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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

October 7, 2002

MEMORANDUM

TO: Ron M. Harris
Press Officer
Press Office

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

SUBJECT: Public Issuance of the Report of the Audit Division on Quayle 2000, Inc.
and Quayle 2000 Compliance Committee

Attached please find a copy of the report and related documents on Quayle 2000, Inc. and Quayle 2000 Compliance Committee that was approved by the Commission on September 20, 2002.

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

Attachment as stated

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

**REPORT OF THE AUDIT DIVISION
ON
QUAYLE 2000, INC.
AND
QUAYLE 2000 COMPLIANCE
COMMITTEE**

Approved September 20, 2002



**FEDERAL ELECTION COMMISSION
999 E STREET, N.W.
WASHINGTON, D.C.**

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AND
QUAYLE 2000 COMPLIANCE COMMITTEE

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION
ON
QUAYLE 2000, INC.
AND
QUAYLE 2000 COMPLIANCE COMMITTEE
EXECUTIVE SUMMARY**

Quayle 2000 Exploratory Committee, Inc. (the Primary Committee) registered with the Federal Election Commission on February 3, 1999, as the principal campaign committee for former Vice President Dan Quayle, candidate for the Republican Party's nomination for the office of President of the United States.¹ The Compliance Committee registered with the Commission on April 7, 1999.

The audit is mandated by Section 9038(a) of Title 26 of the United States Code, which requires the Commission to audit committees authorized by candidates who receive Federal Funds. The Primary Committee received \$2,087,750 in matching funds from the United States Treasury.

The findings of the audit were presented to the Primary Committee at the exit conference held on December 7, 2000, and in the preliminary audit report. The Primary Committee's responses to the findings are contained in the audit report.

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

PURCHASE OF ASSETS – 2 U.S.C. §441a(a)(2)(A) and 11 CFR §100.7(a)(1)(i) and (iii). The Primary Committee issued a check (\$64,930²) on July 28, 1999, in payment for furniture, computer and telephone equipment it received from Campaign America, Inc. (Campaign America), a multicandidate political committee. The Primary Committee

¹ Quayle 2000 Exploratory Committee, Inc. amended its Statement of Organization on June 1, 1999 changing its name to Quayle 2000, Inc.

² The Primary Committee actually paid \$58,906 net for the items. The worksheet that identified the assets sold contained a math error of \$6,024 (\$58,906 + \$6,024 = \$64,930). Subsequently, Campaign America returned \$6,024 to the Primary Committee. Other than the math error, the amount paid by the Primary Committee appeared reasonable.

took possession and began using these items in January 1999; however, it did not pay Campaign America until July 28, 1999. Consequently, an excessive contribution of \$58,906³ occurred as a result of this transaction.

ITEMIZATION OF LOANS – 2 U.S.C. § 434(b)(3)(E) and 11 CFR §§104.3(d)(1), (2) and (3), 104.18(f) and (h). The Primary Committee did not itemize receipt of a loan from the candidate in the amount of \$45,000 on Schedule A-P for line 19(a). In addition, transactions related to a line of credit were not reported properly. Information relative to the line of credit was not disclosed on Schedule C-P-1 and draws totaling \$1,402,625 were not itemized on Schedule A-P.

The Primary Committee filed the necessary amended reports and provided a copy of each agreement for the loans in question.

STALE-DATED CHECKS – 11 CFR §9038.6. The Audit staff identified 18 stale-dated checks totaling \$5,307. The amount of stale-dated checks is payable to the United States Treasury.

MATCHING FUNDS RECEIVED IN EXCESS OF ENTITLEMENT – 11 CFR §9034.1(b). The Primary Committee did not receive matching funds in excess of its entitlement.

³ On January 12, 1999, Campaign America contributed \$5,000 to the Primary Committee.



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***REPORT OF THE AUDIT DIVISION
ON
QUAYLE 2000, INC.
AND QUAYLE 2000 COMPLIANCE COMMITTEE***

I. BACKGROUND

A. AUDIT AUTHORITY

This report is based on an audit of Quayle 2000, Inc. (the Primary Committee) and Quayle 2000 Compliance Committee (the Compliance Committee). The audit is mandated by Sections 9007(a) and 9038(a) of Title 26 of the United States Code. Section 9038(a) 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 Title 26 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. Finally, Section 9007(a) states that after each presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

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

B. AUDIT COVERAGE

The audit of the Primary Committee covered the period from its inception, January 1, 1999 through June 30, 2000. The Primary Committee reported an opening cash balance of \$-0-; total receipts of \$7,864,296; total disbursements of \$7,416,334; and, a closing cash balance of \$447,962. In addition, a limited review of the Primary Committee's disclosure reports filed through June 30, 2002 was conducted for purposes of determining its matching fund entitlement based on its financial position.

The audit of the Compliance Committee covered the period from its inception, July 25, 1999, through June 30, 2000. During this period, the Compliance Committee reported an opening cash balance of \$0; total receipts of \$8,173; total disbursements of \$8,096; and, a closing cash balance of \$77.

