



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 23, 2003

**Via Facsimile and Federal Express**

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**Via Hand Delivery**

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RE: MUR 5181  
Spirit of America PAC and  
Garrett M. Lott, as Treasurer  
Ashcroft 2000 and  
Garrett M. Lott, as Treasurer

Dear Messrs. Trimble and Ginsberg:

Based on a complaint filed with the Federal Election Commission and information supplied by your clients, Spirit of America PAC and Garrett M. Lott, as Treasurer ("the PAC") and Ashcroft 2000 and Garrett M. Lott, as Treasurer ("Ashcroft 2000"), the Commission on July 23, 2002, found reason to believe that the PAC violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and that Ashcroft 2000 violated 2 U.S.C. §§ 441a(f), 434(b) and 441b(a). The Commission also instituted an investigation in this matter.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

Tony P. Trimble, Esq.  
Benjamin L. Ginsberg, Esq.  
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The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

Due to statute of limitations considerations, before granting any request for an extension of time to respond to the enclosed brief, this Office will request that your client execute an agreement to extend the statute of limitations. In addition, any extension request must be submitted in writing five days prior to the due date, and good cause must be demonstrated.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Mark L. Taksar or Mark Allen, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence H. Norton  
General Counsel

Enclosure  
Brief

1  
2  
3 **BEFORE THE FEDERAL ELECTION COMMISSION**

4  
5 In the Matter of \_\_\_\_\_ )  
6 \_\_\_\_\_ ) MUR 5181  
7 Spirit of America PAC and Garrett Lott, as Treasurer )  
8 Ashcroft 2000 and Garrett Lott, as Treasurer )  
9

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11 **GENERAL COUNSEL'S BRIEF**

12  
13 **I. STATEMENT OF THE CASE**

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15 This matter was generated by a complaint filed by the Alliance for Democracy, Common  
16 Cause, the National Voting Rights Institute, Hedy Epstein and Ben Kjelshus alleging that Spirit  
17 of America PAC ("PAC") made an excessive in-kind contribution to Ashcroft 2000 in the form  
18 of a fundraising mailing list. The complaint also alleged that the PAC and Ashcroft 2000,  
19 respectively, failed to report the making and receipt of the contribution. On July 23, 2002, the  
20 Commission found reason to believe that the PAC and Garrett Lott, as Treasurer, violated  
21 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and Garrett Lott, as Treasurer, violated  
22 2 U.S.C. §§ 441a(f), 441b(a) and 434(b).

23 The Office of General Counsel has conducted an investigation. This brief sets forth the  
24 factual and legal issues in this matter and recommends that the Commission find probable cause  
25 to believe violations occurred, based on two theories. See 2 U.S.C. § 437g and 11 C.F.R.  
26 § 111.16(a). First, the PAC and Ashcroft 2000 are affiliated committees that received and made  
27 contributions in excess of their shared contribution limits, see 2 U.S.C. § 441a(a)(5) and  
28 11 C.F.R. §§ 100.5(g) and 110.3(a)(1); failed to disclose each other as affiliated committees in  
29 their Statements of Organization, see 2 U.S.C. § 433(b)(2); and failed to disclose the transfer of  
30 assets between the committees on their reports of receipts and disbursements, see 2 U.S.C.

1 § 434(b)(2)(F). Second, even if the committees are not deemed to be affiliated, the PAC made  
2 and Ashcroft 2000 received an excessive in-kind contribution in the form of mailing lists  
3 developed by the PAC and provided to Ashcroft 2000 through Mr. Ashcroft; the two committees  
4 failed to report the aforementioned contributions; and Ashcroft 2000 misreported certain receipts  
5 of list rental income.

6 Based on the following factual and legal analyses, the General Counsel is prepared to  
7 recommend that the Commission find probable cause to believe that the PAC and Garrett Lott, as  
8 Treasurer, and Ashcroft 2000 and Garrett Lott, as Treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A),  
9 441a(f), 433(b) and 434(b). Additionally, the General Counsel is prepared to recommend that  
10 the Commission find probable cause to believe that the PAC and Garrett Lott, as Treasurer,  
11 violated §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and Garrett Lott, as Treasurer, violated  
12 §§ 441a(f) and 434(b).

13 **II. SUMMARY OF FACTUAL RECORD**

14 On June 6, 1996, Mr. Ashcroft filed a Statement of Candidacy designating Ashcroft 2000  
15 as his principal campaign committee for the 2000 election and Ashcroft 2000 filed its Statement  
16 of Organization. The PAC's initial Statement of Organization was filed with the Commission on  
17 July 5, 1996, and on October 7, 1998, the PAC filed a Notice of Multicandidate Status.<sup>1</sup>

18 The PAC and Ashcroft 2000 shared officers, employees and volunteers and used the  
19 same direct mail vendors, Bruce W. Eberle & Associates ("Eberle & Associates") and Precision  
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<sup>1</sup> The Act defines "multi-candidate political committees" as those political committees which have been registered with the Commission for at least six months, have received contributions from more than 50 persons, and have made contributions to at least five federal candidates. See 2 U.S.C. § 441a(a)(4). The PAC filed a Notification of Multicandidate Status identifying five candidate committees to which the PAC had contributed and certifying that the PAC had received contributions from more than 50 persons. The PAC stated that it met these requirements on September 22, 1997.

1 Marketing, Inc. ("PMI"), to conduct their direct mail fundraising activity. Omega List Company,  
2 which is owned by Bruce Eberle and his wife, Kathi Eberle, served as the list manager for the  
3 mailing list that was developed by the PAC fundraising campaign conducted by Eberle &  
4 Associates. Precision List, Inc. ("PLI"), which is partly owned by Arthur Speck, the president of  
5 PMI, served as the list manager for the mailing list that was developed by the PAC fundraising  
6 campaign conducted by PMI; PLI also later managed a list that combined the names and  
7 addresses resulting from the PMI and Eberle & Associates fundraising campaigns on behalf of  
8 the PAC.

9 In January 1998, the PAC began a direct mail solicitation program operated by Eberle &  
10 Associates. The PAC rented lists or portions of lists from other organizations for prospecting;  
11 the prospecting letters were signed by Mr. Ashcroft and identified him as chairman of the PAC.<sup>2</sup>  
12 The PAC also entered into name exchanges with other organizations. As is customary in the  
13 direct mail industry, these rentals and list exchanges allowed a one-time initial use of the names  
14 (i.e., prospecting); the PAC, however, had the right to retain the names and addresses of  
15 individuals who responded to the initial mailings. The names and addresses of those individuals  
16 who responded to the PAC's prospecting solicitations by making a contribution were maintained  
17 as the PAC's mailing list, which is referred to in the industry as a "housefile." The PAC incurred  
18 significant costs to develop its mailing lists, including renting lists or portions of lists belonging  
19 to other organizations, creative and production fees, printing, mail preparation, postage, caging  
20 and escrow, and file maintenance fees. In May 1998, the PAC began to rent out its mailing list  
21 or portions of it to other organizations.

22 The PAC subsequently expanded its fundraising program by adding a second direct mail  
23 vendor, PMI, in July 1998. During 1998, through its vendors, the PAC sent over 3.9 million

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<sup>2</sup> One of the PAC's fundraising letters was in the form of a letter signed by the candidate's wife, Janet Ashcroft, but was about Mr. Ashcroft.

1 prospecting solicitations at a cost of over \$1.7 million.<sup>3</sup> As a result of spending this very  
2 significant amount of money, the PAC developed extremely valuable assets: namely, mailing  
3 lists of the names and addresses of individuals who responded to Mr. Ashcroft's direct mail  
4 solicitations by contributing to the PAC.<sup>4</sup>

5 Six months after beginning its direct mail program -- which consisted of solicitation  
6 letters signed by Mr. Ashcroft -- and a few days after hiring PMI, the PAC entered into a Work  
7 Product Agreement ("WPA") with Mr. Ashcroft, effective July 17, 1998. The WPA purportedly  
8 gave Mr. Ashcroft all rights to the work product resulting from the PAC's activities in exchange  
9 for the PAC's use of his name and/or likeness. The WPA defined "work product" to include  
10 mailing lists, lists of supporters and contributors to the PAC and lists of prospective contributors  
11 to the PAC. Although the WPA purportedly gave Mr. Ashcroft the exclusive ownership of the  
12 "work product," income received from renting the mailing lists was initially deposited into the  
13 PAC's account. The PAC first reported receiving list rental income, totaling over \$1,400, in  
14 August 1998.

15 Five months later, Mr. Ashcroft entered into a List License Agreement ("LLA") with  
16 Ashcroft 2000 that was effective January 1, 1999. This agreement gave Ashcroft 2000 the right  
17 to use mailing lists owned by Mr. Ashcroft (per the WPA) in its own direct mail solicitations.  
18 The work product that resulted from Ashcroft 2000's use of the lists became the joint property of  
19

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<sup>3</sup> During 1998, Eberle & Associates mailed at least 3 million prospecting solicitations that cost over \$1,300,000 and PMI mailed at least 900,000 prospecting solicitations that cost over \$400,000. Combining the number of prospect mailings with the number of housefile mailings by Eberle & Associates and PMI in 1998 and 1999 yields a figure of over 4 million total solicitations.

<sup>4</sup> Eberle & Associates and PMI were also able to track individuals that responded to a PAC solicitation but did not make a contribution to the PAC.

1 Mr. Ashcroft and Ashcroft 2000. The license granted by Mr. Ashcroft was for a period of five  
2 years and granted Ashcroft 2000 unlimited use of the lists and the right to sell, transfer, assign,  
3 license or sublicense the lists. Ashcroft 2000 then made extensive use of the lists in conducting  
4 its own direct mail solicitations. The effect of these transactions was to provide Ashcroft 2000  
5 with a valuable, proven collection of names that it did not have to expend money or effort to  
6 develop, thereby allowing the campaign committee to engage in minimal prospecting.

