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Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

**SENSITIVE**

**MUR 5067**

DATE COMPLAINT FILED: August 10, 2000

DATE OF NOTIFICATION: August 17, 2000

DATE ACTIVATED: October 17, 2000

**EXPIRATION OF STATUTE OF**

**LIMITATIONS: August 14, 2005<sup>1</sup>**

**STAFF MEMBER: J. Duane Pugh Jr.**

**COMPLAINANT:**

John Hagelin

**RESPONDENTS:**

Patrick J. Buchanan

Buchanan Reform, Inc., and Angela M. Buchanan, as Treasurer

Angela M. Buchanan

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 437g(a)(1)

26 U.S.C. § 9002(2)

26 U.S.C. § 9003(a) and (c)

26 U.S.C. § 9012(d)(1)

11 C.F.R. § 9002.15

11 C.F.R. § 9003.1

11 C.F.R. § 9003.2

**INTERNAL REPORTS CHECKED:**

Disclosure Reports

**FEDERAL AGENCIES CHECKED:**

None

**MUR 5068**

DATE COMPLAINT FILED: August 11, 2000

SUPPLEMENTED: August 31, 2000

DATE OF NOTIFICATION: August 17, 2000

DATE ACTIVATED: October 17, 2000

<sup>1</sup> The candidates' agreement and certifications were submitted to the Commission on August 14, 2000. A revised certification dated August 18, 2000 was later submitted to the Commission. See Attachment 1.

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EXPIRATION OF STATUTE OF  
LIMITATIONS: August 14, 2005  
STAFF MEMBER: J. Duane Pugh Jr.

COMPLAINANT: James Mangia

RESPONDENTS: Patrick J. Buchanan  
Buchanan Reform, Inc., and Angela M. Buchanan, as Treasurer  
Angela M. Buchanan  
Gerald M. Moan

RELEVANT STATUTES  
AND REGULATIONS: 2 U.S.C. § 437g(a)(1)  
26 U.S.C. § 9002(2)  
26 U.S.C. § 9003(a) and (c)  
26 U.S.C. § 9008(c)  
26 U.S.C. § 9012(c)(2)  
26 U.S.C. § 9012(d)(1)  
11 C.F.R. § 9002.15  
11 C.F.R. § 9003.1  
11 C.F.R. § 9003.2

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

MUR 5081

DATE COMPLAINT FILED: August 29, 2000  
DATE OF NOTIFICATION: September 1, 2000  
DATE ACTIVATED: October 25, 2000

EXPIRATION OF STATUTE OF  
LIMITATIONS: August 14, 2005  
STAFF MEMBER: J. Duane Pugh Jr.

COMPLAINANT: Cathy L. Stewart

RESPONDENTS: Patrick J. Buchanan  
Ezola Foster

RELEVANT STATUTES  
AND REGULATIONS: 2 U.S.C. § 437g(a)(1)  
26 U.S.C. § 9002(2)  
26 U.S.C. § 9003(a) and (c)  
26 U.S.C. § 9012(d)(1)

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11 C.F.R. § 9002.15  
11 C.F.R. § 9003.1  
11 C.F.R. § 9003.2

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. GENERATION OF MATTERS

John Hagelin filed a complaint with the Federal Election Commission against Patrick J. Buchanan, Buchanan Reform, Inc. (the "Committee"), and Angela M. Buchanan, which was received August 10, 2000, and designated Matter Under Review ("MUR") 5067.<sup>2</sup> ("Hagelin Complaint").<sup>3</sup> Mr. Buchanan, the Committee, and Ms. Buchanan submitted a joint response on September 5, 2000.

James Mangia filed a complaint with the Commission against Mr. Buchanan, the Committee, Ms. Buchanan, and Gerald M. Moan, which was received August 11, 2000, and designated MUR 5068. ("Mangia Complaint"). Mr. Mangia also submitted a supplement and amendment to the complaint, which was received August 31, 2000. ("Supplement"). The candidate, the Committee, and its treasurer submitted a joint response on September 6, 2000. Counsel for the remaining respondent, Mr. Moan, stated in a letter dated November 21, 2000,

<sup>2</sup> The Hagelin Complaint identified one respondent as "Buchanan for President Campaign Committee, a/k/a Buchanan Reform." Mr. Buchanan established the committee named Buchanan Reform, Inc., in connection with his 2000 campaign for the Presidency as a Reform Party candidate, and the Hagelin Complaint pertains to this committee. Mr. Buchanan had previously established the committee named Buchanan for President, Inc., in connection with his 2000 campaign for the Republican Party's nomination for President. The complaints in MURs 5067 and 5068 also identify Angela Bay Buchanan as a respondent; Buchanan Reform, Inc., lists her as its Treasurer by her formal name of Angela M. Buchanan. Because the complainants identified her by name, she is a respondent as an individual in addition to a respondent as Treasurer of Buchanan Reform, Inc.