C. CAMPAIGN ORGANIZATION

The Primary Committee and Compliance Committee initially maintained their headquarters in Scottsdale, Arizona and subsequently relocated to Calhan, Colorado. The Treasurer of both the Primary Committee and Compliance Committee is Mr. William R. Neale.

Quayle 2000 Exploratory Committee, Inc. registered with the Federal Election Commission (the Commission) on February 3, 1999, as the principal campaign committee for former Vice President Dan Quayle, candidate for the Republican Party's nomination for the office of President of the United States.¹ The Compliance Committee registered with the Commission on April 7, 1999.

During the audit period, both the Primary Committee and the Compliance Committee maintained depositories in the District of Columbia. To handle its financial activity, the Primary Committee utilized 13 bank accounts. From these accounts, the campaign made approximately 4,480 disbursements. In addition, the Primary Committee received approximately 78,000 contributions from approximately 36,000 individuals. These contributions totaled \$4,225,437. The Compliance Committee used one bank account. It received 42 contributions and made 29 disbursements.

The Candidate was determined eligible to receive matching funds on May 27, 1999. The Primary Committee made 6 matching fund requests totaling \$2,191,638 and received \$2,087,750 from the United States Treasury.² This amount represents 12% of the \$16,890,000 maximum entitlement that any candidate could receive. For matching fund purposes, the Commission determined that former Vice President Quayle's candidacy ended on September 27, 1999, the date he publicly announced he was withdrawing from the campaign. On May 15, 2000, the Primary Committee received its final matching fund payment to defray qualified campaign expenses and to help defray the cost of winding down the campaign.

¹ Quayle 2000 Exploratory Committee, Inc. amended its Statement of Organization on June 1, 1999, changing its name to Quayle 2000, Inc.

² On May 13, 2000, the Commission determined that the Primary Committee was not entitled to certified funds totaling \$14,775 that remained unpaid due to the shortfall in the Matching Payment Account. This determination was based on the Primary Committee's financial position reflected on its Statement of Net Outstanding Campaign Obligations prepared April 18, 2000.

D. AUDIT SCOPE AND PROCEDURES

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

1. The receipt of contributions or loans in excess of the statutory limitations (see Finding II.A.);
2. The receipt of contributions from prohibited sources, such as those from corporations or labor organizations;
3. Proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;
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.B.);
6. The 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 filed by the Primary Committee, to disclose its financial condition and to establish continuing matching fund entitlement (see Findings III.A. and III.B.);
9. Compliance with spending limitations; and,
10. Other audit procedures that were deemed necessary in the situation (see Finding III.C.).

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

Unless specifically discussed below, no material non-compliance was detected. The following matters relate to the Primary Committee. There are no findings or recommendations with respect to the Compliance Committee. It should be noted that the Commission may pursue further any of the matters discussed in the audit report in an enforcement action.

II. FINDINGS AND RECOMMENDATIONS - NON-REPAYMENT MATTERS

A. PURCHASE OF ASSETS

Section 441a(a)(2)(A) of Title 2 of the United States Code states that no multicandidate political committee shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate exceed \$5,000.

Section 100.7(a)(1)(iii) of Title 11 of the Code of Federal Regulations states, in part, that the term contribution includes the following payments, services or other things of value: A gift, subscription, loan (except for a loan made in accordance with 11 CFR Section 100.7(b)(11)), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution. For the purposes of 11 CFR Section 100.7(a)(1), the term anything of value includes all in-kind contributions.

Section 100.7(a)(1)(i)(A) and (B) of Title 11 of the Code of Federal Regulations states, in part, that a loan which, exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR part 110 shall be unlawful whether or not it is repaid. A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR part 110. A loan to the extent it is repaid, is no longer a contribution.

On July 28, 1999 the Primary Committee issued a check (\$64,930³) in payment for furniture, computer and telephone equipment it received from Campaign America, Inc. (Campaign America). Campaign America is a multicandidate political committee. The Candidate was Campaign America's chairman at the time the Primary Committee was organized. Records made available indicate that Campaign America purchased the above items between May 1998 and December 1998; apparently the

³ The Primary Committee actually paid \$58,906 net for the items. The worksheet that identified the assets sold contained a math error of \$6,024 ($\$58,906 - \$6,024 = \$64,930$). Subsequently, Campaign America returned \$6,024 to the Primary Committee. Other than the math error, the amount paid by the Primary Committee appeared reasonable.

Primary Committee took possession and began using these items in January 1999.⁴ However, the Primary Committee did not pay Campaign America until July 28, 1999. Consequently, an excessive contribution of \$58,906 occurred as a result of this transaction.⁵

This matter was discussed with the Primary Committee representative at the exit conference. Subsequently, the Primary Committee responded that Campaign America was treated like any other vendor and was paid in the normal course of business.

In the preliminary audit report, the Audit staff recommended that the Primary Committee provide evidence and/or documentation that demonstrated that Campaign America did not make an excessive contribution of \$58,906. This evidence should have included the purchase agreement, any invoices or billing statements issued by Campaign America to the Primary Committee, and any memorandum or correspondence related to this transaction.