7 The licensing of the mailing lists to Ashcroft 2000 occurred at a time when the PAC had  
8 ended its prospecting mailings and Ashcroft 2000 was beginning to gear up for its own direct  
9 mail program. Indeed, the PAC's overall financial activity decreased markedly during 1999,  
10 while Ashcroft 2000's overall financial activity increased substantially during the same year.<sup>5</sup>

11 The transition of focus from the PAC to Ashcroft 2000 was facilitated by the fact that Ashcroft  
12 2000 used the same fundraising vendors used by the PAC, Eberle & Associates and PMI.  
13 Ashcroft 2000 entered into an agreement with Eberle & Associates for direct mail fundraising  
14 services in February 1999 and PMI began providing its services to Ashcroft 2000 sometime  
15 around March 1999.

16 During November 1999 through November 2000, PMI mailed over 900,000 solicitations  
17 using the names and addresses that appeared in Ashcroft 2000's housefile, which included,  
18 among other names, the names and addresses on the lists developed by the PAC and licensed to  
19 Ashcroft 2000 by Mr. Ashcroft. From March 1999 through May 1999, Eberle & Associates  
20 mailed approximately 214,000 solicitations for Ashcroft 2000 using the names and addresses on  
21 lists rented from or exchanged with other organizations. From August 1999 through January  
22 2000, Eberle & Associates mailed over 131,000 solicitations using the names and addresses that

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<sup>5</sup> The PAC's 1998 Year End Report disclosed total receipts of \$2,597,549 and total disbursements of \$2,655,262, while the PAC's 1999 Year End Report disclosed total receipts of \$628,113 and total disbursements of \$696,220. Ashcroft 2000's 1998 Year End Report disclosed total receipts of \$290,606 and total disbursements of \$138,529, while Ashcroft 2000's 1999 Year End Report disclosed \$3,895,209 in total receipts and \$1,003,299 in total disbursements.

1 appeared in Ashcroft 2000's housefile; at this point in time, the Ashcroft 2000 housefile included  
2 the names and addresses of individuals responding to earlier Ashcroft 2000 solicitations as well  
3 as the names and addresses developed by the PAC and licensed to Ashcroft 2000. On  
4 November 10, 1999, Eberle & Associates was terminated by Ashcroft 2000.<sup>6</sup>

5 Subsequent to the execution of the LLA, in December 1999, Mr. Ashcroft had the list  
6 rental income redirected from the PAC to Ashcroft 2000. This redirecting of list rental income  
7 included not merely future rental income, but also payments for list rentals that occurred as far  
8 back as January 1, 1999. Further, one of the vendors was directed to reissue a check to Ashcroft  
9 2000 to replace several list rental income checks initially issued to the PAC that had not yet been  
10 negotiated. In June 2001, after Ashcroft 2000 had concluded its activity, the list rental income  
11 was redirected back to the PAC.

12 **III. THE PAC AND ASHCROFT 2000 ARE AFFILIATED**

13 **A. The Law<sup>7</sup>**

14 **1. Affiliation**

15 The Federal Election Campaign Act of 1971, as amended ("the Act"), states that for  
16 purposes of the limitations set forth in 2 U.S.C. §§ 441a(a)(1) and 441a(a)(2), all contributions  
17 made by political committees "established or financed or maintained or controlled by any . . .  
18 person . . . or by any group of . . . persons, shall be considered to have been made by a single  
19 political committee."<sup>8</sup> 2 U.S.C. §§ 441a(a)(5). Committees established, financed, maintained or  
20 controlled by the same person or group of persons are "affiliated committees." 11 C.F.R.

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<sup>6</sup> Pursuant to the agreement between Eberle & Associates and Ashcroft 2000, the party terminating the agreement had to provide the other with 90 days notice of termination.

<sup>7</sup> All citations to the Act herein are to the Act as it read prior to enactment of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). All citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

<sup>8</sup> Section 441a(a)(5) provides specific exceptions, none of which is relevant here.



1 § 100.5(g). Contributions made to or by such committees shall be considered to have been made  
2 to or by a single committee. 11 C.F.R §§ 100.5(g) and 110.3(a)(1).

3 When registering with the Commission, a political committee must include in its  
4 Statement of Organization "the name, address, relationship, and type of any connected  
5 organization or affiliated committee." 2 U.S.C. § 433(b)(2). A committee must report transfers  
6 of funds or assets received from an affiliated committee. 2 U.S.C. § 434(b)(2)(F).

7 In determining whether committees are affiliated, the Commission considers several  
8 factors and examines these factors in the context of the overall relationship between committees  
9 to determine whether the presence of any factor or factors is evidence of one committee having  
10 been established, financed, maintained or controlled by another committee. 11 C.F.R.  
11 §100.5(g)(4)(ii). Such factors include those identified in Section 100.5(g)(4)(ii) but are not  
12 limited to those factors.

13 2. Historical Background of Leadership PACs

14 Generally, leadership PACs are formed by individuals who are Federal officeholders  
15 and/or Federal candidates. Funds received by these PACs are normally contributed to other  
16 Federal candidates to gain support when the candidate/officeholder seeks a leadership position in  
17 Congress; are used to subsidize the officeholder's travel when campaigning for other Federal  
18 candidates; and are used to make contributions to party committees, including state party  
19 committees in key states, or to candidates for State or local office. See Notice of Proposed  
20 Rulemaking: Leadership PACS, 67 FR 78754 (December 26, 2002).

21 Although the Act does not specifically define "leadership PAC," the Commission first  
22 addressed leadership PACs in 1978 in the context of Advisory Opinion 1978-12. Issues  
23 regarding the relationship between leadership PACs and a candidate's authorized committees  
24 have since arisen in the context of other advisory opinions and in compliance matters. In a 1986

1 rulemaking, after evaluating comments and testimony and the situations presented in advisory  
2 opinions and compliance matters, the Commission concluded that this area is best addressed on a  
3 case-by-case basis. See Notice of Proposed Rulemaking: Contribution and Expenditure  
4 Limitations and Prohibitions, 51 FR 27183 (July 30, 1986). The Commission has considered the  
5 overall relationship between a leadership PAC and the candidate's authorized committee to  
6 determine if the presence of any factor or factors is evidence of one committee being established,  
7 maintained, financed or controlled by the other committee. 11 C.F.R. § 100.5(g)(4)(ii).

8 In the present matter, this Office believes that the extensive and significant relationship  
9 between Ashcroft 2000 and the PAC is such that the committees are affiliated. Not only do the  
10 traditional affiliation criteria show common establishment, financing, maintenance and control,  
11 but one of the PAC's most significant, unique and valuable assets -- its "housefile"-- was used  
12 for campaign purposes in 1999 and 2000.

13 **B. The Relationship Between Ashcroft 2000 and the PAC and Application of**  
14 **the Affiliation Factors**

15 To determine whether candidate committees are affiliated with other committees, the  
16 Commission has examined their relationships on a case-by-case basis to determine whether such  
17 committees are commonly established, financed, maintained or controlled. The facts and  
18 circumstances in the present matter satisfy a number of the regulatory affiliation criteria as set  
19 forth below.

20  
21 1. **Mr. Ashcroft Had A Significant Role in Establishing Both**  
22 **Committees**

23 One factor in determining whether committees are affiliated is whether a committee or its  
24 agent had an active or significant role in the formation of another committee. 11 C.F.R.  
25 § 100.5(g)(4)(ii)(I). Mr. Ashcroft established Ashcroft 2000 as his principal campaign  
26 committee for the 2000 Senate election and authorized the committee to receive contributions  
27

1 and make expenditures on his behalf. As the candidate, Mr. Ashcroft continued to have a  
2 significant role in the campaign committee's fundraising activities.

3 Mr. Ashcroft also had a significant role in the formation of another committee -- the PAC  
4 -- in that he founded the PAC. The PAC's direct mail fundraising solicitations identify  
5 Mr. Ashcroft as both founder and chairman of the PAC.<sup>9</sup> Mr. Ashcroft's role with the PAC was  
6 not limited merely to establishing the PAC; he continued to have a visible and important role as  
7 chairman. The PAC's direct mail fundraising letters -- over 4 million -- were in the form of a  
8 letter signed by Mr. Ashcroft in which he identifies himself as chairman and describes his  
9 activities on behalf of the PAC.<sup>10</sup> He also attended PAC fundraising events and traveled around  
10 the country on behalf of the PAC.<sup>11</sup>

11 2. Common Officers, Employees and Volunteers of the PAC and  
12 Ashcroft 2000 Indicate an Ongoing Relationship Between the  
13 Committees  
14

15 A relevant affiliation factor to be examined is whether the committees have common or  
16 overlapping officers or employees which indicate a formal or ongoing relationship between the  
17 committees. See 11 C.F.R. § 100.5(g)(4)(ii)(E). The PAC and Ashcroft 2000 had common  
18 officers, employees and volunteers and made numerous payments to several of these individuals,  
19 circumstances which clearly indicate an ongoing relationship between the two committees.

20 Jack Oliver served as executive director of the PAC in 1998. After he left the PAC to  
21 start his own consulting company, he worked as a consultant to both the PAC and Ashcroft 2000  
22 in January and February 1999. On February 11, 1999, acting on behalf of and as "Representative  
23 of Ashcroft 2000," Jack Oliver signed a contract with Eberle & Associates for direct mail

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<sup>9</sup> In a page of biographical and career information about Mr. Ashcroft that was included in PMI's "Survey #2" and other mailings, Mr. Ashcroft is identified as founder and chairman of the PAC.

<sup>10</sup> See footnote 2.

<sup>11</sup> Deposition of Jack Oliver at page 26.

1 fundraising services;<sup>12</sup> on that same date, Mr. Oliver signed numerous PAC checks made payable  
2 to vendors. During 1998 and 1999, the PAC made disbursements to Jack Oliver for payroll and  
3 reimbursement for travel and fundraising expenses, and Ashcroft 2000 made disbursements to  
4 Mr. Oliver for fundraising consulting and reimbursement for travel expenses.