<sup>3</sup> Shortly thereafter, Mr. Hagelin filed a document that sought to withdraw the complaint without prejudice. Attachment 2. However, Mr. Hagelin was informed that the Commission is empowered under 2 U.S.C. § 437g to review properly filed complaints and take appropriate action and that a request to withdraw a complaint will not prevent the Commission from taking appropriate action. Attachment 3.

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that the response was also filed on behalf of Mr. Moan. Attachment 4. Although the respondents to MUR 5068 were notified of the supplement and amendment to the complaint, no further responses were received.

Cathy L. Stewart and 16 other individuals from the New York delegation to the Reform Party convention<sup>4</sup> filed a document styled complaint/petition with the Commission against Patrick J. Buchanan and Ezola Foster, which was received August 29, 2000, and designated MUR 5081. ("New York Delegation Complaint"). Mr. Buchanan submitted a response on September 22, 2000.<sup>5</sup> Ms. Foster did not respond.<sup>6</sup>

## II. FACTUAL AND LEGAL ANALYSIS

### A. **The Complaints**

Mr. Hagelin complains that any representation to the Commission that Patrick J. Buchanan is "the valid and lawful Reform Party [of the United States of America] Nominee for the Office of President of the United States constitutes a false, fictitious, and fraudulent representation" in violation of 26 U.S.C. § 9012(d)(1). Hagelin Complaint, at 5. Mr. Hagelin bases his conclusion on a charge that the respondents violated the rules of the Reform Party of the United States of America ("Reform Party") for the process of nominating Presidential and Vice Presidential candidates of the Reform Party. *Id.*, at 2. Specifically, he alleges that the respondents submitted a list of approximately 500,000 names known as the "Pat Buchanan Supporter List" for use in the Reform Party balloting process, although the persons listed were

<sup>4</sup> The complaint purports to have been filed by 17 individuals. However, only Ms. Stewart signed and swore to the contents of the complaint as required by 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4(b)(2).

<sup>5</sup> Mr. Buchanan's attorney represented that Mr. Buchanan did not receive notification of the complaint in MUR 5081 until September 13, 2000; on this basis, his response was filed within the 15 days permitted under 11 C.F.R. § 111.6(a).

<sup>6</sup> This Office has documentation showing that Ms. Foster used the address in the notification letters as recently as August 2000.

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allegedly not qualified under Reform Party rules to receive a primary ballot. *Id.*, at 3. Further, he alleges that the respondents refused to cooperate with and obstructed the Reform Party Presidential Nominations Committee in its efforts to verify the submitted list. *Id.*, at 3-4. The Hagelin complaint anticipates that the respondents would use their "control of a rogue faction claiming to be the Reform Party" to attempt "to override the directives and resolutions by the [Reform Party Presidential Nominations Committee] and the [Reform Party] Executive Committee." *Id.*, at 5.

Mr. Hagelin also alleges that the respondents also engaged in, or were about to engage in, "balloting and voter fraud" and an "attempt[] to conceal . . . fraudulent actions by entering into a secret agreement" in violation of the requirements of 42 U.S.C. § 1974, which concerns the preservation of records by officers of elections. Hagelin Complaint, at 6.

Mr. Mangia alleges in MUR 5068 many of the same charges as Mr. Hagelin alleges in MUR 5067. In particular, he alleges that any representation to the Commission that Patrick J. Buchanan is the valid and lawful Reform Party Nominee for the Office of President of the United States constitutes a false, fictitious, and fraudulent representation in violation of 26 U.S.C. § 9012(d)(1). Mangia Complaint, at 13. Mr. Mangia also cites the submission of the "Pat Buchanan Supporter List," the refusal to cooperate with and obstruction of the Reform Party Presidential Nominating Committee, and his anticipation that the respondents will attempt to override the directives and resolutions of the Reform Party Presidential Nominating Committee and the Reform Party Executive Committee. *Id.*, at 4, 6 and 12. Mr. Mangia added to his complaint a detailed description of the August 8, 2000 Reform Party National Committee meeting that he describes as "chaotic and tense" and that culminated in his instruction to "the properly constituted members of the National Committee . . . to leave the room and convene

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elsewhere." *Id.*, at 8-10. Mr. Mangia also recounts the actions after what he calls the "relocation of the National Committee meeting," which included the disqualification of Mr. Buchanan as Reform Party Nominee for the Presidency. *Id.*, at 10-12.

