

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of Conservative Leadership)
Political Action Committee) MUR 5635
and David Fenner, in his official capacity)
as treasurer)

GENERAL COUNSEL'S BRIEF

I. INTRODUCTION

On December 14, 2004, the Federal Election Commission (the "Commission") found reason to believe that Conservative Leadership Political Action Committee ("CLPAC" or the "Committee") and David Fenner, in his official capacity as treasurer, accepted corporate contributions in violation of 2 U.S.C. § 441b(a), and excessive contributions in violation of 2 U.S.C. § 441a(f). In addition, CLPAC failed to disclose \$13.9 million in debt owed to vendors in violation of 2 U.S.C. § 434(b)(8). It failed to disclose the contributor's occupation and/or the name of the contributor's employer for 93% of the contributions reviewed during the Commission's audit in violation of 2 U.S.C. § 434(b)(3), and it failed to identify the purpose of disbursements totaling over \$1.8 million in violation of 2 U.S.C. § 434(b)(5).¹ Based on a review of the circumstances surrounding these violations, the General Counsel is prepared to recommend that the Commission find probable cause to believe that CLPAC and David Fenner, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b)(3), (5) and (8), 441a(f) and 441b(a).

¹ This matter was generated as a result of the Commission's audit of CLPAC. The Commission approved the Report of the Audit Division on CLPAC on November 18, 2004. The audit, undertaken in accordance with 2 U.S.C. § 438(b), see 2 U.S.C. § 437g(a)(2), covered the period January 1, 1999 through December 31, 2000. Thus, all of the facts recounted in this brief occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2000 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

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II. ANALYSIS

A. Background Information

CLPAC is a small multicandidate political committee that registered with the Commission in 1972. Its financial activity could be characterized as low to moderate. For example, total expenditures for the period 1993 through 1999 were \$280,625 and total reported receipts were \$292,564 -- an average of approximately \$40,000 in receipts and expenditures per year. Expenditures ranged from \$4,818 in 1993 to \$128,239 in 1998.

ATA is a direct mail marketing agency, incorporated in Virginia, that specializes in fundraising for nonprofit entities. ATA is owned by the Viguerie Company, a corporation that also provides direct mail marketing services. ATA's chairman is Richard Viguerie, who serves as the moderator and commentator on the Internet website, ConservativeHQ.com, Inc., one of the third-party vendors to CLPAC.

As of June 30, 2000, CLPAC reported \$464 cash on hand. Six days later, on July 6, 2000, it entered into a contract with ATA (the "Contract") that resulted in a direct mail, telemarketing and Internet fundraising program to occur in the four months before the 2000 election at a cost of \$8 million. Richard Viguerie signed the Contract for ATA. Despite the fact that the fundraising failed to bring in enough money to pay the costs of solicitations and resulted in a \$4 million loss, ATA disbursed \$465,000 to CLPAC. CLPAC used these funds to pay for approximately \$350,000 worth of advertising opposing New York Senate candidate Hillary Clinton and Presidential candidate Albert Gore, Jr.

The Contract, which was styled a "no-risk" contract, provided that ATA would incur all third-party invoices in its name and that CLPAC would be responsible for the costs of the

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fundraising only up to the amount of money raised. In other words, CLPAC was not responsible for paying any shortfall if the fundraising failed to raise enough money to cover its expenses.

The Contract provided for two kinds of direct mail: housefile solicitations and prospect file solicitations. A housefile consists of names of individuals who have contributed in the past and are thought to be likely to contribute to similar or related causes or entities. A housefile is, therefore, considered valuable. A prospect file consists of names of individuals who have not given in the past, but who are deemed likely to make contributions if approached. Because prospect files are more speculative and cast a wider net, prospect mailings usually involve a larger volume of mail, are more expensive, and result in fewer contributions per solicitation than housefile mailings. When an individual contacted as part of a prospect file mailing makes a contribution, his or her name is added to the housefile.

The Contract provided that income from housefile mailings would go first to pay for housefile mailing costs, and thereafter, 70% of net income from housefile mailings would be disbursed to CLPAC and 30% of net income would be disbursed to ATA. The Contract provided that income from each prospect mailing would be disbursed to pay the costs of that prospect mailing first, then losses from prior prospect mailings, and then held to pay for future prospect mailings. When net income from prospect mailings exceeded \$1 million, the excess would be distributed to CLPAC.