5 Garrett Lott became the executive director and deputy treasurer of the PAC and  
6 comptroller and assistant treasurer of Ashcroft 2000 on the same day, January 1, 1999.  
7 Mr. Lott was responsible for filing the committees' disclosure reports and involved in the day-to-  
8 day activities of both committees, including providing instructions to the committees' direct mail  
9 fundraising vendors. Mr. Lott also entered into contracts on behalf of both the PAC and  
10 Ashcroft 2000. For example, on March 31, 2000, the PAC entered into an Assignment of  
11 Accounts Receivable with PMI that Garrett Lott executed on behalf of the PAC and on the same  
12 date, Ashcroft 2000 entered into an Assignment of Accounts Receivable with PMI that Garrett  
13 Lott executed on behalf of the campaign committee. Mr. Lott also identified himself as "Finance  
14 Coordinator" for both Ashcroft 2000 and the PAC in a December 10, 1999, letter to vendor  
15 Omega List Company. Mr. Lott currently serves as treasurer for both the PAC and Ashcroft  
16 2000.

17 The PAC and Ashcroft 2000 each made numerous payments to Garrett Lott, some  
18 directly to Garrett Lott and some to his company, Mason Enterprises, LLC.<sup>13</sup> A long list of other  
19 individuals also received payments from both the PAC and Ashcroft 2000 for payroll or  
20 reimbursement of expenses: Andrew Beach and Juleanna Glover received payments for travel  
21 reimbursement from the PAC and Ashcroft 2000; Steve Hilton received payments for travel  
22 reimbursement from the PAC and Ashcroft 2000 and payroll from Ashcroft 2000; Chris Huff

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<sup>12</sup> Jack Oliver had earlier signed vendor agreements for the PAC on behalf of and as a representative of John Ashcroft.

<sup>13</sup> The PAC and Ashcroft 2000 currently have the same address, the address of Mason Enterprises, LLC.

1 received payments for payroll, reimbursement for office supplies, travel and telephone expenses  
2 from the PAC and reimbursement for travel expenses from Ashcroft 2000; David James received  
3 payments for travel reimbursement from the PAC and payroll from Ashcroft 2000; Joe Messmer  
4 received payments for travel reimbursement from the PAC and Ashcroft 2000 and payroll from  
5 Ashcroft 2000; Matt Morrow received payments for travel reimbursement from the PAC and  
6 Ashcroft 2000; Janet Potter received payments for travel reimbursement from the PAC and  
7 reimbursement of postage and mailing expenses from Ashcroft 2000; Don Trigg received  
8 payments for travel reimbursement from the PAC and Ashcroft 2000; and John Jay Wilson  
9 received payments for travel reimbursement from the PAC and Ashcroft 2000 and payroll from  
10 Ashcroft 2000.

11 Bruce Eberle, chairman of Eberle & Associates, testified that his company's contacts at  
12 the PAC with respect to direct mail solicitation were David Ayres, Don Trigg and Jack Oliver.<sup>14</sup>  
13 Mr. Eberle identified these same individuals and Garrett Lott as his company's contacts at  
14 Ashcroft 2000 with respect to direct mail solicitation.<sup>15</sup> The overlap of payments made to the  
15 above-noted individuals by the PAC and Ashcroft 2000 as well as the overlap in roles of Jack  
16 Oliver, Garrett Lott, David Ayres and Don Trigg indicates an ongoing relationship between the  
17 committees.

18 3. Mr. Ashcroft's Dual Role in PAC and Ashcroft 2000 Activity  
19 Indicates an Ongoing Relationship Between the Committees  
20

21 As described above, the PAC and Ashcroft 2000 not only had common or overlapping  
22 officers, employees and volunteers, but Mr. Ashcroft had, and at times exercised, control over  
23 each committee analogous to that of an officer. *See* 11 C.F.R. § 100.5(g)(4)(ii)(E).

<sup>14</sup> Deposition of Bruce Eberle, March 25, 2003, at page 18.

<sup>15</sup> Deposition of Bruce Eberle, March 28, 2003, at page 47.

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1 Mr. Ashcroft was centrally involved in the fundraising activities of both committees. In  
2 addition to signing Ashcroft 2000 direct mail solicitations and appearing at Ashcroft 2000  
3 fundraising events, Mr. Ashcroft signed the PAC's direct mail solicitations and traveled around  
4 the country on behalf of the PAC.<sup>16</sup> Mr. Ashcroft also directed and exerted control over  
5 activities such as the receipt of list rental income, direct mail solicitations and list rental. As set  
6 forth below, the evidence in this matter contradicts the PAC's assertion that Mr. Ashcroft's role  
7 was limited merely to that of an "honorary chairman" who lacked authority to direct or control  
8 PAC activity.<sup>17</sup>

9 As noted above, Mr. Ashcroft directed to which entity, the PAC or Ashcroft 2000, list  
10 rental income would be paid. *See also infra* at page 16 (Garrett Lott's December 10, 1999, letter  
11 to Omega instructs vendor to redirect rental income at "intention of Senator Ashcroft"). During  
12 1998, list rental income was paid to the PAC. In December 1999, Mr. Ashcroft directed that list  
13 rental income be paid to Ashcroft 2000.

14 Mr. Ashcroft also exerted control over which organizations could rent the mailing lists  
15 from the PAC. During the confirmation hearing on his nomination for Attorney General of the  
16 United States, held before the Senate Judiciary Committee, Mr. Ashcroft was asked by Senator  
17 Leahy about the rental of a PAC mailing list to the Paula Jones Legal Defense Fund and the  
18 Linda Tripp Legal Defense Fund.<sup>18</sup> Mr. Ashcroft responded, "These donor lists were rented  
19 without my knowledge or approval. Once I became aware that the list had been rented to these

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<sup>16</sup> See footnote 10.

<sup>17</sup> In response to the complaint, the PAC stated that "Senator Ashcroft supported the Committee's efforts by serving as 'Honorary Chairman.' Because this position was honorary only, it did not confer on him any authority, express or implied, to bind or direct the Committee, and he did not control or direct its efforts." *See Response to the Complaint*, at pages 2-3; *see also* Deposition of Garrett Lott, February 28, 2003 (9:00 a.m. session) at page 12; Deposition of Jack Oliver at page 15.

<sup>18</sup> *Confirmation Hearing on the Nomination of John Ashcroft To Be Attorney General of the United States Before the Senate Committee on the Judiciary*, 107<sup>th</sup> Cong. 538 (2001) (questions submitted by Senator Leahy).

1 organizations; I directed that the lists no longer be rented to these organizations.”<sup>19</sup> Such  
2 direction constitutes a significant action on his part and indicates that Mr. Ashcroft exerted  
3 control over an important and income-producing PAC activity.

4 As chairman of the PAC, Mr. Ashcroft also exerted control over the content of the PAC's  
5 direct mail solicitations. For example, during May 1998, Jack Oliver, then-executive director of  
6 the PAC, approved with revisions page 2 of a draft copy of a direct mail solicitation package  
7 named "CC." Mr. Oliver's revisions to the copy were faxed on May 21, 1998 to Lenny Pappano,  
8 copywriter for Eberle & Associates. On page 2 of the copy, Mr. Oliver circled the words  
9 "\*\*\* Opposing the United Nations" and drew a line out to the right margin where he made the  
10 notation "JDA wants the change [to] be put in" and below that wrote "unwarranted dependence  
11 on." "JDA" are Mr. Ashcroft's initials and Mr. Oliver was requesting this change based on  
12 Mr. Ashcroft's direction.

13 During 1998, the PAC entered into two agreements with Eberle & Associates for direct  
14 mail fundraising services that expressly reserve authority to Mr. Ashcroft to authorize conduct on  
15 behalf of the PAC. These agreements demonstrate that there was more than a mere association  
16 between the PAC and Mr. Ashcroft.

17 The first agreement, entered into on January 15, 1998, was a "No-Risk Interim  
18 Agreement" that involved the testing of fundraising packages. This agreement was executed by  
19 "Bruce W. Eberle, Chairman of the Board" for Eberle & Associates and "Jack Oliver,  
20 Representative of Senator John Ashcroft, Chairman, without recourse to either of them  
21 individually" for the PAC. Mr. Eberle testified that an additional sentence was added to

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<sup>19</sup>

*Id.*

1 Paragraph 9, "Creative Rights," at Mr. Oliver's request during the negotiation process.<sup>20</sup> The  
2 additional sentence states:

3 Eberle agrees that this No-Risk Interim Agreement does not grant  
4 to it or its volunteers, agents, employees or representatives,  
5 *except as otherwise expressly directed by Senator Ashcroft*, any  
6 permission or consent [sic] to any use of the name, logo or likeness  
7 of the Spirit of America or Senator Ashcroft in conjunction with its  
8 activities . . . *without the prior authorization of Spirit of America or*  
9 *Senator Ashcroft.*" (emphasis added).

10  
11 The second agreement, made effective March 12, 1998, was a "Direct Mail Fund Raising  
12 Counsel Agreement" for the appointment of Eberle & Associates as "fund raising counsel for . . .  
13 [the PAC's] direct mail fund raising program and list rentals." The agreement was executed by  
14 "Bruce Eberle, Chairman of the Board" for Eberle & Associates and by "Jack Oliver, Executive  
15 Director, on behalf of Senator John Ashcroft, without recourse to him or either of them  
16 individually" for the PAC.