Mr. Mangia also repeats Mr. Hagelin's charges of violations of 42 U.S.C. § 1974, balloting and voter fraud. *Id.*, at 13. Additionally, he alleges that he and others were "physically assaulted." *Id.*, at 10.

Mr. Mangia supplements and amends his complaint with a submission received August 31, 2000, in which he alleges that the respondents held an "illegal convention" and made a false, fictitious and fraudulent representation to the Commission in violation of 26 U.S.C. § 9012(d)(1). Supplement, at 3-4. He also submits additional documentation and states that the Reform Party nominated Mr. Hagelin for the Presidency on August 15, 2000. *Id.*, at 1-2. This submission also amends his complaint to add a new allegation of "illegal use of Public Funds earmarked for the Reform Party nomination convention," *id.*, at 3-4, which it appears would constitute a violation of 26 U.S.C. §§ 9008(c) and 9012(c)(2).

The New York Delegation Complaint is primarily a petition asking the Commission to deny Mr. Buchanan and Ms. Foster certification as the recipients of general election funds under 26 U.S.C. § 9005 based on Ross Perot's performance as the Reform Party candidate for President in the 1996 election. New York Delegation Complaint, at 1, 2, and 7. However, the Complainant also asks that the Commission consider the complaint "for other legally permissible purposes" and as a basis for "further sanction for the illegal actions described herein." *Id.*, at 2 and 7.

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The New York Delegation Complaint argues that the distinction between major and minor parties in 26 U.S.C. § 9002(2)(A) and (B) constitutes “invidious discrimination without rational basis,” and implies that this amounts to “a constitutional infirmity.” *Id.*, at 2-3.

The New York Delegation Complaint also argues that Mr. Buchanan and Ms. Foster forfeited their right to receive general election funding as the candidates of the Reform Party by their actions at and leading up to the Reform Party 2000 Convention. *Id.*, at 4. The document cites the Buchanan campaign refusal to comply with a demand from the Reform Party's Presidential Nominations Committee to submit to an audit of the Buchanan Supporter List. *Id.* It also claims that the convention that nominated Mr. Buchanan cannot properly be called a Reform Party convention, and claims that its refusal to seat the New York Delegation and choice to seat challengers to the New York Delegation demonstrates the infirmity of the convention that nominated Buchanan. *Id.*, at 5-6.

The New York Delegation Complaint does not cite a specific provision of law that it alleges Mr. Buchanan and Ms. Foster violated. However, because the allegations concern whether Mr. Buchanan and Ms. Foster are the nominees of the Reform Party entitled to general election funding, it appears that the complaint alleges that Mr. Buchanan and Ms. Foster violated 26 U.S.C. § 9012(d)(1) by their certifications of that candidacy.

## **B. The Responses**

The respondents in MUR 5067 argue that the Commission should dismiss the Hagelin Complaint for its alleged failure to meet the threshold requirement of 2 U.S.C. § 437g to plead a violation of the Federal Election Campaign Act of 1971, as amended (“FECA”), or the Presidential Election Campaign Fund Act, as amended (the “Fund Act”). (“MUR 5067 Response”). They argue that the Hagelin Complaint is limited to matters relating to the internal

operations of the Reform Party, which are not governed by FECA or the Fund Act. *Id.*, at 1-2. Consequently, the respondents in MUR 5067 argue that the proper forum for resolving such disputes is the Reform Party Convention. *Id.* Furthermore, they argue that even if the allegations of procedural irregularity are accurate, they do not change the fact that Mr. Buchanan and Ms. Foster were nominated by the Reform Party as its Presidential and Vice Presidential candidates, so no violation of 26 U.S.C. § 9012(c) based on false statements resulted from Mr. Buchanan and Ms. Foster's application for funds under the Fund Act. *Id.*, at 2-3. Finally, they argue that Mr. Buchanan and Ms. Foster were properly nominated by the Reform Party Convention, *id.*, at 3-6 and 7-9, and that Mr. Hagelin has no basis to claim that he is the Reform Party nominee for President, *id.*, at 6-7.

The respondents in MUR 5068 filed a nearly-identical response to the MUR 5067 Response, supplemented with allegations that Mr. Mangia's actions at the Reform Party Convention demonstrate his and Mr. Hagelin's lack of good faith. Buchanan, *et. al* Response, MUR 5068, at 9-10 (Sept. 5, 2000).

