreparable harm, (ii) the Committee has a substantial probability of success on the merits as reflected by the Commission's own struggle to resolve the difficult underlying legal and factual issues, (iii) there is no compelling government interest in requiring repayment at this point, and (iv) the equities favor maintaining the status quo. Accordingly, the Commission should stay the repayment pending resolution of the appeal.

B. A Stay Pending Appeal Is Warranted Here

Because of the substantial legal issues presented by the Committees' appeals, and the irreparable injury that would be incurred in complying with the repayment order, a stay is appropriate here.

First, requiring immediate repayment would cause irreparable harm to the Primary Committee and others. The Primary Committee does not have funds sufficient to pay the amount required in the repayment determination. The Compliance Committee would need to raise the balance through difficult and substantial fundraising activities, largely if not exclusively through direct mail appeals. While raising money is never easy, it is particularly difficult several years after the election during the heat of the next presidential election campaign that is already well underway with 10 active Republican candidates. As Keith A. Davis, Assistant Treasurer to the Committees, explains in the attached declaration, the fundraising would have to be limited to the Primary and Compliance Committees, and only individuals who have not already contributed the \$1,000 maximum to those Committees would be allowed to contribute. Mailing

Ms. Kim Bright-Coleman
August 22, 1995
Page 5

lists would have to be culled and contributions would have to be screened to ensure that each was proper and allowable.

As a result of these difficulties, the cost of raising the funds would likely consume more than one third of the amount raised and could easily reach one half of that amount. If the Committees prevail on appeal, the time, effort, and expense of the fundraising will have been entirely wasted. The government would presumably pay back the money paid to U.S. Treasury, but it would not reimburse the Committee, the fundraising volunteers, or the contributors for their time or for the expense of the fundraising. This loss would thus be irreparable.

A second irreparable loss would occur after the Committee received the refund from the Treasury, again assuming a favorable outcome on appeal. The Committee would refund the remaining money -- thus incurring substantial additional administrative and postage expense -- leaving the contributors substantially less than their original contributions. On the other hand, a decision not to refund the money would also leave the contributors irreparably harmed.

Second, as the Commission itself recognized during its deliberations, the repayment determinations involve difficult and close legal issues that indicate that the Committees have a reasonable probability of success on the merits. For example, there is a substantial question as to whether the Commission has applied the proper legal standard in making its determination. The applicable statute and regulations require, in pertinent part, only that expenditures be made "in connection with" the campaign for nomination, 26 U.S.C. § 9032(9); 11 C.F.R. § 9032(9). The Commission, however, applied a much higher standard; it required that the expenditures "must be primarily related to the primary campaign." Statement of Reasons at 19 (emphasis added). Moreover, the Commission has recently adopted the "bright line" test advocated by the Committees for the 1996 election cycle. If the "50/50 split" prevails on appeal, only the 1992 cycle will have been subjected to this standard.

Even if the "primarily-related" standard were to be found to be within the Commission's discretion, another substantial legal issue is whether the Commission provided the Committees with adequate notice of its interpretation prior to the 1992 campaign. The statute and regulations do not on their face suggest that expenditures for goods and services received and used prior to the date of ineligibility ("DOI") must either be primarily related to the primary campaign or otherwise allocated 50/50 between the Primary Committee and the General Committee. Nor has the Commission been able to point to a single

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Ms. Kim Bright-Coleman
August 22, 1995
Page 6


instance before 1992 in which a presidential campaign was required to allocate such expenditures on a 50/50 basis.

Third, the government would not be harmed by a stay. While the repayment demand is substantially in excess of the Committees' current ability to pay, it is not needed immediately by the United States Treasury. If the Commission's determination is upheld on appeal, the Committees will be as able to raise the funds for the repayment at the end of the appeal process as they are now. Moreover, the Commission's rules provide that "stays shall require the payment of interest on the amount at issue." 11 C.F.R. § 9038.5(4).

Finally, the equities of the situation favor maintaining the status quo. The Committees undertook a review of the existing law, regulations, and precedents concerning the allocation of expenditures between the Primary and General Committees, and, based on that review, adopted a coherent approach that was consistently applied. The Committees promptly ~~corrected the relatively few inadvertent deviations from that~~ approach that the Commission staff revealed during the post-election audit. Several Commissioners made clear in their comments during their deliberations that they do not question that the Committees sought in good faith to comply with the Commission's requirements and that the issues presented were difficult. Moreover, the Commissioners have made clear, both in the regulations recently published and their comments during the open meetings, that the "bright-line" approach under which the Committee believed it was operating is the better policy.