The Primary Committee, in its response to the preliminary audit report, stated:

“no such documentary evidence is necessary. This is purely a legal matter and the fact is that the Audit Division’s legal basis for its conclusion is erroneous. Specifically, the Audit Division’s theory is that because Campaign America is a multicandidate committee the delay in payment constitutes an excessive campaign contribution from Campaign America to the Committee. However, based on the legal analysis adopted by the Commission in its Advisory Opinions, this theory is wrong and Campaign America did not make an excessive contribution to the Committee.”

In support of its position, the Primary Committee’s response references Advisory Opinions (AOs), which address the sale of assets by a political committee for other than fundraising purposes (AOs 1986-14, 1989-4 and 1990-26). The Primary Committee concluded:

“[w]hile these opinions address primarily whether or not the purchaser of the assets will be making a ‘contribution’ to the committee selling the assets, the fact is that in these cases the Commission has treated the committee selling the assets as a vendor, not as a

⁴ Both Campaign America and the Primary Committee maintained offices at the same location in January 1999. Campaign America then relocated to Austin, Texas.

⁵ On January 12, 1999, Campaign America contributed \$5,000 to the Primary Committee.

committee, unless the committee receives in excess of the 'usual and normal charge' for the goods."

The Primary Committee concluded that Campaign America should be treated as a vendor that was paid in the ordinary course of business and on a commercially reasonable basis. In an apparent effort to demonstrate that Campaign America was treated the same as other vendors, the Primary Committee included in its response a schedule of debts owed to five vendors that were disclosed on its April 15, 1999 and July 15, 1999 Quarterly Reports.

Primary Committee representatives incorrectly interpreted the Commission's ruling with respect to the above Advisory Opinions. The three Advisory Opinions address the sale of an asset(s) by a terminating committee. In two of the Advisory Opinions, the Commission concluded the sale would not result in a contribution from the purchaser (AO 1986-14 and 1990-26). In each, the Commission specifically stated principal campaign committees with valuable campaign equipment and leftover campaign supplies that wished to terminate their operations have been permitted to liquidate such assets for debt retirement purposes, or in contemplation of prompt dissolution of the committee, without contributions resulting. The issue addressed in the third Advisory Opinion (1989-4) is similar but specifically addressed the sale of assets by a candidate's terminating federal committee to his current gubernatorial committee. The Commission concluded that the proposed sale by the federal committee at the usual and normal charge would not result in a contribution to the federal committee.

At no time did the Commission conclude in the above Advisory Opinions that the sales were permissible because the committee selling the asset was considered a vendor and the opinions did not discuss the elapsed time between the sale and payment. In each Advisory Opinion, the committee selling its asset was terminating its operations. Neither of the committees that were party to this transaction was terminating. Therefore, the Primary Committee's reliance on the above Advisory Opinions is misplaced.

Finally, the schedule provided by the Primary Committee that compared this transaction (between Campaign America and the Primary Committee) to unrelated debts disclosed to five other Primary Committee vendors is also not relevant. By definition, 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 or services (emphasis added) (11 CFR §100.10). Campaign America is not a commercial vendor; its normal course of business is not providing furniture, computer and telephone equipment to other entities.

The Primary Committee has not demonstrated that Campaign America did not make an excessive contribution of \$58,906.

B. ITEMIZATION OF LOANS

Section 434(b)(3)(E) of Title 2 of the United States Code states that each report under this section shall disclose the identification of each person who makes a loan to the reporting committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan.

Section 104.3(d)(1), (2) and (3) of Title 11 of the Code of Federal Regulations states, in part, that when a political committee obtains a loan from, or establishes a line of credit at, a lending institution it shall disclose in the next report information on Schedule C-P-1. The political committee shall submit a copy of the line of credit agreement that describes its terms and conditions when it files Schedule C-P-1. Additionally, political committees shall file in the next report a Schedule C-P-1 each time a draw is made on a line of credit, and each time a loan or line of credit is restructured to change the terms of repayment.

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

Section 104.18(h) of Title 11 of the Code of Federal Regulations states, in part, that certain schedules, forms, etc. have special signature and other requirements and reports containing these documents shall include, in addition to providing the required data within the electronic report, either a paper copy submitted with the political committee's electronic report or a digitized version submitted as a separate file in the electronic submission.

Loans, including a line of credit, are required to be reported on Form 3P, page 2 (Detailed Summary of Receipts and Disbursements) for line 19(b) (Other Loans); loan proceeds received are itemized on Schedule A-P (Itemized Receipts). Information related to a line of credit is disclosed on Schedule C-P-1. In the case of a direct loan from a candidate, the reporting requirements are similar, except that if no financial institution is involved in the transaction, Schedule C-P-1 does not have to be filed.

The Primary Committee received a \$45,000 loan from the Candidate and a line of credit at a lending institution that was initially established for \$1,000,000 and later increased to \$1,750,000. Regarding the Candidate loan, the Primary Committee did not itemize the receipt of the loan on Schedule A-P for line 19(a); the amount received was included in the summary page figures and the obligation was itemized on Schedule C-P.

Certain transactions related to the line of credit were not reported properly. Information relative to the original (\$1,000,000) and restructured line of credit (\$1,750,000) was not disclosed on Schedule C-P-1. Also, four draws on the line of credit, totaling \$1,402,625, were not itemized on Schedule A-P, as required.