In response to MUR 5081, Mr. Buchanan argues that the New York Delegation Complaint was rendered moot by the Commission's certification of funds to Mr. Buchanan and Ms. Foster on September 14, 2000. Buchanan Response, MUR 5081 (Sept. 22, 2000). Further, the response states that the New York Delegation Complaint's request that the Commission consider it for other legally permissible purposes is such a broad statement that it does not meet the requirement of 2 U.S.C. § 437g(c) that a complaint allege a specific violation of law.<sup>7</sup> *Id.*

<sup>7</sup> However, 2 U.S.C. § 437g(c) refers to reports by the Attorney General of apparent violations. Section 437g(a) of Title 2 of the United States Code specifies the requirements for a complaint, which are that the complaint be written, signed and sworn to by the person filing the complaint, notarized, and made under the penalties of perjury and subject to 18 U.S.C. § 1001. 2 U.S.C. § 437g(a)(1). There is no specificity requirement *per se*; only a

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## C. Analysis

### 1. The Law

The Fund Act makes it unlawful for any person to knowingly and willfully furnish false, fictitious, or fraudulent evidence or information to the Commission relevant to a certification by the Commission. 26 U.S.C. § 9012(d)(1)(A). The Fund Act provides for criminal penalties for any person who violates this provision. 26 U.S.C. § 9012(d)(2).

The Fund Act provides that the eligible candidates of a minor party in a presidential election shall be entitled to pre-election funding. 26 U.S.C. § 9004(a)(2)(A). *See also* 11 C.F.R. § 9004.2(b).<sup>8</sup>

The Fund Act defines "candidate" as an individual who has been nominated for election to the office of President of the United States or the office of Vice President of the United States by a major party or has "qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more states." 26 U.S.C. § 9002(2). A "political party" is an "association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee or organization." 11 C.F.R. § 9002.15.

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requirement that the person believe a violation of one of three Acts within the Commission's jurisdiction has occurred. *Id.*

<sup>8</sup> The amount of the minor party candidate's entitlement is the proportionate amount of the funding available for major party general election candidates, based on the ratio of the total popular votes received by the minor party candidate in the preceding election compared to the average of the total popular votes by the major party candidates for President in that election. 26 U.S.C. § 9004(a)(2); 11 C.F.R. § 9004.2(b). The Commission shall certify to the Secretary of the Treasury payment to eligible candidates in the full amount to which they are entitled not later than 10 days after they have met all applicable conditions for eligibility. 26 U.S.C. § 9005(a); 11 C.F.R. § 9005.1(b).

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Candidates of minor parties must submit written agreements agreeing to the terms specified in 26 U.S.C. § 9003(a) and must certify under the penalty of perjury to the terms specified in 26 U.S.C. § 9003(c).

Payments for presidential nominating conventions shall be used only to defray expenses incurred with respect to a presidential nominating convention by or on behalf of the national committee receiving such payments. 26 U.S.C. § 9008(c)(1). It is unlawful for the national committee of a minor party which receives any payment under 26 U.S.C. § 9008(b)(3) to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 26 U.S.C. § 9008(c). 26 U.S.C. § 9012(c)(2).

2. Analysis of Alleged 26 U.S.C. § 9012(d)(1) Violation

In order to determine that any of the respondents violated 26 U.S.C. § 9012(d)(1) in connection with the application of Mr. Buchanan and Ms. Foster for pre-election funding under the Fund Act as Reform Party candidates for President and Vice President of the United States, the Commission would have to conclude that one or more of the statements made in the application was "false, fictitious, or fraudulent" and was made knowingly and willfully.<sup>9</sup> 26 U.S.C. § 9012(d)(1). The application consists of a letter from the candidates agreeing to comply with the conditions set forth at 11 C.F.R. § 9003.1(b) and a certification as required by 11 C.F.R. § 9003.2(b) and (c). Attachment 1. In both documents, Patrick J. Buchanan and Ezola Foster are identified as candidates of the Reform Party for the offices of President and Vice

<sup>9</sup> Section 9012 is entitled "Criminal Penalties," and 26 U.S.C. § 9012(d)(2) provides criminal penalties for violations of 26 U.S.C. § 9012(d)(1). Nonetheless, the Commission has jurisdiction over the civil enforcement of this provision. See, e.g., Certification, *In the Matter of Carter-Mondale Reelection Committee*, MUR 1324 (Mar. 31, 1981), where the Commission found reason to believe that Carter/Mondale Reelection Committee violated, *inter alia*, 26 U.S.C. § 9012(d)(1)(A). See also *Reagan-Bush Committee v. FEC*, 525 F. Supp. 1330, 1334 (D.D.C. 1981) (noting that the Commission's enforcement authority under 2 U.S.C. § 437g extends to Fund Act violations and citing "knowing and willful failures to comply with the payment conditions, see 26 U.S.C. § 9012" as an example).