For the reasons set forth above, the Committee requests that the Commission stay the repayments not already made by the Committees pending the resolution of the appeal.

Respectfully submitted,


Bobby R. Burchfield
Thomas O. Barnett

Counsel to the Committees

95070194116

COVINGTON & BURLING

DECLARATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed in Washington, D.C. on this 22nd day of August 1995.


Bobby R. Burehfield

950/0194116

BEFORE THE FEDERAL ELECTION COMMISSION

Bush-Quayle '92 Primary Committee, Inc., Petitioner v. Federal Election Commission, Respondent.))))))))))))))	Petition for Stay
--	--	-------------------

DECLARATION OF KEITH A. DAVIS

In accordance with 28 U.S.C. § 1746, I, Keith A. Davis, hereby declare as follows:

1. During the 1992 Presidential campaign, I served as Assistant Treasurer to Bush-Quayle '92 Primary Committee, Inc. ("Primary Committee"), Bush-Quayle '92 General Committee, Inc. ("General Committee"), and Bush-Quayle '92 Compliance Committee, Inc. ("Compliance Committee") (collectively, the "Committees"). As part of my responsibilities, I was involved with virtually every aspect of the finances of the Committees, including the fundraising efforts made by the Primary and Compliance Committees. I have been involved with campaign finance activities since 1979. This declaration is based upon my personal knowledge, experience, and expertise.

2. The Commission's final repayment determination requires, in part, that the Primary Committee repay to the United States Treasury \$106,979 for non-qualified campaign expenses and \$216,853 for matching funds received in excess of

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entitlement. The Commission also recommends that the Compliance Committee reimburse the General Committee for \$182,785 to eliminate expenditures in excess of the General Committee's overall expenditure limitation.

3. The Committees currently lack the funds to make such payments. As of August 22, 1995, the three funds had the following net balances:

Primary Committee \$ 5,550.63

General Committee \$ 8,734.33

Compliance Committee \$76,930.63

4. If the Primary and General Committees are required to make the payments set forth in the Commission's final determinations, they will have to undertake expensive and difficult fundraising efforts. The only realistic method for raising the amounts necessary to comply with the repayment determination is a direct mail appeal to the Primary and Compliance Committee contributor lists. Since many of those contributors have already contributed the maximum amount to those Committees, the Committees' most reliable contributors would need to be deleted from the mailing.

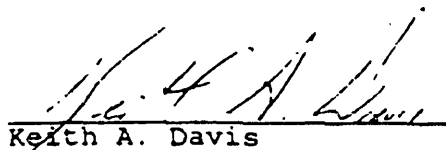
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5. The cost of raising funds during an election campaign typically amounts to about one third of the funds raised. To raise funds several years after an election, however, the cost would be substantially greater.

6. The difficulty in raising funds for a past Presidential election campaign is increased further by the extensive fundraising efforts currently being made by the 10 Republicans seeking the nomination for the 1996 election. It could well be easier to raise funds after the 1996 election than it would be to do so now.

7. As a result of these factors, I estimate that the cost of raising the funds necessary to make the repayments required by the Commission would be at least \$100,000 and could exceed \$150,000. These costs do not include the time and effort by volunteers helping with the fundraising efforts.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Washington, D.C., on August 22, 1995.


Keith A. Davis

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August 22, 1995

Mark Langer
Clerk of the Court
United States Court of Appeals
for the District of Columbia Circuit
Room 5423
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re: **Petitions for Review Submitted by Bush-Quayle '92
Primary Committee, Inc., Bush-Quayle '92 General
Committee, Inc. and Bush-Quayle '92 Compliance
Committee, Inc.**

Dear Mr. Langer:

You will find enclosed an original and four copies of the following:

1. A petition by Bush-Quayle '92 Primary Committee, Inc. for review of final audit determinations of the Federal Election Commission;
2. A petition by Bush-Quayle '92 General Committee, Inc. for review of final audit determinations of the Federal Election Commission;
3. A petition by Bush-Quayle '92 Compliance Committee, Inc. for review of final audit determinations of the Federal Election Commission; and
4. A joint motion by the three committees to consolidate consideration of the three petitions.