17 Mr. Eberle testified that Paragraph 16 of this agreement, "Independent Contractor," and  
18 Paragraph 17, "Use of Senator Ashcroft's Name and Likeness," were added to the agreement by  
19 the PAC during the negotiation process.<sup>21</sup> Paragraph 16 states that Eberle & Associates is an  
20 independent contractor for the PAC, not an employee of the PAC or Mr. Ashcroft, and nothing in  
21 the agreement makes Eberle & Associates the agent, representative or legal representative of the  
22 PAC or Mr. Ashcroft for any purpose other than specifically set forth in the agreement. Under  
23 this paragraph, Eberle & Associates has "no right or authority to assume, or to create, any  
24 obligation or responsibility, express or implied, in the name or on behalf of . . . [the PAC] or  
25 Senator Ashcroft, except as may be provided in this Agreement or *as may be specifically*  
26 *authorized in writing by Senator Ashcroft or Jack Oliver.*" (emphasis added).

<sup>20</sup> Deposition of Bruce Eberle, March 25, 2003, at pages 14-15.

<sup>21</sup> Deposition of Bruce Eberle, March 25, 2003, at page 30.



1 Paragraph 17 states that the agreement “does not grant Eberle or its officers, directors,  
2 agents, employees or representatives, *except as otherwise expressed by . . . [the PAC] or Senator*  
3 *Ashcroft*, any express or implied permission or consent to any use of the name, logo or likeness  
4 of . . . [the PAC] or Senator John Ashcroft in conjunction with Eberle’s activities . . . *without the*  
5 *prior authorization of . . . [the PAC] or Senator Ashcroft.*” (emphasis added).

6 These agreements reserve to Mr. Ashcroft authority to authorize a range of conduct on  
7 behalf of the PAC, including the creation of obligations and the use of his or the PAC’s name,  
8 logo or likeness. As such, they afforded him a significant degree of control over the PAC’s  
9 activities and its relations with its vendors.

10 As set forth above, Mr. Ashcroft directed and exerted control over core PAC activities  
11 such as the receipt of list rental income, direct mail solicitations and list rental. Additionally, the  
12 agreements noted above were expressly entered into by the PAC on behalf of Mr. Ashcroft as  
13 PAC chairman, and the language added to the agreements by the PAC reserved to Mr. Ashcroft  
14 authority to direct key PAC activities. Moreover, Mr. Ashcroft’s involvement in the fundraising  
15 activities of the PAC and Ashcroft 2000 is analagous to the involvement of a common or  
16 overlapping officer.

17 4. Providing Mailing Lists to Ashcroft 2000 That the PAC Spent  
18 Over \$1.7 Million to Develop Constitutes Providing Goods in a  
19 Significant Amount to Ashcroft 2000  
20

21 Another factor in determining whether committees are affiliated is whether a committee  
22 provides funds or goods in a significant amount or an ongoing basis to another committee, such  
23 as through direct or indirect payments for administrative, fundraising or other costs, but not  
24 including the transfer to the committee of its allocated share of proceeds jointly raised.

25 11 C.F.R. § 100.5(g)(4)(ii)(G). Viewed as a whole, the WPA between Mr. Ashcroft and the  
26 PAC and the LLA between Mr. Ashcroft and his principal campaign committee provided a

1 vehicle for the PAC to furnish the campaign committee, at no charge, mailing lists that the PAC  
2 spent over \$1.7 million to develop. These valuable assets greatly reduced the need for Ashcroft  
3 2000 to spend its own funds to conduct an extensive prospecting campaign. Although Ashcroft  
4 2000 engaged in some limited prospecting and also acquired lists or portions of lists by other  
5 means, the mailing lists provided to Ashcroft 2000 by the PAC were particularly valuable to the  
6 campaign committee because the lists contained the names and addresses of individuals who had  
7 already responded to solicitations signed by the candidate. These particular lists are much more  
8 valuable than any lists that Ashcroft 2000 might have acquired on the open market because of the  
9 strong possibility that the individuals who had contributed to the PAC would again respond  
10 favorably to a request from Mr. Ashcroft for a contribution.

11 5. List Rental Income Redirected From the PAC to Ashcroft 2000  
12 Constitutes the PAC Arranging for Funds in a Significant Amount  
13 to Be Provided to Ashcroft 2000  
14

15 Another factor in determining whether committees are affiliated is whether a committee  
16 arranges for funds in a significant amount or on an ongoing basis to be provided to another  
17 committee. 11 C.F.R. § 100.5(g)(4)(H). Ashcroft 2000 received a significant amount of funds  
18 when future list rental income and payments due to the PAC for list rentals dating back to  
19 January 1, 1999 were redirected to Ashcroft 2000.<sup>22</sup>

20 Garrett Lott, executive director of the PAC, indicated in a December 10, 1999, letter,  
21 addressed to Sandra Redlage at Omega List Company, that “[i]t is the intention of Senator  
22 Ashcroft that all list rental revenue . . . be attributed to Ashcroft 2000.”<sup>23</sup> Mr. Lott identified list  
23 rentals handled by Omega “dating back to January 1, 1999” as the category of rentals for which

<sup>22</sup> The list rental income was redirected from Ashcroft 2000 back to the PAC in June 2001.

<sup>23</sup> The letter was written on letterhead with “John Ashcroft” printed at the top. A disclaimer for Ashcroft 2000 and the campaign committee’s address, telephone number and facsimile number appear at the bottom of the letterhead.

1 the income should be reversed and paid to Ashcroft 2000 rather than the PAC.<sup>24</sup> Mr. Lott  
2 requested that six Omega checks that had been issued and sent to the PAC for list rental income  
3 totaling \$49,131.42 be reissued to Ashcroft 2000. Mr. Lott stated that the six Omega checks  
4 initially issued to the PAC had not yet been deposited and would be sent back to Omega.<sup>25</sup>

5 A second, undated letter addressed to Omega and signed by "Garrett M. Lott /Ashcroft  
6 2000/Spirit of America" stated that the WPA "establishes that [John] Ashcroft owns the list(s)  
7 used by [the PAC] for direct mail fund raising with the authority to direct list rental income."  
8 Mr. Lott authorized and directed Omega "to issue checks to Ashcroft 2000 reflecting receipts for  
9 list rental income for the Ashcroft owned lists used by SOA for the period commencing  
10 January 1, 1999." Mr. Lott then identified the same six checks referenced in his December 10,  
11 1999, letter to Omega and indicated that this instruction also applies to "any future list rental  
12 income from the Ashcroft owned lists." Mr. Lott also stated that the transfer of these receipts  
13 was fully authorized by Mr. Ashcroft and the PAC and did not contravene any existing  
14 agreement, law and/or regulation of any government authority. Mr. Lott's letter further provided  
15 that Omega List Company and Bruce W. Eberle & Associates would be held harmless from any  
16 and all claims to the contrary. Omega complied with the request. On December 31, 1999, it  
17 issued a check to Ashcroft 2000 in the amount of \$66,662.22. The \$66,662.22 figure included  
18 the \$49,131.42 total for the six checks identified by Garrett Lott and a \$17,530.80 check that  
19 Omega had issued to the PAC on December 21, 1999 for list rental income.<sup>26</sup>

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<sup>24</sup> Mr. Lott attached the LLA to his letter and noted to Ms. Redlage that the contract "shows Senator Ashcroft's ownership of the names and his ability to grant the right of list rental to either party which he chooses."

<sup>25</sup> The checks that were made payable to Spirit of America were attached to Mr. Lott's December 10, 1999, letter and include: check number 09834 in the amount of \$10,202.73; check number 09934 in the amount of \$14,419.71; check number 09896 in the amount of \$10,042.00; check number 09845 in the amount of \$124.24; check number 09782 in the amount of \$13,946.30; and check number 09678 in the amount of \$396.44.

<sup>26</sup> This figure of \$66,662.22 represents 22% of the income from the rental of the PAC's list that was paid in 1999.

1 List rental income was also redirected to Ashcroft 2000 through the vendor PLI. From  
2 December 13, 1999 through May 22, 2001, PLI made payments totaling \$121,254.98, a  
3 significant portion of which is attributable to the PAC's lists.<sup>27</sup> See *infra* page 30. The list rental  
4 income continued to be paid to Ashcroft 2000 until June 2001 when the payments for list rental  
5 were redirected back to the PAC per instruction from Garrett Lott.

6 On June 19, 2001, Mr. Lott sent an e-mail from the "Ashcroft 2000@sprintmail.com"  
7 account to Arthur Speck of PMI, who is also the majority owner of PLI, regarding the shifting of  
8 list rental income. Mr. Lott instructed Mr. Speck to "shift all list rental to SOA effective  
9 immediately. Thanks!! Any future checks should go to SOA." After receiving this instruction,  
10 PLI paid list rental income to the PAC; payments from PLI to the PAC were made between  
11 July 2, 2001 and July 8, 2002 and totaled \$53,726.91.<sup>28</sup>

12 These facts set forth above show that the list rental income relating to the PAC's lists was  
13 treated as equally available to the PAC and Ashcroft 2000, and was redirected as the needs of the  
14 two changed. During most of 1999, the list rental income was paid to the PAC in order to pay  
15 off debts; then, in later 1999, per Mr. Ashcroft's instruction, the list rental income was paid to  
16 Ashcroft 2000, which was gearing up for the 2000 election. Then, in June 2001 when Ashcroft  
17 2000 was wrapping up, Garrett Lott instructed PLI to redirect the funds for list rental income  
18 from Ashcroft 2000 back to the PAC. Redirecting funds from the PAC to Ashcroft 2000  
19 constitutes arranging for funds in a significant amount to be paid to another committee.  
20

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<sup>27</sup> Precision List issued checks to Ashcroft 2000 for list rental income as follows: \$8,981.66 on December 13, 1999; \$5,958.79 on December 30, 1999; \$14,465.81 on March 2, 2000; \$4,734.19 on March 27, 2000; \$6,384.49 on June 5, 2000; \$9,995.12 on June 28, 2000; \$8,882.96 on August 7, 2000; \$7,229.25 on September 8, 2000; \$13,536.75 on September 28, 2000; \$16,479.31 on November 22, 2000; \$18,124.08 on January 8, 2001; and \$6,482.57 on May 22, 2001.