President, respectively. *Id.* The Commission acted upon the application and made a final determination on September 14, 2000, that Mr. Buchanan and Ms. Foster were entitled to \$12,613,452 in pre-election public funding pursuant to 26 U.S.C. § 9004(a)(2)(A) and issued a Statement of Reasons setting forth the factual and legal reasons for its final determination. *See* Statement of Reasons, *Entitlement of Patrick Buchanan and Ezola Foster to \$12,613,452 in Pre-election Public Funding*, LRA 596 (Oct. 17, 2000).

In that Statement of Reasons, the Commission explained that Mr. Buchanan and Ms. Foster submitted the required letters of candidate agreements and certifications required under 26 U.S.C. § 9003(a) and (c) and 11 C.F.R. §§ 9003.1 and 9003.2. In response to a Commission request, Mr. Buchanan and Ms. Foster also submitted documentation indicating that they have qualified to appear on the general election ballots as the nominees of the Reform Party in at least ten states in satisfaction of the Fund Act's definition of "candidate." 26 U.S.C. § 9002(2)(B). Consequently, the Commission determined that Mr. Buchanan and Ms. Foster established their eligibility to receive pre-election payments under 26 U.S.C. § 9006. The Commission stated that it "does not believe that it should entangle itself in the complexities of party rules or procedures as the Fund Act does not define eligibility in terms of a political party's actions." *See* Statement of Reasons, LRA 596, at 6. Instead, the Commission relied on the judgment of the states with regard to who should appear on a state ballot as a party nominee. *Id.* The Commission found alternatively that if the Fund Act does require the Commission to independently review Mr. Buchanan's claim to be the nominee of the Reform Party, such a review would have to be of a limited nature to avoid the Commission entangling itself in party rules. *Id.* Based on the evidence submitted by Mr. Buchanan, the Commission found "that Mr. Buchanan has made a prima facie showing that he has received the nomination of the Reform Party." *Id.*

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In connection with this determination, the Commission rejected Mr. Mangia's request to deny certification of Mr. Buchanan and Ms. Foster for public funding for the 2000 general election.<sup>10</sup> In doing so, the Commission stated that "[t]he allegations made against Mr. Buchanan and Ms. Foster do not satisfy the substantial burden that must be met to withhold certification of public funds." *See Statement of Reasons, Request by Mr. James Mangia to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster*, LRA 598, at 9 (Nov. 2, 2000). The Commission further concluded that "[it did] not possess evidence that Mr. Buchanan's application for public funds contains patent irregularities or the possibility of fraud." *Id.*, at 10.

The Commission further stated:

Moreover, Mr. Mangia's allegations primarily relate to the Reform Party's internal rules and procedures. The Fund Act's definition of "candidate" explicitly requires the Commission to rely on the states' determinations of who appears on the general election ballot for each party. *See* 26 U.S.C. § 9002(2)(B); 11 C.F.R. § 9002.2(a)(2). The Commission should not entangle itself in the complexities of party rules or procedures as the Fund Act does not define eligibility in terms of a political party's actions. Thus, the Commission should not substitute its own judgment for that of a state with regard to who should appear on a state ballot as a party nominee. [Citation omitted.] Similarly, Mr. Mangia's submission relates to events of competing factions of the Reform Party and raises questions regarding which faction is the "true" Reform Party. However, the Commission's regulations indicate that a "political party" is an association that nominates or selects an individual for federal office whose name appears on the general election ballot as the candidate for that association. *See* 11 C.F.R. § 9002.15. As Mr. Buchanan and Ms. Foster have submitted documentation demonstrating that they have qualified to appear on numerous general election ballots as Reform Party candidates, they meet the Fund Act's definition of "candidate," and the Reform Party, under whose designation they run, meets the definition of "political party."

<sup>10</sup> Similarly, the Commission rejected the request from the New York Delegation to deny certification. *Statement of Reasons, Request by the New York Delegation to Deny Certification of Public Funds to Patrick J. Buchanan and Ezola Foster*, LRA 599 (Nov. 2, 2000).

*Id.*, at 10-11. The Commission issued a similar Statement of Reasons in response to the New York Delegation Complaint. *See* Statement of Reasons, LRA 599.