In the preliminary audit report, the Audit staff recommended that the Primary Committee file complete amended electronic reports to itemize the Candidate loan (\$45,000) and draws on the line of credit (\$1,402,625) on Schedule A-P for the appropriate line. In addition, the Primary Committee was to disclose the original and restructured lines of credit on Schedule C-P-1 and to submit a copy of each agreement.

The Primary Committee filed the necessary amendments and provided a copy of each agreement for the loans in question.

III. FINDINGS AND RECOMMENDATIONS – AMOUNTS DUE TO THE U.S. TREASURY

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 reflects the total of all net outstanding obligations for qualified campaign expenses plus estimated necessary winding down costs.

In addition, Section 9034.1(b) of Title 11 of the Code of Federal Regulations 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.

The Candidate's date of ineligibility was September 27, 1999. The Audit staff reviewed the Primary Committee's financial activity through June 30, 2002 analyzed winding down costs (plus projections through December 31, 2005), and prepared the Statement of Net Outstanding Campaign Obligations (NOCO statement) that appears below.

QUAYLE 2000, INC
STATEMENT OF NET OUTSTANDING CAMPAIGN OBLIGATIONS
AS OF SEPTEMBER 27, 1999
AS DETERMINED ON JUNE 30, 2002

ASSETS

Cash in Bank	\$143,907	
Cash on Hand	481	
Accounts Receivable:		
Vendor Deposits	17,381	
Vendor Refunds	10,288	
Capital Assets	18,800	
Contributor List	<u>36,876</u> a/	
Total Assets		\$227,733

OBLIGATIONS

Accounts Payable for Qualified Campaign Expenses	410,339	
Loans Payable	1,022,625	
Refunds of Contributions	17,958	
Amount Due U. S. Treasury - Stale-dated Checks	5,307	
Actual Winding Down Expenses		
September 28, 1999 – June 30, 2002	895,164	
Estimated Winding Down Expenses		
July 1, 2002 – December 31, 2002 b/	<u>73,992</u>	
Total Obligations		<u>2,425,385</u>

Net Outstanding Campaign Obligations (Deficit) (\$2,197,652)

- a. Represents proceeds from the sale of the Committee's contributor list.
- b. Includes storage at \$130 per month through 12/31/2005

The audited NOCO statement was presented to Primary Committee representatives at the exit conference. Subsequently, the Primary Committee provided documentation that clarified certain components, but continues to disagree with inclusion and/or exclusion of certain components. The above NOCO statement has been updated based on a review of the Primary Committee's response to the preliminary audit report as well as a review of additional financial records and disclosure reports.

Capital Assets

As previously discussed, the Primary Committee purchased certain assets from Campaign America including office furniture. According to records made available, Campaign America reported purchasing \$10,000 in furniture from Office Furniture Wholesales in November 1998. This furniture was then sold to the Primary Committee for \$10,000. The above capital asset figure includes this furniture at a depreciated value.

Primary Committee representatives claim that Campaign America did not purchase but leased the furniture. Further, Campaign America made a one-time lease payment of \$10,000 and the Primary Committee was merely reimbursing Campaign America and taking over its lease. At the time of the preliminary audit report, the Primary Committee had not provided a copy of the original lease or any document that demonstrated that the lease was transferred.

In the preliminary audit report, the Audit staff recommended the Primary Committee provide documentation to show that the furniture did not constitute a capital asset.

Primary Committee representatives continue to dispute the inclusion of office furniture as a capital asset. The Primary Committee provided a letter from the former president of Office Furniture Wholesalers stating he could not provide a copy of the lease agreement between Campaign America and Office Furniture Wholesalers at this time, but based on his personal recollection, the furniture in question was leased initially by Campaign America and then by Quayle 2000, Inc. In addition, the Primary Committee provided two invoices from the vendor, billed to Campaign America but paid by the Primary Committee, for furniture pickup. The Primary Committee also provided a worksheet that itemized specific office equipment. With the inclusion of a sales tax and delivery charge, the cost of the furniture itemized on the worksheet totaled \$10,000.

The clearest documentation would have been an itemized listing of the furniture provided, on Office Furniture Wholesaler's letterhead, that was created at the time of the purchase/lease by Campaign America as well as an invoice/lease agreement that supports the purchase or lease of the office furniture. The worksheet provided by the Primary Committee is on plain white paper. The worksheet, if representative of the furniture purchased, renders the issue of whether or not Campaign America purchased or

leased the office furniture moot, since no item listed is valued greater than \$2,000.⁶ However, it appears that the office furniture was leased, as evidenced by the invoices from Office Furniture Wholesalers for furniture pickup and the statement provided by its former president.

Based on the above, the value of capital assets has been reduced by \$6,000, the depreciated value of the office furniture in question.