<sup>28</sup> Payments made to the PAC for list rental income subsequent to Garrett's Lott's e-mail are as follows: \$4,923.68 on July 2, 2001; \$4,976.34 on August 1, 2001; \$4,625.48 on October 10, 2001; \$10,380.27 on December 10, 2001; \$12,163.33 on February 4, 2002; \$10,060.07 on May 31, 2002; and \$6,597.74 on July 8, 2002.

1           **C.     Consequences of Affiliation**

2           Based on the foregoing factual and legal analysis, the PAC and Ashcroft 2000 are  
3 affiliated committees. As affiliated committees, Ashcroft 2000 and the PAC share contribution  
4 limits for contributions made and received, *see* 2 U.S.C. § 441a(a)(5) and 11 C.F.R. §§ 100.5(g)  
5 and 110.3(a)(1), and were limited to receiving \$1,000 per election from individuals and \$5,000  
6 per election from multicandidate political committees. 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(2)(A)  
7 and 441a(f). Also sharing the limits for contributions made to candidate committees, the  
8 committees were limited to making a contribution of \$1,000 per election. 2 U.S.C.  
9 § 441a(a)(1)(A). The committees received and made contributions that exceeded the shared  
10 limits.

11           The committees also failed to disclose each other as affiliated committees in their  
12 Statements of Organization. In addition, the committees failed to report the transfer of the lists  
13 between affiliated committees when transferred from the PAC to Ashcroft 2000. Therefore, the  
14 General Counsel is prepared to recommend that the Commission find probable cause to believe  
15 that the PAC and Garrett Lott, as Treasurer, and Ashcroft 2000 and Garrett Lott, as Treasurer,  
16 violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), 433(b) and 434(b).

17 **IV.    THE PAC MADE AN EXCESSIVE CONTRIBUTION TO ASHCROFT**  
18 **2000 IN THE FORM OF MAILING LISTS**

19  
20           **A.     Introduction**

21           The factual record in this matter indicates that the PAC developed valuable mailing lists  
22 at great expense and provided those lists to Ashcroft 2000. If the Commission determines that  
23 the PAC and Ashcroft 2000 are affiliated as set forth above, the PAC providing something of  
24 value to Ashcroft 2000 constitutes a transfer rather than a contribution. On the other hand, if the  
25 Commission determines that the PAC and Ashcroft 2000 are not affiliated, then the contribution  
26 limits of the Act apply. The PAC, as a multicandidate committee, may not make contributions to

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1 Ashcroft 2000 in an amount greater than \$5,000 per election. *See* 2 U.S.C. § 441a(a)(2)(A). On  
2 June 30, 1999, the PAC made the maximum allowable contributions to Ashcroft 2000, \$5,000  
3 for the 2000 primary election and \$5,000 for the 2000 general election. Thus, any additional  
4 contribution from the PAC to Ashcroft 2000 is excessive. Therefore, the mailing lists provided  
5 by the PAC to Ashcroft 2000 constitute an excessive contribution.

6 Finally, neither the PAC nor Ashcroft 2000 disclosed the making or receipt of this  
7 excessive contribution and Ashcroft 2000 misreported certain receipts related to list rental  
8 income. *See* 2 U.S.C. § 434(b).

9 **B. Law on Contribution Limits**

10 The Act provides that no multi-candidate political committee shall make contributions to  
11 any federal candidate and his or her authorized political committee with respect to a Federal  
12 election which in the aggregate exceed \$5,000. 2 U.S.C. § 441a(a)(2)(A). Candidates and  
13 political committees may not accept contributions which exceed the statutory limitations of  
14 section 441a. 2 U.S.C. § 441a(f).

15 A "contribution" includes "any gift, subscription, loan, advance, or deposit of money or  
16 anything of value made by any person for the purpose of influencing any election for Federal  
17 office." 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions,  
18 including the provision of goods or services without charge or at a charge which is less than the  
19 usual and normal charge for such goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A). For  
20 purposes of 11 C.F.R. § 100.7(a)(1)(iii)(A), "usual and normal charge for goods" means the price  
21 of those goods in the market from which they ordinarily would have been purchased at the time  
22 of the contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B).<sup>29</sup> The regulations specifically include  
23 mailing lists as an example of such goods or services. *Id.* See also 11 C.F.R.

<sup>29</sup> Part 100 of the Commission's regulations were renumbered last year. As a result of the renumbering, Sections 100.7(a)(1)(iii)(A) and (B) now appear in Sections 100.52(d)(1) and (2), respectively.

1 § 100.8(a)(1)(iv)(A);<sup>30</sup> *FEC v. Christian Coalition*, 52 F. Supp.2d 45, 96 (D.D.C. 1999) (mailing  
2 lists have commercial value and are routinely rented for fundraising or other solicitation  
3 purposes).

4 A candidate who receives a contribution, or any loan for use in connection with the  
5 campaign, or makes a disbursement in connection with such campaign, is considered, for  
6 purposes of the Act, to have received the contribution or loan, or made the disbursement as an  
7 agent of the authorized committee or committees of such candidate. 2 U.S.C. § 432(e)(2).

8 **C. Analysis**

9 1. The PAC Made an Excessive Contribution to Ashcroft 2000 in the Form  
10 of the PAC's Mailings Lists Through the Mechanism of Candidate  
11 Ownership

12  
13 As described above, through its direct mail vendors Eberle & Associates and PMI, the  
14 PAC mailed over four million fundraising solicitations during the period January 1998 through  
15 May 1999. The vendors compiled lists of persons who contributed to the PAC in response to the  
16 solicitations. These "mailings lists" served multiple purposes: they were rented out to other  
17 organizations for list rental income;<sup>31</sup> they were exchanged with mailing lists belonging to other  
18 organizations,<sup>32</sup> allowing the PAC to mail its own solicitations to persons on those other  
19 organizations' lists without paying to rent those other organizations' lists; and they were used for  
20 further mailings by the PAC itself.

21 In late 1999 and 2000, income earned by rental of the PAC's lists was redirected to  
22 Ashcroft 2000. Also during that time, Ashcroft 2000 used the PAC's lists to solicit contributions

<sup>30</sup> Section 100.8(a)(1)(iv)(A) now appears at Section 100.111(e)(1).

<sup>31</sup> The available information does not indicate that the rental prices charged for the use of these lists were other than fair market value. The rental of the lists was carried out through list managers Omega and PLI. Rosann Garber, president of PLI, testified that she set the rental price for the list of names developed for the PAC by PMI based on "what lists of similar type were being rented [for] in the marketplace." Deposition of Rosann Garber at pages 78-79.

<sup>32</sup> The available information does not indicate that the list exchanges were other than for lists of equal value. See Advisory Opinion 2002-14. This matter does not involve a list exchange between the PAC and Ashcroft 2000.

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1 in its own direct mail program, but Ashcroft 2000 did not provide compensation to the PAC for  
2 such use. This arrangement was facilitated through the purported ownership of the mailing lists  
3 by the candidate Mr. Ashcroft.

4 As set forth below in detail, the evidence in this matter shows that the PAC paid for the  
5 millions of mailings through which its vendors developed the mailing lists, and the wholesale  
6 transfer of these valuable and unique assets to Ashcroft 2000 constituted the making of an  
7 excessive contribution.

8 a. The Vendor Agreements Do Not Provide the Candidate With  
9 Ownership Rights to the PAC's Mailing Lists

10  
11 The PAC began its direct mail fundraising program in January 1998 pursuant to an  
12 agreement it entered into with Eberle & Associates. This "No-Risk Interim Agreement" dated  
13 January 15, 1998, pursuant to which Eberle & Associates performed two initial test mailings,  
14 provided that "both Eberle and the Client have the right to unlimited and unrestricted usage of  
15 the donor records generated as a result of [the test] mailing." The term "Client" is defined in the  
16 agreement preamble as "Spirit of America." No other person is given any rights to the donor  
17 records in this agreement.

18 Eberle & Associates performed the bulk of the PAC's direct mail program from March  
19 1998 through May 1999 pursuant to a "Direct Mail Fund Raising Counsel Agreement," with an  
20 effective date of March 12, 1998. This agreement provided that the "work product" – defined to  
21 include "mailing lists" and "lists of supporters of and contributors to the Client" – "shall be the  
22 sole property of the Client." The term "Client" is defined in the agreement preamble as "Spirit  
23 of America PAC." No other person is given ownership rights to the work product in this  
24 agreement. Bruce Eberle, signatory to this agreement on behalf of Eberle & Associates, testified

23  
04  
2009



1 that the ownership provision of the agreement, that provided ownership to the PAC, was added  
2 by the PAC.<sup>33</sup>

3 The PAC entered into an agreement with a second direct mail vendor, PMI, by a "Letter  
4 of Agreement" dated July 8, 1998. PMI performed direct mail services pursuant to this  
5 agreement, which does not contain any provision specifying ownership of the resulting donor  
6 records or mailing lists.

7 Thus, none of the three vendor agreements provided the candidate, Mr. Ashcroft, with  
8 any ownership interest in the donor lists, mailing lists, or work product.

9 b. The Agreements Purporting to Give the Candidate  
10 Ownership of the Mailing Lists and Ashcroft 2000 Use of  
11 the Lists Merely Facilitated the Making of an Excessive  
12 Contribution  
13

14 The PAC provided the mailing lists to Ashcroft 2000 through the mechanism of  
15 candidate ownership of the mailing list names, which was facilitated by two agreements entered  
16 into by the candidate Mr. Ashcroft, the above-mentioned WPA with the PAC and the LLA with  
17 Ashcroft 2000.