The first few mailings, which consisted of prospect mailings, were relatively modest in size and resulted in mixed gains and losses.² On August 21, 2000, ATA cast a substantial net in a prospect mailing of 2.7 million pieces, at a total cost of over \$1.4 million. This mailing resulted in a net loss of approximately \$657,000. Four days after that mailing, on August 25,

² The mailings, their dates, the descriptive titles assigned to the mailings by ATA, and net results are set forth in the chart at Attachment A. The chart summarizes ATA management reports: American Target Advertising, Inc., Prospect Management Report and House Management Report.

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2000, ATA disbursed \$20,000 to CLPAC. On September 8, 2000, ATA disbursed an additional \$10,000 to CLPAC. Positive returns on housefile mailings could not have served as the basis for the disbursements as ATA made no housefile mailings until after these disbursements to CLPAC.

On September 20, 2000, ATA and CLPAC amended the Contract to provide for disbursements to CLPAC from prospect mailing income before the prospect file netted \$1 million. Again, Richard Viguerie signed for ATA. When the Contract was amended, prospect mailings were running a loss of over \$1 million and housefile mailings a profit of only \$35,000. Nevertheless, the parties amended the Contract to eliminate the \$1 million net income requirement and, in the end, ATA disbursed a total of \$465,000 to CLPAC.

ATA contracted out much of the work and expense of the CLPAC fundraising program. A number of the third-party vendors ATA engaged were entities that were closely connected to it. For example, ATA rented mailing lists from its parent, the Viguerie Company, and hired ConservativeHQ.com, Inc. (whose website is moderated by Richard Viguerie, ATA's chairman) to provide Internet fundraising services. ATA employees Edward Adams and Benjamin Hart paid some of the third-party vendors and lent money to other vendors to pay for postage for the CLPAC direct mail program.

The fundraising program involved thirty-nine mailings. According to the titles ATA gave them, fifteen of the mailings (a total of over 6 million pieces of mail) opposed the candidacy of Albert Gore, Jr. and thirteen of them (almost 4.8 million pieces of mail) opposed Hillary Rodham Clinton.³ Two of the anti-Clinton mailings specifically targeted New York

³ The titles for the remaining eleven mailings do not reveal whether they included references to any specific candidate.

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voters and five of them went to New York and non-New York voters.⁴ The solicitations stated that the contributions would fund independent expenditures to “Get-Out-the-Anti-Gore-Vote” and “Stop Hillary Now, Before She Wins the White House.”

In the end, the returns were insufficient to pay the bills. ATA wrote off \$1,157,832 of the amount CLPAC owed it and paid third-party vendors a total of \$1,195,024 for goods and services they provided for CLPAC's fundraising program. ATA Chief Financial Officer, Edward Adams, also paid third-party vendors bills totaling \$25,727. In addition, ATA negotiated with third-party vendors to compromise their claims for payment, accept partial payment and forgive debt. Specifically, the Viguerie Company wrote off CLPAC bills totaling \$500,652 and paid other third-party vendors \$418,147; ConservativeHQ.com, Inc. wrote off CLPAC bills in the amount of \$77,425; SMS Direct Printing, Inc. wrote off \$17,000 of debt associated with the CLPAC fundraising; and American Business Information Systems, Inc. and American Automated Mailing, Inc. wrote off, as uncollectible, CLPAC bills of \$8,770 and \$7,674, respectively. Finally, Mail Fund, Inc. paid third-party vendors a total of \$68,254 for work they did for CLPAC. In sum, ATA provided CLPAC with access to individuals and corporations that were willing to loan money and direct mail companies willing to work in advance of payment. As a result, CLPAC was able to spend \$8 million on a direct mail program that included the distribution of millions of pieces of election-related literature in the four months prior to the 2000 election.

B. Prohibited Corporate Contributions

The Federal Election Campaign Act of 1971, as amended (the “Act”) prohibits political committees from accepting contributions from corporations. 2 U.S.C. § 441b(a). Under the Act,

⁴ There is insufficient information to establish what proportion of the six remaining mailings went to New York voters.