Estimated Winding Down Expenses

- Consulting/Consulting Expenses – the Primary Committee’s NOCO statement included estimated consulting costs, totaling \$249,000, for calendar years 2001 and 2002. In addition, it included \$10,000 for consulting expenses for the same period. The Primary Committee responded that it will continue to incur consulting fees and expenses. The Audit staff had initially allowed monthly consulting fees and expenses, totaling \$10,250 per month, for calendar year 2001 but had not recognized any such expenses for calendar year 2002. The Primary Committee is in the final stages of winding down the campaign. For example, for the period 7/1/00-6/30/01 the Primary Committee reported receipts totaling \$27,480 none of which were contributions, expenditures totaling \$241,900 (including \$280 in operating expenditures, \$1,351 in fundraising disbursements, \$45,000 in loan repayments, and \$195,269 in exempt legal and accounting expenses), and as of 6/30/01, debts owed by the Primary Committee were \$1,568. Given this level of activity, the Audit staff initially determined that winding down expenses would not be necessary in calendar year 2002.

During the first six months of calendar year 2002, the Primary Committee reported paying \$53,908 in consulting fees and \$1,026 in consulting expenses. Since the audit process has continued into calendar year 2002, we have included additional consulting fees and expenses of \$116,000 in our winding down expense calculation for calendar year 2002.

- Insurance – the Primary Committee’s NOCO statement included estimated insurance costs, totaling \$24,000, for calendar years 2001 and 2002 (\$12,000 a year). When questioned, the Primary Committee stated that its counsel recommended that it continue to carry corporate insurance on its directors. Subsequently, the Primary Committee paid \$8,265 on March 20, 2001 for insurance

⁶ The term “capital asset” means any property used in the operations of the campaign whose purchase price exceeded \$2,000 when received by the committee (11 CFR §9034.5(c)(1)).

on its Directors and Officers. Further, on the same date, the Primary Committee paid \$1,400 for insurance that appears to cover workers' compensation insurance for clerical office employees (\$371), employee benefits liability (\$250) and property (\$774). Absent documentation that demonstrated such insurance was in connection with winding down the campaign, the amount was excluded from winding down expenses.

In its response to the preliminary audit report, the Primary Committee continues to state that an ongoing incorporated entity must protect its board of directors, officers, and employees as well as remaining assets with insurance. The Primary Committee further stated, "while the Committee currently has no employees, it has consultants, and was informed by the insurance company that in order to protect itself and its consultants, the Committee should continue this coverage. This coverage amounted to \$621."

Even though the Primary Committee stated such cost was only \$621, it continues to include estimated insurance costs of \$10,000 in its revised NOCO statement. However, it reported paying insurance costs of \$5,121 in January, February and May 2002.

The Primary Committee provided neither documentation demonstrating that such insurance was in connection with winding down the campaign nor documentation supporting the above reported payments. However, since the amounts paid in calendar years 2001 (\$9,665) and 2002 (\$5,121) appear reasonable based on similar payments made in calendar year 2000, the Audit staff has included these amounts in its winding down expense calculation.

- Rent and Storage – the Primary Committee is renting its headquarters at \$450 a month and has included that amount in its winding down expenses for calendar years 2001 and 2002 (\$10,800). For the same period the Primary Committee estimated storage cost at \$6,100 or approximately \$250 a month. The Primary Committee's disclosure report for the period January 1, 2001 through March 31, 2001 did not itemize any payments relative to storage. In the preliminary audit report NOCO calculations, for calendar year 2001, the Audit staff included headquarters rent at \$450 per month but did not recognize any storage cost. Conversely, for calendar year 2002, the Audit staff excluded headquarters rent but included storage cost, estimated at \$100 a month.

In its response, the Primary Committee revised its initial estimate to include rent through June 2002 and storage through 2005. In addition, the Primary Committee provided cost estimates for various storage rental units within a specific area. The average monthly rental cost was approximately \$130.

Since the audit process will continue through calendar year 2002, the Audit staff has allowed rent of \$450 a month through December 2002 and storage of \$130 a month for the period January 2003 through December 2005 or \$4,680.

- Telephone Expense – the Primary Committee’s NOCO statement included an estimated telephone cost of \$4,500 and \$2,700 for calendar years 2001 and 2002 respectively. The Audit staff had initially accepted the estimate for calendar year 2001 but did not recognize any costs for 2002.

For calendar year 2001, the Primary Committee reported \$4,814 in telephone expenses. For the first six month of calendar year 2002, the Primary Committee paid \$2,549. As a result, the Audit staff has included telephone expenses of \$4,814 paid in calendar year 2001 and \$5,099 for calendar year 2002, which represents twice the amount reported as being paid during the first half of calendar year 2002, in its calculation of winding down costs.

- Moving Expenses – the Primary Committee included an estimate of \$3,000 to cover moving costs. No documentation was provided in support of this expense. As a result, the Audit staff’s analysis did not include an estimated amount for moving expenses.

The Primary Committee did not include any estimate for moving expenses in its revised calculation of winding down costs.

- Travel Expense – the Primary Committee included an estimate for travel expenses of \$10,000. No documentation was provided in support of this estimate; consequently, the Audit staff’s analysis did not consider this a valid winding down cost.

The Primary Committee representative stated she will be required to travel to Washington in calendar year 2002 for Commission related matters and has revised its estimate for 2001 and 2002 to \$1,000. The Audit staff has included the revised figure in its estimated winding down cost for 2002.