18 i. The Work Product Agreement  
19

20 After the PAC entered into the three vendor agreements regarding direct mail programs,  
21 the PAC and Mr. Ashcroft entered into the WPA effective July 17, 1998. Pursuant to the  
22 "Agreement" section of the WPA, Mr. Ashcroft and the PAC "acknowledge and agree that in  
23 exchange for the use of his name and/or likeness, the work product resulting from the PAC's  
24 activities shall be the exclusive property of John Ashcroft." The WPA defines "work product" to  
25 "include, but not be limited to, mailing lists, lists of supporters of and contributors to [the PAC],  
26 lists of prospective contributors to [the PAC], results of polling data, and any and all other data

<sup>33</sup> Deposition of Bruce Eberle, March 25, 2003, at pages 30 and 32.

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1 and documentation regarding [the PAC] or John Ashcroft.”<sup>34</sup> The “Recital” section of the WPA  
2 contains a parallel provision regarding Mr. Ashcroft’s exclusive ownership of the work product:  
3 “John Ashcroft is willing to permit the [PAC] to use his name and likeness in exchange for  
4 ownership of all work product developed by the [PAC] in connection with the use of John  
5 Ashcroft’s name and likeness.” The WPA thus on its face purports to give Mr. Ashcroft  
6 “exclusive” ownership of the work product, such as mailing lists, developed in response to PAC  
7 mailings using Mr. Ashcroft’s name and/or likeness.<sup>35</sup>

8 ii. The List License Agreement

9 On January 1, 1999, several months after Mr. Ashcroft and the PAC entered into the  
10 WPA, Mr. Ashcroft and Ashcroft 2000 entered into the LLA. The LLA identifies Mr. Ashcroft  
11 as the “Licensor” who “is the owner of certain items of intellectual property in the form of data  
12 constituting a mailing/contact list of individuals who have made or may potentially make  
13 monetary contributions, or otherwise provide support to Licensor.” The LLA identifies Ashcroft  
14 2000 as the “Licensee” being granted a non-exclusive license by Mr. Ashcroft “to use his Data in  
15 connection with Licensee’s election effort....” The LLA provides that “Work Product” resulting  
16 from Ashcroft 2000’s “use of the Data shall be the joint property of” Ashcroft 2000 and Mr.  
17 Ashcroft. “Work Product” is defined to “include, but not be limited to, updated and revised or  
18 added names, addresses and other contact information received from [Ashcroft 2000’s] use of the

<sup>34</sup> Although the WPA contains within its text an “effective” date of July 17, 1998, the copy provided to this Office contains signatures dated August 3 and 4, 1999. The PAC’s response to the Commission’s reason-to-believe notification explains that this agreement was “originally negotiated and executed by Jack Oliver as Executive Director of Spirit of America PAC and John D. Ashcroft on July 17, 1998; however, after execution the parties did not forward the original or a copy of the signed agreement to counsel. In July, 1999, the parties realized that the originally executed document could not be located and a replacement original bearing the effective date was forwarded to the parties for execution and was subsequently executed. Neither the signed original nor any copy or facsimile copy thereof can be located.” Jack Oliver testified that he had originally signed the WPA during July 1998. Deposition of Jack Oliver at page 110.

<sup>35</sup> Jack Oliver, then-executive director of the PAC who signed the WPA on behalf of the PAC, testified that he intended the agreement to extend ownership of the work product to both Mr. Ashcroft and the PAC. Deposition of Jack Oliver at pages 70-71. This Office notes that the excessive contribution by the PAC to Ashcroft 2000 in the form of the mailing lists exists whether Mr. Ashcroft was the “exclusive” owner of the mailing lists or whether the PAC also owned the lists. Either way, the PAC gave its lists to Ashcroft 2000: either to Mr. Ashcroft as the agent of Ashcroft 2000, see 2 U.S.C. § 432(e)(2), or directly to Ashcroft 2000.

1 Data in its election effort.” The LLA thus purported to complete the process begun by the WPA:  
2 the transfer of the PAC’s mailing lists without cost to Ashcroft 2000. As noted above, the  
3 January 1, 1999 effective date of the LLA coincides with the end of the PAC’s development of  
4 its mailing lists through prospecting and the start of Ashcroft 2000’s gearing up for the 2000  
5 election.

6 iii. The WPA Was Not an Arm’s-Length, Bargained-For  
7 Exchange of Equal Value  
8

9 The information in this matter has shown that the WPA was not an arm’s-length,  
10 bargained-for exchange of equal value. This conclusion is based on a variety of factors that are  
11 set forth below. As a result, Ashcroft 2000 through Mr. Ashcroft received an in-kind  
12 contribution in the form of the PAC’s mailing lists.

13 (I). The WPA was not an arm’s-length transaction

14 The exchange set forth in the WPA was not an arm’s-length transaction because Mr.  
15 Ashcroft exercised control and maintained a principal role for parties on both sides of the  
16 transaction. Mr. Ashcroft exercised control on one side of the transaction as an individual: he  
17 signed the WPA as “John D. Ashcroft” and not in relation to or on behalf of any organization  
18 such as the PAC or Ashcroft 2000. On the other side of the transaction was the PAC. Mr.  
19 Ashcroft’s extensive role with the PAC, as described above at pages 8-9 and 11-15, even if not  
20 found to constitute affiliation between the PAC and Ashcroft 2000, see 2 U.S.C. § 441a(a)(5),  
21 was still very significant as founder, beneficiary and ultimate decision-maker concerning key  
22 activities of the PAC.

23 The signatory for the PAC was “Jack Oliver, Executive Director, on behalf of Spirit of  
24 America.” Interestingly, this signature block for Mr. Oliver varies from that used for the PAC’s  
25 agreements with vendors described above. The PAC’s agreements with Eberle & Associates and  
26 PMI are signed for the PAC by Jack Oliver as “[r]epresentative of Senator John Ashcroft,

1 Chairman" and "on behalf of Senator John Ashcroft." One of these agreements, the "Letter of  
2 Agreement" between the PAC and PMI, was signed on July 8, 1998, just nine days before the  
3 effective date of the WPA. It is notable that the WPA, by contrast, does not identify Mr. Oliver  
4 as signing on behalf of Mr. Ashcroft or as a representative of Mr. Ashcroft but rather simply as  
5 the PAC's executive director. Of course, if Mr. Oliver had signed the WPA as "representative of  
6 John Ashcroft" or "on behalf of John Ashcroft," the WPA would have made explicit what this  
7 Office concludes is a central characteristic of the WPA – that it is not an arm's-length transaction  
8 because Mr. Ashcroft is on both sides of the transaction.

9 (II). The WPA was not an exchange of equal value

10 The WPA also was not an exchange of equal value. Specifically, Mr. Ashcroft received  
11 far more from the PAC in the form of the mailing lists than he gave to the PAC in the form of the  
12 use of his name and likeness.<sup>36</sup> The PAC had been using Mr. Ashcroft's name and likeness on  
13 all of its mailings beginning in January 1998. Indeed, by the time of the effective date of the  
14 WPA six months later, the PAC had already mailed over 1.2 million pieces.<sup>37</sup> It is unremarkable  
15 that for these six months Mr. Ashcroft would not insist on any compensation whatsoever for use  
16 of his name or likeness,<sup>38</sup> because he had a substantial interest in, and exercised control over, the

<sup>36</sup> By contrast, see MUR 4382/4401 General Counsel's Report #2 dated August 2, 2000, pages 12-18 (Senator Bob Dole signed letters for the Citizens Against Government Waste and in exchange received one-time use of the list of persons who responded). Bruce Eberle, who has been in the direct mail business since 1974, testified that he had not seen another exchange like that reflected in the WPA. Deposition of Bruce Eberle, March 28, 2003, at pages 70-71.

<sup>37</sup> See Kimberly Bellissimo (Eberle & Associates) memorandum to Gretchen Purser and Jack Oliver, dated July 20, 1998.

<sup>38</sup> Jack Oliver testified that prior to the WPA an "oral understanding" existed that the PAC's mailing list would be owned by the PAC and by Mr. Ashcroft. Deposition of Jack Oliver at page 60. When asked whether Mr. Ashcroft (a party to the WPA) was involved in that oral understanding, Mr. Oliver replied:

I can't remember if I told John or not or I just assumed. I think -- I think -- I don't remember whether I told him or not. I think he may have asked me. If he had them, too, if he owned the names, too, and [the PAC] owned the names and how we were doing all this, I said, look, we're going to use standard industry practice, but I don't remember when or if that conversation occurred. I just don't remember. I mean, it's a standard operating procedure, so I may have mentioned it to him. I don't remember what his response was.

*Id.* at pages 61-62. Thus, there is no certainty whether one party to the WPA, Mr. Ashcroft, was even involved in an "oral understanding" regarding ownership of the PAC's mailing list.

1 activities of the PAC. He therefore had every reason to allow the PAC to use his name and  
2 likeness at no charge. Six months and 1.2 million mail pieces later, without any significant  
3 changes in circumstances, the PAC's use of Mr. Ashcroft's name and likeness cannot suddenly  
4 have commanded value equal to the exclusive ownership of the PAC's mailing lists. The  
5 mailing lists, of course, were of substantial value to Ashcroft 2000, which based on this  
6 arrangement, saved the considerable amount it would have cost to acquire or develop the lists on  
7 its own and received nearly \$200,000 in list rental income it would not otherwise have had. The  
8 WPA thus cannot be reasonably considered an exchange of equal value.

9 Because the WPA was not an arm's-length transaction and was not an exchange of equal  
10 value, Mr. Ashcroft received an asset of far greater value than he gave in the form of the use of  
11 his name. Because Mr. Ashcroft was a candidate for reelection at the time the transactions took  
12 place (the WPA as well as the LLA), and because the only plausible explanation for the  
13 transactions was to facilitate use of the PAC's lists by Ashcroft 2000, Mr. Ashcroft, by operation  
14 of law, acted as Ashcroft 2000's agent when he received this asset. 2 U.S.C. § 432(e)(2).<sup>39</sup> That  
15 Ashcroft 2000 was the true recipient of the lists is emphasized by the fact that Ashcroft 2000  
16 received income from the rental of the lists. Mr. Ashcroft, by contrast, did not receive any  
17 income, despite the terms of the WPA that he was the "exclusive" owner of the PAC's mailing  
18 lists. See Mr. Ashcroft's *United States Senate Public Financial Disclosure Reports* for 1998 and  
19 1999, which do not disclose any income related to mailing lists.