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contributions include any "direct or indirect payment, distribution, loan, advance, deposit, or gift of money or any services, or anything of value[.]" 2 U.S.C. § 441b(b)(2). The corporate contributions CLPAC accepted took four forms: (1) some of the corporations were not paid in full for the goods and services and then forgave the resulting debt; (2) some of the corporations paid third parties on CLPAC's behalf; (3) ATA disbursed \$465,000 to CLPAC; and (4) Mail Fund made a series of short-term loans to third-party vendors to pay for CLPAC postage.

1. Corporations Forgave CLPAC Debt and Thereby Made Contributions

Six corporations provided goods and services to CLPAC in advance of payment. They extended credit to the Committee. The Committee did not pay, or did not pay in full, its debts to these corporations. As a result, the Committee accepted prohibited corporate contributions. The following chart sets forth the amount of debt CLPAC owed to each corporation but did not repay:

Corporation	Debt Forgiven
American Target Advertising, Inc.	\$1,157,832
The Viguerie Company	\$500,652
ConservativeHQ.com, Inc.	\$77,425
SMS Direct, Inc.	\$17,000
American Business Information Systems, Inc.	\$8,770
American Automated Mailing, Inc.	\$7,674
Total	\$1,769,353

Commission regulations provide that a commercial vendor's extension of credit will not be considered a contribution so long as it is made in the ordinary course of business and on the

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same terms as those provided to non-political clients of similar risk and with an obligation of similar size. 11 C.F.R. §§ 100.7(a)(4) and 116.3(b). In determining whether an extension of credit was in the ordinary course of business, the Commission considers whether the vendor followed established procedures and past practices in making the extension of credit, whether the vendor received prompt payment in full for previous extensions of credit, and whether the extension of credit conformed to the usual and normal practice in the industry. 11 C.F.R. § 116.3(c).

The regulations further provide that a commercial vendor may forgive, or settle such extension of credit for less than the full amount owed, if it has treated the debt in a commercially reasonable manner and complied with the regulatory requirements for forgiving debt. 11 C.F.R. § 116.4(b). A vendor can demonstrate that it has treated the debt in a commercially reasonable manner by showing, *inter alia*, that: (1) the original extension of credit was proper; (2) the committee has engaged in additional fundraising to satisfy the debt, reduced overhead and administrative costs, or liquidated assets; and (3) that the vendor has pursued its remedies as vigorously as it would pursue its remedies against a similarly-situated non-political debtor, *i.e.*, that it has made oral and written requests for payment, withheld delivery of goods or services until overdue debts are satisfied, imposed additional charges for late payment, referred the debt to a collection service, or litigated for payment on the debt. 11 C.F.R. § 116.4(d). A creditor may ask for approval of a plan to forgive or settle a debt from the Commission where the debt has been outstanding for twenty-four months and the committee does not have sufficient cash to pay the vendor, has receipts and disbursements of less than \$1,000 during the previous twenty-four months, and has debts to other creditors of such magnitude that the vendor reasonably concludes that the committee will not pay the debt owed to the vendor. 11 C.F.R. § 116.8. If a

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vendor extends credit and fails to make a commercially reasonable attempt to obtain repayment, a contribution will result. 11 C.F.R. §§ 100.7(a)(4) and 116.4(b)(2).

The six corporations identified in the chart above did not extend credit to CLPAC in the ordinary course of business. ATA's extension of credit exceeded \$1 million and on CLPAC's behalf it arranged for large extensions of credit from the other entities -- all for a fundraising program scheduled to run for four months. Such a large extension of credit for a short-term contract is not the usual and normal practice in the direct mail industry and did not comport with ATA's established procedures and past practices. While a longstanding relationship and a history of transactions between a committee and a vendor may justify the provision of goods and services in advance of payment, CLPAC had no longstanding relationship with ATA. This was the first time CLPAC and ATA transacted business with each other. Likewise, none of the other corporations that extended credit to CLPAC had done business with the committee before. Thus, the six corporations had not received prompt payment in full from CLPAC for previous extensions of credit.