- Other Expenses - the Primary Committee estimated the following costs for calendar year 2002: cable costs of \$132, delivery costs of \$775, office expenses of \$100, office supplies of \$550, postage of \$100, and utilities of \$900. In addition, for the period January 2003 through December 2005, it estimated office supplies of \$1,000 and delivery costs of \$300.

It is the Audit staff's opinion that the cost of cable service is not in connection with winding down the campaign. Further, since the Primary Committee did not report making expenditures for office expenses, supplies or postage during the first six months of calendar year 2002, the above estimates were not included as winding down expenses. However, during this six month period, the Primary Committee reported paying \$794 in delivery charges and \$1,129 for utilities. Therefore, Audit staff has included delivery cost of \$1,586 and utilities of \$2,257 as reasonable winding down expenses. These amounts represent twice the amounts reported as being paid during the first half of calendar year 2002.

B. MATCHING FUNDS RECEIVED IN EXCESS OF ENTITLEMENT

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.

Section 9038.2(b)(1)(i) of Title 11 of the Code of Federal Regulations entitled *Bases for repayment* states that for payments in excess of candidate's entitlement, the Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. One example of such excessive payments is payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5.

In the preliminary audit report, the Audit staff recommended that the Primary Committee provide documentation demonstrating that it was entitled to the matching funds it received.

The revised NOCO statement shows the Primary Committee to be in deficit position in the amount of \$2,197,652. As shown below, the Primary Committee did not receive matching funds in excess of the Candidate's entitlement.

Net Outstanding Campaign Obligations (deficit) as of 9/27/99		(\$2,197,652)
Net Private Contributions Received 9/28/99 to 1/3/00	\$ 107,048	
Matching Funds Received 1/03/00	<u>1,044,340</u>	<u>1,151,388</u>
Remaining Entitlement at 1/3/00		(1,046,264)
Net Private Contributions Received 1/4/00 to 1/14/00 ⁷	2,496	
Matching Funds Received 1/4/00 to 4/17/00	<u>743,386</u>	<u>745,882</u>
Remaining Entitlement at 4/17/00		(300,382)
Matching Funds Received on 5/15/00		<u>300,024</u>
Remaining Entitlement		<u>(\$358)</u>

⁷ There were no private contributions received after January 14, 2000, or any other receipts not already accounted for within the asset section of the NOCO statement.

C. 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 contributions 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 identified 21 stale-dated checks totaling \$6,665. The checks were dated between April 5, 1999 and December 8, 1999 and had not cleared the bank as of October 31, 2000. Fifteen of the stale-dated checks represented refunds of excessive contributions.

The Primary Committee was provided a list of stale-dated checks at the exit conference. Subsequently, the Primary Committee demonstrated that one stale-dated check (\$45) had cleared the bank. Therefore, the value of the remaining (20) stale-dated checks, \$6,620, is payable to the United States Treasury.

In the preliminary audit report, the Audit staff recommended that the Primary Committee provide evidence that the checks were either not outstanding or that they were voided and no obligation existed. If the checks were not outstanding, the evidence provided should have included copies of the front and back of the negotiated checks. If the checks were voided, the evidence should have included statements from the vendors that acknowledged they have been paid in full, or an account reconciliation showing that no obligation exists.

The Primary Committee provided documentation that two checks, totaling \$1,313, cleared its bank account. As a result, the value of the remaining 18 stale-dated checks, \$5,307 (\$6,620 - \$1,313), is payable to the United States Treasury.

Recommendation

The Audit staff recommends that the Primary Committee make a payment of \$5,307 to the United States Treasury.

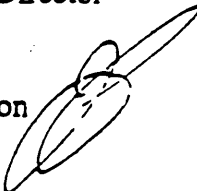


FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463


August 9, 2002


MEMORANDUM


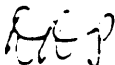
TO: Joseph F. Stoltz
Assistant Staff Director
Audit Division

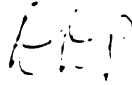
THROUGH: James A. Pehrkon 
Staff Director

Robert J. Costa
Deputy Staff Director

FROM: Lawrence H. Norton 
General Counsel

Gregory R. Baker 
Acting Associate General Counsel

Peter G. Blumberg  by 
Acting Assistant General Counsel

Delanie DeWitt Painter 
Attorney

SUBJECT: Proposed Audit Report on Quayle 2000, Inc. and Quayle 2000
Compliance Committee (LRA 544)

The Office of General Counsel has reviewed the proposed Audit Report on Quayle 2000, Inc. (the "Committee") and Quayle 2000 Compliance Committee submitted to this Office on June 27, 2002. This memorandum summarizes our comments on the proposed report.¹ Generally, we concur with any findings not specifically addressed in these comments. If you have any questions, please contact Delanie DeWitt Painter, the attorney assigned to this audit.