Thus, the Commission found that Mr. Buchanan and Ms. Foster met the Fund Act's definition of "candidate," and that they did so running under the designation of the Reform Party. Given these determinations, the allegations that the respondents made false statements in that application cannot be supported. Specifically, the Commission's findings that Mr. Buchanan and Ms. Foster met the Fund Act's definition of "candidate" and that they did so running under the designation of the Reform Party provide a legal basis to demonstrate that the respondents had, at the very least, a good-faith belief in the truth of the statements in the application. Such a belief is sufficient to defeat an allegation of a 26 U.S.C. § 9012(d)(1) violation as such a violation would require a showing that the statements were both "false, fictitious and fraudulent" and that they were made "knowingly and willfully."

In its Statement of Reasons providing the basis for its certification of funds, the Commission went further and found "that Mr. Buchanan has made a *prima facie* showing that he has received the nomination of the Reform Party." *See* Statement of Reasons, LRA 596, at 6. Such a *prima facie* showing is also sufficient to defeat an allegation of a knowing and willful false statement. Thus, in order to assess whether the respondents violated 26 U.S.C. § 9012(d)(1), the Commission need not entangle itself in the complexities of party rules or procedures and consider the action of competing factions of the Reform Party, seeking to establish which faction is the "true" Reform Party.<sup>11</sup>

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<sup>11</sup> Moreover, at least three Commissioners went further and stated that they had "no reason to doubt the Reform Party, as formally recognized, nominated Mr. Buchanan and Ms. Foster for President and Vice President for the 2000 election cycle." *See* Vice Chairman McDonald, Commissioner Thomas and Commissioner Smith, *Statement for the Record*, LRA 598 and 599, at 3 (Oct. 18, 2000). A fourth Commissioner explained that his approval of funding for Mr. Buchanan is based, in part, on a preliminary injunction issued by a California court that

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On these bases, the Office of General Counsel recommends that the Commission find no reason to believe the respondents violated 26 U.S.C. § 9012(d)(1) in connection with the application of Mr. Buchanan and Ms. Foster for funding under 26 U.S.C. § 9006.

3. Analysis of Alleged 26 U.S.C. §§ 9008(c) or 9012(c)(2) Violation

Mr. Mangia amended his complaint to allege that the respondents in MUR 5068 held an illegal convention under the name of the Reform Party. He complains of actions taken at this convention, and states that "[s]uch action is expressly prohibited by the Reform Party Rules." Supplement, at 3. Finally, he states that the respondents in MUR 5068 illegally used public funds earmarked for the Reform Party nominating convention. *Id.*, at 4.

An illegal use of public funds awarded for presidential nominating conventions would be a violation of 26 U.S.C. § 9008(c) and, for the national committee of a minor party that received any public funds, of 26 U.S.C. § 9012(c)(2). However, Mr. Mangia's allegation that funds for the Reform Party nominating convention were illegally used is based on the same charges of violations of the Reform Party's internal rules and procedures that serve as a basis for the allegation that Mr. Buchanan was not the Reform Party's nominee for President. The Commission should again decline to entangle itself in the complexities of party rules or procedures.<sup>12</sup> Additionally, the application of 26 U.S.C. § 9012(c)(2) is expressly limited to the national committees of a major or minor party that receives payment under 26 U.S.C.

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concluded that Mr. Buchanan was nominated in conformity with the Reform Party's constitution. *See* Commissioner Sandstrom, Statement for the Record, LRA 596, at 6 (Oct. 23, 2000) (citing *Reform Party of the United States of America v. John Hagelin, et al.*, Case No. 028469 (Super. Ct. Cal. S.D. Sept. 13, 2000)).

<sup>12</sup> Three Commissioners went further in their Statement for the Record in LRAs 598 and 599, noting that some participants walked out of a meeting of the Reform Party National Committee that had been awarded public funds for conducting its convention. However, the Statement continues: "But a majority of those who had come for the National Committee meeting stayed and continued on with party affairs. A majority held the convention, attended and chaired by the person in charge of the Convention Committee we had previously certified for convention funding." *See* Vice Chairman McDonald, Commissioner Thomas and Commissioner Smith, *Statement for the Record*, LRAs 598 and 599, at 8 (Oct. 18, 2000).

§ 9008(b)(3). As such, it appears that it is inapplicable to Mr. Buchanan, the Committee, and Ms. Buchanan; further, it appears applicable at most to Mr. Moan in his capacity as an officer of the Reform Party.

