

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of )

MUR 5045

Patrick J. Buchanan; Buchanan  
for President, Inc., and  
Angela Buchanan, as Treasurer;  
Matching Funds, Inc., and  
Scott B. Mackenzie, as President )

**SENSITIVE**

GENERAL COUNSEL'S REPORT # 2

I. **ACTIONS RECOMMENDED:** Take no further action against Matching Funds, Inc., and Scott B. Mackenzie, as President. Take no further action against Buchanan for President, Inc. and Angela Buchanan, as Treasurer, with respect to 2 U.S.C. § 441a(f). Approve pre-probable cause conciliation with Patrick J. Buchanan; Buchanan for President, Inc., and Angela Buchanan, as Treasurer.

II. **BACKGROUND**

On July 11, 2000, the Commission found reason to believe that Patrick J. Buchanan violated 26 U.S.C. § 9035(a); and Buchanan for President, Inc. and Angela Buchanan, as Treasurer ("Committee"), violated 2 U.S.C. §§ 441a(f), 434(b)(8), and 434(b)(3)(A). The Commission also found reason to believe that Matching Funds, Inc. ("MFI"), and Scott B. Mackenzie, as President, violated 2 U.S.C. § 441a(a). In order to allow this Office the opportunity to analyze the impact of a lawsuit related to the extension of credit issue, filed by Scott Mackenzie against the Committee in Fairfax County, Virginia, the Commission declined at

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that time to pursue conciliation with respondents prior to a finding of probable cause to believe in this matter.<sup>1</sup>

Mr. Buchanan and the Committee were notified of the Commission's reason to believe finding on July 21, 2000. On July 31, 2000, Counsel for Mr. Buchanan and the Committee requested an extension of time to respond to the Commission's findings, which was granted until the close of business on August 28, 2000. On August 28, 2000, Counsel requested pre-probable cause conciliation but did not provide a substantive response to the Commission's reason to believe finding. Attachment 1. No response to the Commission's finding has been submitted by Mr. Mackenzie or MFI.<sup>2</sup>

### III. ANALYSIS

The Office of General Counsel has obtained and analyzed the filings of plaintiffs and defendants in *Scott B. Mackenzie v. Buchanan for President*, No. 185230 (Cir. Va. filed Jan. 6, 2000). A trial by jury is set for November 15, 2000.

In a Second Amended Motion for Judgment filed with the Fairfax County Circuit Court, MFI and Mr. Mackenzie reference the contract signed between MFI and the Committee on June 3, 1995 and the Commission recommendation contained in the Exit Conference Memorandum that the Committee "amend its debts and obligations schedule to show a debt owed to MFI of \$193,835.00." *Second Amended Motion* at 2. MFI states that the Committee "subsequently

<sup>1</sup> In *Scott B. Mackenzie v. Buchanan for President*, No. 185230 (Cir. Va. filed Jan. 6, 2000), plaintiff alleged, among other things, that the Committee breached its contract and failed to pay \$150,835 to MFI for services rendered in processing the Committee's matching funds submissions.

<sup>2</sup> Although the Commission mailed the reason to believe notification to Scott B. Mackenzie's last known mailing address, it was returned as unclaimed on August 17, 2000. Subsequently, on August 24, 2000, Commission investigators delivered the reason to believe notification to Mr. Mackenzie's residence where it was received by a female who identified herself as Mr. Mackenzie's daughter. MFI's response to the notification, due on September 8, 2000, has not been received.

accepted the FEC Audit staff's recommendation to show a debt owed to Mackenzie t/a MFI of \$193,835, and thereafter, BFP [the Committee] began reducing the \$193,835 debt BFP owed to Mackenzie t/a MFI by making payments." *Id.* at 3. According to MFI, it is currently owed \$150,835, the Committee having paid \$43,000 of the \$193,835 debt.<sup>3</sup> Therefore, MFI alleges breach of contract and seeks to have a Constructive Trust imposed upon \$150,835 of the funds of Buchanan Fund. *Id.* at 4.