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Further, in response to a question regarding the timing of the WPA, Jack Oliver did not explain its timing in terms of any change in circumstances but rather testified: "I don't remember. I don't remember. I think I just wanted to have something in writing in case the question ever came up [regarding ownership of the mailing lists]." *Id.* at page 47.

<sup>39</sup> According to press accounts and other sources, Mr. Ashcroft was exploring a possible presidential campaign during 1998. Ashcroft 2000 direct mail fundraising solicitations during 1999 reference Mr. Ashcroft's decision in January 1999 to forego a presidential campaign and instead run for reelection to the Senate. Mr. Ashcroft never filed a Statement of Candidacy for the 2000 presidential election. During this entire period, as noted, Mr. Ashcroft was registered with the Commission as a candidate for reelection. Had Senator Ashcroft formed a presidential campaign committee and otherwise structured these transactions in the same manner, the same analysis would apply.

1 Ashcroft 2000 thus received an in-kind contribution in the form of the PAC's mailing  
2 lists. See 11 CFR 100.7(a)(1)(iii)(A) and (B) (the provision of goods and services, including  
3 mailing lists, without charge or at a charge which is less than the usual and normal charge  
4 constitutes a contribution). Discussed below are two components of that contribution, Ashcroft  
5 2000's receipt of the PAC's list rental income and Ashcroft 2000's use of the mailing lists to  
6 conduct its own direct mail solicitation.

7 c. List Rental Income Earned by the PAC's Mailing Lists  
8 Was Redirected to Ashcroft 2000  
9

10 Up until late 1999, list rental income earned by rental of the PAC's mailing lists was paid  
11 to the PAC, the entity that developed the lists. The PAC disclosed its first "list rental income"  
12 receipts on August 10, 1998 on its report of receipts and disbursements filed with the  
13 Commission. Subsequent list rental income disclosed by the PAC during 1998 brought the total  
14 for that year to \$6,330.79. During the first half of 1999, the PAC's disclosed list rental income  
15 receipts jumped to \$97,390.32. Additional list rental income was paid to the PAC during July  
16 1999 – October 1999.

17 During this period, Ashcroft 2000 rented a PAC list for use in Ashcroft 2000's direct mail  
18 campaign. For example, Omega List Company, the list manager and broker that worked closely  
19 with Eberle & Associates, invoiced Ashcroft 2000 on May 26, 1999 for \$1,993.00 for use of  
20 15,944 "Spirit of America Donors" in connection with a May 27, 1999 Ashcroft 2000 mailing.<sup>40</sup>  
21 Interestingly, this transaction was inconsistent with the terms of the LLA, which provided that as  
22 of January 1, 1999, Ashcroft 2000 was able to use free of charge the mailing list purportedly

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<sup>40</sup> For this rental Ashcroft 2000 was using a portion of the PAC's list, specifically, donors who had contributed at least \$15 to the PAC. It is not clear from the information whether this PAC list is the one developed by Eberle & Associates or the one developed by Precision Marketing; these lists were ultimately combined into a single list.

1 owned by Mr. Ashcroft under the terms of the WPA. Bruce Eberle testified that he was unaware  
2 of the LLA until it was provided to Eberle & Associates and Omega in December 1999.<sup>41</sup>

3 By letter dated December 10, 1999, Garrett Lott, writing as "Finance Coordinator" of  
4 both the PAC and Ashcroft 2000, announced to Omega List Company "the intention of Mr.  
5 Ashcroft that all list rental revenue assuming Spirit of America's debt has been paid off, [sic] be  
6 attributed to Ashcroft 2000." Garrett Lott's letter attached copies of six list rental income checks  
7 from Omega, payable to the PAC, which had not been deposited. Mr. Lott directed that the  
8 checks, with a range of dates from September 28, 1999 to December 3, 1999 and totaling  
9 \$49,131.42, be changed to be made payable to Ashcroft 2000. Finally, Mr. Lott's letter also  
10 attached a copy of the LLA "which shows Mr. Ashcroft's ownership of the names and his ability  
11 to grant the right of list rental to either party which he chooses."

12 Eberle & Associates and Omega expressed concerns regarding the propriety of reissuing  
13 the checks based on their concern that the proposal "might not be in accordance with the FEC  
14 statutes."<sup>42</sup> Bruce Eberle testified that "we wanted to make sure it was legal for us to go ahead  
15 and transfer it over to him, because we had an agreement that said that Spirit of America was the  
16 owner of the list."<sup>43</sup> In response Garrett Lott wrote the above-described letter holding the firms  
17 harmless.

18 After the hold harmless letter was provided, a seventh list rental check, for \$17,530.80,  
19 was similarly redirected. Although Omega had issued these seven checks to the PAC consistent  
20 with the terms of the Direct Mail Fund Raising Counsel Agreement dated March 12, 1998,

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<sup>41</sup> Deposition of Bruce Eberle, March 28, 2003, at page 66. Mr. Eberle also testified that he was not aware of the WPA. *Id.* at page 69. Rosann Garber, president of PLI who managed the renting of the list of names developed for the PAC by PMI (and at some point the names developed by Eberle & Associates as well), testified that no one told her that Mr. Ashcroft was the owner of any mailing list until after MUR 5181 began. Deposition of Rosann Garber at pages 124-26. By contrast, Arthur Speck, president of PMI, testified that he was told by Jack Oliver during 1998 that Mr. Ashcroft and the PAC owned the names on the mailing lists. Deposition of Arthur Speck at pages 90-91 and 143-44.

<sup>42</sup> Deposition of Bruce Eberle, March 28, 2003, at pages 67-68.

<sup>43</sup> Deposition of Bruce Eberle, March 28, 2003, at page 87.

1 between Eberle & Associates and the PAC, Omega re-issued a single check to Ashcroft 2000 for  
2 \$66,662.22 dated December 30, 1999. Ashcroft 2000 disclosed the receipt of this list rental  
3 income as "mail receipts."

4 Ashcroft 2000 received additional income during the year 2000 by selling the right to  
5 collect payment from persons who had rented the PAC's list from the PAC itself. Ashcroft 2000  
6 sold these "accounts receivable" to PMI for \$46,299.83,<sup>44</sup> which Ashcroft 2000 disclosed, with  
7 no identified purpose, as received on March 31, 2000.

8 Finally, Ashcroft 2000 received additional list rental income totaling \$121,254.98  
9 through the vendor PLI during the period December 1999 through May 2001, a significant  
10 portion of which is attributable to the PAC's lists.<sup>45</sup> Ashcroft 2000 disclosed these payments as  
11 receipts from "Precision Marketing Inc." or "Precision Inc.", but they were in fact receipts from  
12 PLI for list rental income. Only one of these list rental income receipts was actually disclosed  
13 with "rental" as the purpose; several others were disclosed with "mail receipts" as the purpose.<sup>46</sup>

14 Thus, between the list rental income in the form of the re-issued checks and the sale of  
15 accounts receivable, which total over \$110,000, and the PAC-related portion of the list rental  
16 income through PLI, Ashcroft 2000 received funds that had been due to the PAC. These indirect

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<sup>44</sup> This arrangement was reduced to writing in an agreement between Ashcroft 2000 and PMI titled "Assignment of Accounts Receivable" and effective March 31, 2000. The information shows a total of approximately \$57,000 in list rental accounts receivable for Ashcroft 2000 relating to Eberle & Associates and Omega as of January 31, 2000. Prior to instructions from Garrett Lott and Mr. Ashcroft in December 1999 that the list rental income should be redirected to Ashcroft 2000, the list rental accounts receivable figure for Ashcroft 2000 was zero. Finally, a similar "Assignment of Accounts Receivable" agreement was entered into between the PAC and PMI effective March 31, 2000 in which the PAC provided its accounts receivable to PMI in exchange for \$10,000. Garrett Lott testified that these agreements were entered into because Ashcroft 2000 wanted the list rental income to be received from PMI and not from Omega, which had been terminated by Ashcroft 2000 along with Eberle & Associates. Deposition of Garrett Lott, February 28, 2003 (11:25 a.m. session) at page 98.

<sup>45</sup> By 2000, a portion of the PLI-managed names came from Ashcroft 2000's acquisition of a list called "Conservative Hotline." Bruce Eberle described the Conservative Hotline as a list consisting of individuals responding to fundraising letters signed by Mr. Ashcroft for other organizations. Deposition of Bruce Eberle, March 25, 2003, at page 44. The only such organization that Mr. Eberle was able to name was "the ranch historical trust." *Id.* Although Mr. Eberle testified that Mr. Ashcroft received unrestricted usage of such names, he was not certain who owned the names. *Id.*; Deposition of Bruce Eberle, March 28, 2003, at page 5. Little else is known about this list.

<sup>46</sup> See PLI checks made payable to Ashcroft 2000, as listed in footnote 27 above. Each such check contains "List rental" on the memo line.



1 payments constitute an excessive contribution from the PAC.<sup>47</sup> The redirection of list rental  
2 income from the PAC to Ashcroft 2000 eventually ended, pursuant to a June 19, 2001 instruction  
3 by Garrett Lott to PMI and PLI to redirect the list rental income back to the PAC.