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

I. NOCO AND MATCHING FUND ENTITLEMENT (II. A. B.)

The Preliminary Audit Report ("PAR") stated that, unless the Committee demonstrated that it is not in a surplus position, the Audit Division would recommend the Commission make a repayment determination in the amount of \$186,124, pursuant to 26 U.S.C. § 9038(b)(1). The Audit Division's conclusion that the Committee would have a surplus was based on its estimation of the Committee's projected winding down costs. Generally, the Committee's estimated winding down costs were much higher than the Audit Division's estimates. The proposed Audit Report no longer contains any surplus repayment, or any other type of repayment, and includes only a \$5,307 payment to the United States Treasury for stale-dated checks. Based on its analysis of the Committee's response to the PAR and disclosure reports, the Audit Division increased the amount of actual and projected winding down costs, thus eliminating the Committee's surplus and the potential repayment. According to the proposed Audit Report, the Committee's remaining entitlement is precisely \$0. Although this Office concurs that no repayment is appropriate, we have the following comments.

A. Winding Down Costs in General

In general, we note that the Audit Division's calculation of the Committee's winding down costs includes actual winding down costs through December 31, 2001 and estimated winding down costs for 2002. The Committee has filed two quarterly reports for 2002 reflecting its actual winding down costs for the first half of this year. This Office recommends that, to the extent possible, actual 2002 figures should be used rather than estimated figures to more accurately reflect the Committee's winding down costs; thus, we suggest the winding down costs be updated based on the Committee's 2002 disclosure reports.

In addition, while most of the Audit Division's estimated winding down figures appear to be reasonable, we believe that the proposed Audit Report should provide more detail and explain the underlying basis for the Audit Division's estimated winding down figures.² For example, the Committee's actual consulting fees for 2001 were \$153,716, an average of \$12,809 a month. The Audit Division's estimate for 2002 is \$11,137 a month. This slightly lower average monthly amount appears to be reasonable, given that if there is no repayment, the Committee might not need to pay any consulting expenses in late 2002; however, the proposed Audit Report does not explain why this lower figure is appropriate. Similarly, the proposed Audit Report does not explain the basis of the estimated telephone cost of \$2,400 for 2002, which is lower than the actual telephone costs of \$4,813.53 in 2001.

Further, the proposed Audit Report includes no explanation for the Audit staff's deletion of a number of small amounts for "other expenses" from the 2002 figures proposed by the Committee, including cable costs of \$132, delivery of \$775, office expenses of \$100, office

² This Office has reviewed a spreadsheet of estimated winding down expenses prepared by the Audit staff. We suggest appending a similar chart to the Audit Report listing the different categories of expenses, the Committee's estimates, the actual expense figures that are available, and the Audit Division's estimates to help clarify this issue.

supplies of \$550 (the auditors allowed \$100 of this expense) and postage of \$100. These amounts appear to be both reasonable and negligible, and it is unclear why they were not included in the winding down figures.

B. Insurance

In particular, the proposed Audit Report does not adequately explain why the Audit Division estimated \$0 for insurance costs for 2001 and 2002 when the Committee allocated approximately \$10,000 a year. The proposed Audit Report states that in 2001, the Committee paid \$8,265 for general liability insurance on its directors and officers and \$1,400 for insurance covering workers compensation, employee benefits liability and property. According to conversations with the Audit staff, these figures were based on the Committee's reports and the Committee did not provide invoices or other documentation for the insurance in response to the PAR. The Committee's 2002 reports disclose insurance payments of \$3,306 to Seabury and Smith and \$1,491 to the Hartford.

The proposed Audit Report states that these insurance costs were not in connection with winding down the campaign and were not recognized as a winding down expense. The proposed Audit Report states that the Committee stated its counsel advised maintaining corporate insurance coverage. The Committee's response to the PAR states that "as long as the Committee is an ongoing incorporated entity," it must maintain insurance coverage to avoid subjecting its officers, directors and employees to "any number of potential liabilities." Committee Response (October 31, 2001) at 6. The Committee further explains that although it currently has no employees, it has consultants and might need to hire clerical staff to assist with research related to the audit; thus, on the advice of its insurance company, it is maintaining insurance to protect its consultants. *Id.*

This Office notes that this a close issue. According to conversations with the Audit staff, the Audit Division does not believe that the Committee provided sufficient documentation to support including these expenses as winding down costs. The proposed Audit Report, however, does not make clear that the problem is a lack of documentation, but rather implies that these kinds of insurance costs are not inherently winding down costs and are unnecessary. This Office disagrees that these kinds of insurance expenses are not allowable winding down costs. Insurance coverage is not inappropriate to winding down a campaign. Potential liabilities continue as long as an entity continues to exist, regardless of the eligibility of the candidate. As a matter of policy, committees should not be discouraged from obtaining insurance to reduce potential liability. Indeed, the Commission's regulations encourage publicly-financed committees to obtain insurance on equipment; section 9038.4(b)(8) includes "whether the committee sought or obtained insurance on the items" as a factor to consider in determining whether lost, misplaced or stolen equipment should be considered a non-qualified campaign expense. The kinds of insurance the Committee is maintaining appear to be reasonable. For

example, the Committee is a corporation with officers and directors and insurance to protect them is an appropriate winding down cost.³

This Office acknowledges that the Committee should have provided documentation of these insurance expenses in response to the PAR, such as invoices supporting its reported payments and copies of the insurance policies. Nevertheless, since the Committee's reports disclose payments for insurance coverage in 2001 and 2002, and the Committee made similar payments during 1999 and 2000, this Office recommends including insurance costs as winding down expenses for 2001 and 2002. This Office recommends that the insurance costs be calculated based on the amounts disclosed as paid by the Committee on its 2001 and 2002 reports rather than an estimate.