Moreover, pursuant to 26 U.S.C. § 9008(g) and (h), the Reform Party's use of public convention funds is subject to a Commission audit. Thus, the Commission will have an opportunity to evaluate the use of the public funds awarded for the Reform Party nominating convention. Therefore, this Office recommends the Commission find no reason to believe that the respondents in MUR 5068 violated 26 U.S.C. §§ 9008(c) or 9012(c)(2).

#### 4. Analysis of Other Alleged Violations

Messrs. Hagelin and Mangia make some allegations that concern conduct outside the jurisdiction of the Commission. Specifically, Mr. Hagelin alleges "balloting and voter fraud" and an "attempt[] to conceal . . . fraudulent actions by entering into a secret agreement" in violation of the requirements of 42 U.S.C. § 1974. *See Hagelin Complaint*, at 6. Mr. Mangia repeats the charges of violations of 42 U.S.C. § 1974, balloting and voter fraud. *Mangia Complaint*, at 13. Additionally, he alleges that he and others were "physically assaulted." *Id.*, at 10. However, the Commission's jurisdiction extends only to violations of FECA, the Fund Act, and the Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. §§ 9031-42. *See* 2 U.S.C. § 437g(a)(1). Other than the alleged violations of 26 U.S.C. §§ 9008 and 9012, Messrs. Hagelin and Mangia's allegations do not appear to constitute a violation of any of the three Acts that define the Commission's jurisdiction.

The New York Delegation argues that the distinction between major and minor parties in 26 U.S.C. § 9002(2)(A) and (B) constitutes "invidious discrimination without rational basis," and implies that this amounts to "a constitutional infirmity." *See New York Delegation Complaint*,

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at 2-3. However, the Commission cannot determine that any provision of any act is unconstitutional. *See American Coalition for Competitive Trade v. Clinton*, 128 F.3d 761, 766 n.6 (D.C. Cir. 1997).

Therefore, this Office makes no recommendation to Commission with respect to the allegations described in this section.

### III. RECOMMENDATIONS

#### MUR 5067

1. Find no reason to believe that Patrick J. Buchanan violated 26 U.S.C. § 9012(d)(1).
2. Find no reason to believe that Buchanan Reform, Inc., and Angela M. Buchanan, as Treasurer, violated 26 U.S.C. § 9012(d)(1).
3. Find no reason to believe that Angela M. Buchanan violated 26 U.S.C. § 9012(d)(1).
4. Close the file with respect to MUR 5067.

#### MUR 5068

5. Find no reason to believe that Patrick J. Buchanan violated 26 U.S.C. § 9012(d)(1).
6. Find no reason to believe that Buchanan Reform, Inc., and Angela M. Buchanan, as Treasurer, violated 26 U.S.C. § 9012(d)(1).
7. Find no reason to believe that Angela M. Buchanan violated 26 U.S.C. § 9012(d)(1).
8. Find no reason to believe that Gerald M. Moan violated 26 U.S.C. § 9012(d)(1).
9. Find no reason to believe that Patrick J. Buchanan violated 26 U.S.C. §§ 9008(c) or 9012(c)(2).
10. Find no reason to believe that Buchanan Reform, Inc., and Angela M. Buchanan, as Treasurer, violated 26 U.S.C. §§ 9008(c) or 9012(c)(2).

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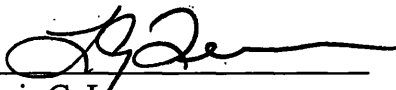


11. Find no reason to believe that Angela M. Buchanan violated 26 U.S.C. §§ 9008(c) or 9012(c)(2).
12. Find no reason to believe that Gerald M. Moan violated 26 U.S.C. §§ 9008(c) or 9012(c)(2).
13. Close the file with respect to MUR 5068.

MUR 5081

14. Find no reason to believe that Patrick J. Buchanan violated 26 U.S.C. § 9012(d)(1).
15. Find no reason to believe that Ezola Foster violated 26 U.S.C. § 9012(d)(1).
16. Close the file with respect to MUR 5081.
17. Approve the appropriate letters for MURs 5067, 5068 and 5081.

2/15/01  
Date

  
Lois G. Lerner  
Acting General Counsel

Attachments:

1. Letter from Patrick J. Buchanan and Ezola Foster to FEC (Aug. 11, 2000); Presidential and Vice Presidential Candidates Certification (Aug. 18, 2000).
2. John Hagelin, Withdrawal of Complaint without Prejudice, MUR 5067 (Aug. 17, 2000).
3. Jeff S. Jordan, FEC Letter to John Hagelin, MUR 5067 (Aug. 24, 2000).
4. Letter from John S. Duffy to Chairman Darryl R. Wold (Nov. 21, 2000).