ATTACHMENT 1
Page 10 of 21

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COVINGTON & BURLING

Mark Langer
August 22, 1995
Page 2

You will also find enclosed three checks in the amount of \$100.00 each payable to the United States Court of Appeals for the District of Columbia Circuit for the filing fees for each petition.

Please date-stamp and return a copy of each paper with our messenger. Your cooperation in this matter is appreciated.

Sincerely,


Thomas O. Barnett

TOB:rmh
Enclosures

cc: Service List

95070124121

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Bush-Quayle '92 Primary
Committee, Inc.,

Petitioner

v.

Federal Election Commission,

Respondent.

Petition for Review

2507019412
Bush-Quayle '92 Primary Committee, Inc. (the
"Primary Committee") hereby petitions the Court for review of
the final determinations sent to the Primary Committee by the
Federal Election Commission on August 17, 1995. In addition,
because the issues raised in this appeal are closely
interrelated to those raised in the petitions filed today by
Bush-Quayle '92 General Committee, Inc. and Bush-Quayle '92
Compliance Committee, Inc., the Primary Committee requests
that the Court consolidate the three petitions.

Respectfully submitted,

Bobby R. Burchfield
Thomas O. Barnett

COVINGTON & BURLING
P.O. Box 7566
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-5000

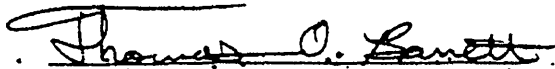
Attorneys for Petitioner

August 22, 1995

CERTIFICATE OF SERVICE

I, Thomas O. Barnett, certify that a copy of the foregoing document was served by hand on this 22nd day of August, 1995, on the following:

Lawrence M. Noble, Esq.
Kim Bright-Coleman, Esq.
Delanie Painter, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463


Thomas O. Barnett

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Bush-Quayle '92 General
Committee, Inc.

Petitioner

v.

Federal Election Commission,

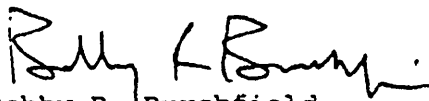
Respondent.

Petition for Review

9 5 0 7 0 1 9 4 1 2 4

Bush-Quayle '92 General Committee, Inc. ("General
Committee") hereby petitions the Court for review of the final
determinations sent to the General-Committee by the Federal
Election Commission on August 17, 1995. In addition, because
the issues raised in this appeal are closely interrelated to
those raised in the petitions filed today by Bush-Quayle '92
Primary Committee, Inc. and Bush-Quayle '92 Compliance
Committee, Inc., the General Committee requests that the Court
consolidate the three petitions.

Respectfully submitted,


Bobby R. Burchfield
Thomas O. Barnett

COVINGTON & BURLING
P.O. Box 7566
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-5000

Attorneys for Petitioner

August 22, 1995

ATTACHMENT 1
Page 15 of 21

CERTIFICATE OF SERVICE

I, Thomas O. Barnett, certify that a copy of the foregoing document was served by hand on this 22nd day of August, 1995, on the following:

Lawrence M. Noble, Esq.
Kim Bright-Coleman, Esq.
Delanie Painter, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463


Thomas O. Barnett

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Bush-Quayle '92 Compliance Committee, Inc.,)	
)	
Petitioner)	
)	
v.)	Petition for Review
)	
Federal Election Commission,)	
)	
Respondent.)	

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Bush-Quayle '92 Compliance Committee, Inc.
("Compliance Committee") hereby petitions the Court for review
of the final determinations sent to the General Committee by
the Federal Election Commission on August 17, 1995. In
addition, because the issues raised in this appeal are closely
interrelated to those raised in the petitions filed today by
Bush-Quayle '92 Primary Committee, Inc. and Bush-Quayle '92
General Committee, Inc., the Compliance Committee requests
that the Court consolidate the three petitions.

Respectfully submitted,


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Attorneys for Petitioner

August 22, 1995

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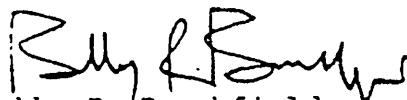

Thomas O. Barnett

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addressed the issues on a consolidated basis, and the Committees respectfully submit that it would be more efficient for the Court to do the same.

Counsel for the Committees has consulted with the General Counsel for the respondent Federal Election Commission on this motion, which has not yet reached a determination on the issue.

Respectfully submitted,



Bobby R. Burchfield
Thomas O. Barnett

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August 22, 1995

9507019427

CERTIFICATE OF SERVICE

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