C. Entitlement

This Office notes that any change in the amount of winding down costs could change the calculation of remaining entitlement on pages 14-15 of the proposed report. The proposed Audit Report concludes that the remaining entitlement is exactly \$0; however, a change could result in some amount of remaining entitlement. The Committee's response to the PAR states that according to its figures, it "is still owed \$12,478." Committee Response (October 31, 2001) at 9.

It should be noted that the Committee, according to footnote 2 on page 2 of the proposed Audit Report, had been certified for \$14,775 that was never paid due to the shortfall in the Matching Payment Account. See 11 C.F.R. § 9036.4(c)(2). On May 31, 2000, the Commission determined that the Committee was not entitled to those previously certified funds based on the Committee's most recent statement of net outstanding campaign obligations ("NOCO Statement"), which indicated no remaining net outstanding campaign obligations, and notified the candidate and the United States Treasury that no further matching payments were owed to the Committee on the same date. See Memorandum to the Commission from Ray Lisi, "Dan Quayle/Quayle 2000 Exploratory Committee - Non Entitlement to Further Matching Funds" (May 30, 2000). On May 18, 2000, the Audit Division informed this Office that the Committee had received an overpayment based on its most recent NOCO Statement, and that, although "this situation has never before been encountered, an adjustment to previous certifications was indicated." Memorandum to Kim Leslie Bright from Ray Lisi, "Overpayment of Matching Funds to Quayle 2000, Inc." (May 18, 2000) at 2. The Audit staff stated that it contacted the Committee and advised them of the overpayment, and the Committee responded that "a revised NOCO will be prepared and based on that NOCO, a voluntary repayment will be made." *Id.*

This Office believes that even if changes to the winding down amounts result in an apparent remaining entitlement, it is too late for the United States Treasury to make any additional payments of matching funds to the Committee. According to the Internal Revenue

³ The Quayle 2000 Exploratory Committee, Inc. is incorporated in the state of Arizona, and state corporate filings list several officers, a Secretary and a President/CEO, and directors. The corporation filed its most recent annual report on May 6, 2002. The Committee amended its Statement of Organization with the Commission on June 1, 1999, changing its name from Quayle 2000 Exploratory Committee, Inc. to Quayle 2000, Inc.

Service Regulations governing matching fund payments, the Presidential Election Campaign Fund ("Fund") is divided into three separate accounts, one of which, the Presidential Primary Matching Payment Account ("Matching Payment Account"), is used to make matching fund payments to primary candidates. See 26 C.F.R. parts 701 and 702; Internal Revenue Service, Treasury, Final Regulations "Financing of Presidential Election Campaigns" 56 Fed. Reg. 21596-21600 (May 10, 1991). Section 702.9037-1 of the Internal Revenue Service regulations provides that any amount remaining in the Matching Payment Account after October 31 of the year following a presidential election shall be returned to the Fund to make transfers to the three accounts for the next presidential election. See 56 Fed. Reg. 21597, 21599. Thus, since October 31, 2001, there have been no funds in the Matching Payment Account available to pay any entitlement arising from the 2000 election. The Commission's revision of the amount certified to the Committee was appropriate because there were no apparent remaining net outstanding campaign obligations on the date of the revision based on the most recent NOCO statement submitted by the Committee. See 11 C.F.R. §§ 9034.1(b), 9034.5. In addition, the Commission's revision was based on a NOCO Statement submitted by the Committee. Moreover, the Committee did not protest the Commission's revision of the amount certified to it in May 2000, and apparently contemplated making a voluntary repayment of the apparent overpayment. Therefore, this Office does not believe that any additional payment to the Committee could be made even if there is any remaining entitlement.



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 25, 2002

Mr. William R. Neale, Treasurer
C/o Peggy Doven
Quayle 2000, Inc.
Quayle 2000 Compliance Committee
P.O. Box 437
Calhan, CO 80808

Dear Mr. Neale:

Attached please find the Report of the Audit Division on Quayle 2000, Inc. and Quayle 2000 Compliance Committee. The Commission approved the report on September 20, 2002. As noted in the report, the Commission may pursue any of the matters discussed in an enforcement action.

The Commission approved report will be placed on the public record on October 4, 2002. Should you have any questions regarding the public release of the report, please contact the Commission's Press Office at (202) 694-1220.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph F. Stoltz". The signature is written in a cursive style with a long horizontal stroke at the end.

Joseph F. Stoltz
Assistant Staff Director
Audit Division

Attachment as stated

cc: Peggy Doven, Comptroller
Keith Davis - Huckaby, Davis & Associates

CHRONOLOGY
QUAYLE 2000, INC.
AND
QUAYLE 2000 COMPLIANCE COMMITTEE

Audit Fieldwork	06/12/00 – 8/27/00
Exit Conference	12/07/00
Preliminary Audit Report to the Committee	8/15/01
Response Received to the Preliminary Audit Report	10/31/01
Final Audit Report Approved	09/20/02