4 d. Ashcroft 2000 Mailings Utilized the PAC's Mailing Lists

5  
6 More significant than the redirection of the PAC's list rental income from the PAC to  
7 Ashcroft 2000 was the latter's use of the PAC's mailing lists to conduct direct mail fundraising.  
8 The mailing lists developed for the PAC by vendors Eberle & Associates and PMI were  
9 developed through over four million mailings in the form of letters signed by Mr. Ashcroft on  
10 behalf of the PAC. These mailings were all paid for by the PAC, and the lists derived therefrom  
11 were unique and valuable assets. Ashcroft 2000's use of these mailing lists gave the committee  
12 ready access to individuals who had already made at least one contribution in response to (or  
13 who had otherwise responded to) a letter signed by Mr. Ashcroft. Ashcroft 2000 used these  
14 mailing lists in connection with mailing over 900,000 pieces through its vendor PMI during late  
15 1999 and throughout 2000. Ashcroft 2000 was therefore spared from the expense of conducting  
16 extensive prospecting (which often includes paying to rent lists),<sup>48</sup> i.e., soliciting contributions  
17 from individuals who had not yet contributed in response to a letter from Mr. Ashcroft.<sup>49</sup> Thus,  
18 Ashcroft 2000 received largely free of charge the use of the PAC's mailing lists. The value of  
19 these assets, which were received from the PAC, represent an in-kind contribution to Ashcroft  
20 2000.

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<sup>47</sup> Eberle & Associates' 1999 direct mail for Ashcroft 2000 developed approximately 7000 names, which produced \$342 in list rental income in 1999. The possible inclusion of these names among those names for which list rental income was received by Ashcroft 2000 may reduce the amount of the list rental income received by Ashcroft 2000 relating to the PAC's mailing lists.

<sup>48</sup> "The role of the prospect mailing program is to build the donor file of the organization as fast as possible and as efficiently as possible. Once you have generated a list of donors, you must repeatedly mail to that list (referred to as a house list) in order to raise net dollars for your campaign or cause." *Political Direct Mail Fund Raising*, Bruce W. Eberle (Kaleidoscope Publishing, Ltd., revised ed. 1996) at page 6.

<sup>49</sup> Ashcroft 2000's other direct mail vendor, Eberle & Associates, mailed approximately 214,000 prospecting pieces on behalf of Ashcroft 2000 during March 1999 through May 1999. By contrast, Eberle & Associates mailed over three million prospecting pieces on behalf of the PAC during 1998.

1           2.       Even if the Commission Concludes that the Mechanism of Candidate  
2                    Ownership Did Not Facilitate an Excessive Contribution by the PAC to  
3                    Ashcroft 2000, the PAC Still Made an Excessive Contribution to Ashcroft  
4                    2000 in the Form of the Names on the PAC's Mailing List that Pre-date  
5                    the WPA  
6

7           Even if the Commission concludes that the mechanism of candidate ownership through  
8           the WPA and LLA did not facilitate an excessive contribution by the PAC to Ashcroft 2000 in  
9           the form of the mailing lists, the WPA on its face applies only prospectively and thus did not  
10          transfer to Mr. Ashcroft ownership of names on the PAC's mailing list that pre-date the WPA.  
11          As noted above, to the extent that the vendor agreements contain ownership provisions regarding  
12          mailing lists, that ownership is clearly stated as belonging to the PAC and nowhere is it stated  
13          that Mr. Ashcroft owns the lists.

14          The WPA provides that it is "made and entered into effective as of the 17<sup>th</sup> day of July,  
15          1998" between the PAC and Mr. Ashcroft. Everything in the WPA is expressed in present and  
16          future terms – there is no reference to the PAC's previous use of Mr. Ashcroft's name and  
17          likeness or any reference to any prior activity whatsoever. For example, the WPA's "Recitals"  
18          state that "The [PAC] desires to use the name and likeness of John Ashcroft..." and that "John  
19          Ashcroft is willing to permit the [PAC] to use his name and likeness..." Although Jack Oliver  
20          testified that the WPA applied to names on the PAC's mailing list developed prior to the WPA,<sup>50</sup>  
21          there is no support for this proposition. None of the three vendor agreements pre-dating the  
22          WPA provided Mr. Ashcroft with any ownership interest in the mailing list.

23          As a consequence, the names on the PAC's mailing list developed prior to the WPA,  
24          which total at least 19,000, remained the property of the PAC after the July 17, 1998 effective  
25          date of the WPA. These 19,000 names constituted approximately 34.5% of the total of 55,000

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<sup>50</sup> Jack Oliver deposition at page 79. Mr. Oliver also testified that prior to the WPA an "oral understanding" existed that the PAC's mailing list would be owned by the PAC and by Mr. Ashcroft. *Id.* at page 60. There is no certainty, however, whether one party to the WPA, Mr. Ashcroft, was even involved in an "oral understanding" regarding ownership of the PAC's mailing list. See footnote 38 above.

1 names developed for the PAC through the vendor Eberle & Associates.<sup>51</sup> Thus, of the  
2 \$66,662.22 in list rental income redirected from the PAC to Ashcroft 2000 in December 1999  
3 and the \$46,299.83 redirected in March 2000 – which were the amounts related to the Eberle  
4 names – approximately \$38,972 relates to the PAC-owned 19,000 names and thus constitutes an  
5 excessive contribution from the PAC to Ashcroft 2000.<sup>52</sup>

6 An additional component of the excessive contribution, as discussed above, is Ashcroft  
7 2000's use of the PAC's mailing lists to conduct direct mail fundraising. The PAC-owned  
8 19,000 names constituted part of the lists so used, and thus provided a benefit from the PAC to  
9 Ashcroft 2000. The value of this benefit plus the list rental income figure of approximately  
10 \$38,972 constitute the excessive contribution from the PAC to Ashcroft 2000.

11 3. The PAC and Ashcroft 2000 Each Failed to Properly Report  
12 Receipts and Disbursements

13 a. Law On Reporting of Receipts and Disbursements

14  
15 All political committees are required to file reports of their receipts and disbursements.  
16 2 U.S.C. § 434(a). Pursuant to 2 U.S.C. § 434(b), such reports shall disclose all contributions  
17 made and received. Each report filed by a committee not authorized by a candidate must  
18 disclose all contributions made to candidates and their committees. 2 U.S.C. § 434(b)(6)(B)(i).  
19 All political committees must report the identification of each political committee which has  
20 made a contribution to the reporting committee, together with the date and amount of any such  
21 contribution. 2 U.S.C. § 434(b)(3)(B). All political committees must also report the  
22 identification of each person who provides any other receipt to the reporting committee in an  
23 aggregate value or amount in excess of \$200 within the calendar year. 2 U.S.C. § 434(b)(3)(G).

<sup>51</sup> These names were all developed through the direct mail program of the vendor Eberle & Associates. The PAC's other direct mail vendor, PMI, did not mail its initial direct mail pieces until August 1998, after the effective date of the WPA.

<sup>52</sup> This contribution figure is an estimate, because any individual rental of the PAC's list developed by Eberle & Associates may consist of the entire list or any particular segment of the list which may include a lesser or greater component of the PAC-owned 19,000 names.

1 Finally, in-kind contributions must be reported as both contributions received and expenditures  
 2 made. 11 C.F.R. § 104.13(a)(2).

3 b. Neither the PAC Nor Ashcroft 2000 Reported Making or  
 4 Receiving the Contributions Described Above

5  
 6 Neither the PAC nor Ashcroft 2000 disclosed the making and receiving of the  
 7 contributions described above relating to the mailing lists and so failed to meet the Act's  
 8 reporting requirements. See 2 U.S.C. § 434(b).

9 c. Ashcroft 2000 Misreported List Rental Income Payments

10 As noted above, Ashcroft 2000 disclosed certain list rental income receipts from PMI that  
 11 were in fact received from PLI. See 2 U.S.C. § 434(b)(3)(G). The chart below sets forth this  
 12 misreporting.<sup>53</sup>

Reported Receipt From	Reported Date	Amount	Actual Receipt From
Precision Marketing Inc.	3/21/00	\$14,645.81	Precision List Inc.
Precision Marketing Inc.	3/31/00	\$ 4,734.19	Precision List Inc.
Precision Marketing Inc.	6/28/00	\$ 6,384.49	Precision List Inc.
Precision Marketing Inc.	6/30/00	\$ 9,995.12	Precision List Inc.
Precision Marketing Inc.	8/07/00	\$ 8,882.96	Precision List Inc.
Precision Marketing Inc.	9/10/00	\$ 7,229.25	Precision List Inc.
Precision Marketing Inc.	9/30/00	\$13,536.75	Precision List Inc.
Precision Marketing Inc.	12/01/00	\$16,479.31	Precision List Inc.
Precision Marketing Inc.	1/10/01	\$18,124.08	Precision List Inc.
Precision Marketing Inc.	6/06/01	\$ 6,482.57	Precision List Inc.

<sup>53</sup> Ashcroft 2000 reported two additional receipts, \$8,981.66 on December 13, 1999 and \$5,958.79 on December 31, 1999, from "Precision Inc." related to list rental income that in fact were receipts from Precision List Inc.

1           **D.     Recommendations**

2           In light of the above discussion, this Office is prepared to recommend that the  
3 Commission find probable cause to believe that the PAC and Garrett Lott, as Treasurer, violated  
4 2 U.S.C. §§ 441a(a)(2)(A) and 434(b), and that Ashcroft 2000 and Garrett Lott, as Treasurer,  
5 violated 2 U.S.C. §§ 441a(f) and 434(b).


6           **V.     GENERAL COUNSEL'S RECOMMENDATIONS**

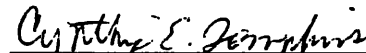
- 7           1.     Find probable cause to believe that Ashcroft 2000 and Garrett Lott, as Treasurer, and  
8 Spirit of America PAC and Garrett Lott, as Treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A),  
9 441a(f), 433(b) and 434(b).  
10  
11          2.     Find probable cause to believe that Spirit of America PAC and Garrett Lott, as Treasurer,  
12 violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and Garrett Lott, as Treasurer,  
13 violated 2 U.S.C. §§ 441a(f) and 434(b).  
14


15  
16           4/23/03

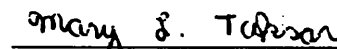
17           Date

18             
19           Lawrence H. Norton  
20           General Counsel

21             
22           Rhonda J. Vosdingh  
23           Associate General Counsel for Enforcement

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