August 11, 2000

Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Commissioners:

Pursuant to 11 CFR § 9003.1, Patrick J. Buchanan, Presidential candidate of the Reform Party of the United States of America ("Reform Party"), and Ezola Foster, Vice Presidential candidate of the Reform Party, agree that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR § 9003.1(b). Specifically, Mr. Buchanan and Ms. Foster agree that:

1. They have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.
2. They and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.
3. They and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.
4. They and their authorized committee(s) will keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter (including those required to be maintained under 11 CFR 9003.5), and other information that the Commission may request. If the candidates or the candidates' authorized committee(s) maintain or use computerized information containing any of the categories of data listed in 11 CFR 9003.6(a), the committee(s)

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will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information that meets the requirements of 11 CFR 9003.6(b) at the times specified in 11 CFR 9007.1(b)(1). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee(s) shall also be made available.

5. They and their authorized committee(s) shall obtain and furnish to the Commission upon request all documentation relating to funds received and disbursements made on the candidates' behalf by other political committees and organizations associated with the candidates.
6. They and their authorized committee(s) shall permit an audit and examinations pursuant to 11 CFR part 9007 of all receipts and disbursements including those made by the candidates, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidates or committee(s). The candidates and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR part 9007.
7. They and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR parts 100-116, and 9001-9012.
8. They and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement or otherwise imposed under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

9. Any television commercial prepared or distributed by the candidates or the candidates' authorized committee(s) will be prepared in a manner which ensures that the commercial contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line 21 of the vertical blanking interval.

10. They and their authorized committee(s) shall file all reports with the Commission in an electronic format that meets the requirements of 11 CFR 104.18 if the candidates or the candidates' authorized committee(s) maintain or use computerized information containing any of the information described in 11 CFR 104.3.

11. The name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidate is Angela M. Buchanan, 8233 Old Courthouse Road, Suite 200, Vienna, VA 22182.

12. The name and address of the depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9005.2 is ~~First State~~ SEQUOIA BANK  
1629 K STREET, WASHINGTON, D.C. 20006

13. The name under which each account is held at the depository at which the payments from the Fund are to be deposited is ~~First State~~ BUCHANAN FOSTER CORP

  
Patrick J. Buchanan  
Presidential Candidate

  
Ezola Foster  
Vice Presidential Candidate

Date: 8/13/00

PRESIDENTIAL AND VICE PRESIDENTIAL  
CANDIDATES CERTIFICATION

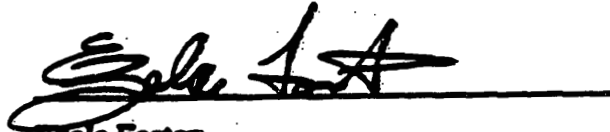
Pursuant to 11 CFR § 9003.2(b), we, Patrick J. Buchanan and Ezola Foster, candidates of the Reform Party of the United States of America for the offices of President and Vice President, respectively, make the following certification under penalty of perjury.

1. We and our authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR part 9004.
2. No contributions to defray qualified campaign expenses have been or will be accepted by us and our authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by us from the Fund under 11 CFR 9004.2.
3. We will not knowingly make expenditures from our personal funds, or the personal funds of our immediate families, in connection with the campaign for the offices of President and Vice President in excess of \$50,000 in the aggregate.

We declare under penalty of perjury that the foregoing is true and correct. Executed on August 18, 2000.



Patrick J. Buchanan



Ezola Foster



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

MEMORANDUM

TO: Office of the Commission Secretary

FROM: Office of General Counsel *KCS*

DATE: February 15, 2001

SUBJECT: MURs 5067,5068,5081-First General Counsel's Report

The attached is submitted as an Agenda document for the Commission Meeting of \_\_\_\_\_

Open Session \_\_\_\_\_

Closed Session \_\_\_\_\_

CIRCULATIONS

SENSITIVE ☒  
NON-SENSITIVE ☐

72 Hour TALLY VOTE ☒

24 Hour TALLY VOTE ☐

24 Hour NO OBJECTION ☐

INFORMATION ☐

96 Hour TALLY VOTE ☐

DISTRIBUTION

COMPLIANCE ☒

Open/Closed Letters ☐  
MUR ☐  
DSP ☐

STATUS SHEETS ☐  
Enforcement ☐  
Litigation ☐  
PFESP ☐

RATING SHEETS ☐

AUDIT MATTERS ☐

LITIGATION ☐

ADVISORY OPINIONS ☐

REGULATIONS ☐

OTHER ☐

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