In its Answer and Grounds of Defense, the Committee admits it has paid Mr. Mackenzie but denies it owes him additional monies. *Answer and Grounds of Defense* at para. 8. The Committee also makes counter-allegations of incompetence, negligence, misappropriation, and fraud. *Id.* at paras. 7, 29, 31, 35.

That Mr. Mackenzie and MFI filed a lawsuit to collect the debt the Committee owed suggests that Mr. Mackenzie and MFI did not intend to make a contribution when MFI extended credit to the Committee. Although there is no documentation available to the Commission, apart from the MFI invoices,<sup>4</sup> that MFI had attempted to collect amounts due, the suit could indicate that such attempts were made and that Mr. Mackenzie did not intend to make an unlawful

<sup>3</sup> As of the 1999 Year-End disclosure report, the Committee reported an outstanding debt to MFI in the amount of \$165,835. In its court filings, MFI acknowledges receiving an additional \$15,000, thus reducing the amount of the indebtedness to \$150,835. However, the Committee omits any mention of the indebtedness to MFI in its April 15, 2000 and July 15, 2000 quarterly reports.

<sup>4</sup> From January 1996 to July 1996, MFI had invoiced the Committee on a monthly basis consistent with the contractual clause requiring monthly invoicing and payment. However, from August 1996 to April 1997, MFI apparently did not invoice the Committee for services rendered totaling \$183,009. Subsequent to the audit fieldwork, the Committee provided copies of MFI invoices to the Commission on February 18, 1998, covering the period from August 1996 to January 1997 in the total amount of \$181,252.94. The Audit staff had calculated MFI's fees for its services at \$780,345.72. Prior to the conclusion of fieldwork, MFI had billed the Committee \$597,336.45. According to the auditors, the additional invoices amounting to \$181,252.94 were not in the possession of the Committee and therefore not available for review by Audit staff prior to the end of fieldwork. At the end of fieldwork conference held on January 29, 1998, Scott Mackenzie told the Audit staff that he had the invoices for the remaining submissions in his office, but he did not provide any reason why they were never presented to the Committee.

extension of credit at the outset. The suit constitutes a commercially reasonable attempt to collect a debt. *See* 11 C.F.R. § 100.7(a)(4).

Accordingly, the Office of General Counsel recommends that the Commission take no further action against Matching Funds, Inc. and Scott B. Mackenzie, as President. Likewise, the Office of General Counsel recommends that the Commission take no further action against Buchanan for President, Inc. and Angela Buchanan, as Treasurer, with respect to the debt owed to MFI.

**IV. DISCUSSION OF CONCILIATION PROVISIONS AND CIVIL PENALTY**

21-04-403-3023

V. RECOMMENDATIONS

1. Take no further action against Matching Funds, Inc. and Scott B. Mackenzie, as President.
2. Take no further action against Buchanan for President, Inc. and Angela Buchanan, as Treasurer, with respect to 2 U.S.C. § 441a(f).
3. Enter into conciliation with Mr. Patrick J. Buchanan prior to a finding of probable cause to believe.
4. Enter into conciliation with Buchanan for President, Inc. and Angela Buchanan, as Treasurer, prior to a finding of probable cause to believe with respect to 2 U.S.C. §§ 434(b)(8), 434(b)(3)(A).
5. Approve the attached proposed Conciliation Agreements.
6. Approve the appropriate letters.

11/16/00  
Date

  
Lawrence M. Noble  
General Counsel



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: LAWRENCE M. NOBLE  
GENERAL COUNSEL

FROM: MARY W. DOVE/VENESHE FEREBEE-VINES *WVW*  
COMMISSION SECRETARY

DATE: NOVEMBER 21, 2000

SUBJECT: MUR 5045 - General Counsel's Report #2.  
dated November 16, 2000

The above-captioned document was circulated to the Commission on

Thursday, November 16, 2000.

Objection(s) have been received from the Commissioner(s) as  
indicated by the name(s) checked below:

Commissioner Mason	<u>XXX</u>
Commissioner McDonald	<u>XXX</u>
Commissioner Sandstrom	—
Commissioner Smith	—
Commissioner Thomas	—
Commissioner Wold	—

This matter will be placed on the meeting agenda for Tuesday,

November 28, 2000. Please notify us who will represent your Division before  
the Commission on this matter.

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