In addition, CLPAC and the six corporations failed to treat the debt in a commercially reasonable fashion as required by 11 C.F.R. § 100.7(a)(4). CLPAC engaged in no fundraising efforts on its own; it did not reduce its overhead or administrative costs; and it did not liquidate assets. *See* 11 C.F.R. § 116.4(d). The corporations made no demand for payment, nor did they withhold goods or services. *Id.* They imposed no additional fees for late payment, did not refer the debt to a collection service, and did not initiate litigation to collect the debt. *Id.* In fact, some of them extended additional credit to CLPAC despite the fact that the fundraising program lost large sums of money. Moreover, the Committee accepted a \$465,000 disbursement from ATA that could have been applied to the losses.

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The corporations forgave the CLPAC debt within 24 months. During that 24-month period, CLPAC had more than \$1,000 in receipts and disbursements. Thus, the debt was not eligible for forgiveness and the Commission did not review and approve a debt settlement plan regarding any of these debts. 11 C.F.R. § 116.8(a). Because the debt was not incurred in the ordinary course of business, was not treated by the corporations in a commercially reasonable fashion, and did not qualify for forgiveness under the applicable regulation, the debt resulted in prohibited corporate contributions to CLPAC. Thus, there is probable cause to believe that CLPAC violated 2 U.S.C. § 441b(a) by accepting prohibited corporate contributions totaling \$1,769,353.

CLPAC's asserted reliance on Advisory Opinion ("AO") 1979-36 to argue it did not violate the Act is misplaced and ignores subsequent AOs that specifically address the key facts in this matter: the fundraising program resulted in a loss, and CLPAC never repaid ATA's extension of credit.

AO 1979-36 addressed a proposed contract between a committee and a direct mail vendor that would allow the committee to retain 25% of fundraising proceeds while paying the costs of the fundraising program from the remaining 75% of proceeds. The contract would also provide for an initial test period and for termination of the contract upon a poor initial showing. The Commission concluded that the contract would not result in a contribution so long as the arrangement was a normal industry practice and involved an extension of credit that was extended in the ordinary course by the vendor to similarly situated non-political clients. *Id.* The Commission did not opine in AO 1979-36 as to the result should the committee fail to pay-off the extension of credit. That circumstance was addressed in subsequent AOs in which the Commission has been "more explicit as to the need, in fundraising situations, for the committee

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to pay for all of the costs of the program.” AO 1991-18. *See also*, AOs 1995-34, 1990-14, 1990-1, and 1989-21.

Specifically, in AO 1989-21, the Commission noted that advances by a fundraiser to a committee are “contributions to the extent that [they] remain unpaid.” In AOs 1995-34, 1991-18, 1990-14 and 1990-1, the Commission required the addition of safeguards where fundraising costs were to be paid out of fundraising proceeds. These safeguards took the form of: deposits made in advance by the committee to reimburse the vendors for potential shortfalls (AOs 1995-34, 1990-14, and 1990-1); short-term programs or early termination of the contract triggered by poor performance (AOs 1995-34, 1991-18, 1990-14, and 1990-1); and recourse to the committee (AO 1995-34 and 1991-18).

Unlike the particular extension of credit described in AO 1979-36, the Contract between CLPAC and ATA did not contain a provision for an initial test period or for termination upon a poor showing. It contained one safeguard only: the provision that no disbursements would be made to CLPAC from prospect file income until prospect mailings netted \$1 million. Despite this provision, as noted above, ATA disbursed and CLPAC accepted funds even though prospect mailings had not netted \$1 million.

Facts more analogous to the situation in the instant matter were addressed in AO 1991-18. AO 1991-18 involved a contract for telemarketing programs, including a “Prospecting Program,” where, like the arrangement between CLPAC and ATA, the costs of the fundraising program were to be paid out of fundraising proceeds. Like ATA, the vendor had no recourse to the committee for the payment of any shortfall. The Commission, in explaining why it disapproved of the program, stated its concern “that regardless of the degree of success of the effort to raise funds, the committee would retain contribution proceeds while giving up little, or

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the committee would assume little or no risk with the vendor bearing all, or nearly all, the risk.”

Id. In this case, the “no risk” Contract resulted in ATA making and CLPAC accepting from ATA a contribution totaling \$2,817,874.

2. Corporations Paid Third-Parties on CLPAC's Behalf

ATA, the Viguerie Company, and Mail Fund paid other vendors a total of \$1,707,152 on CLPAC's behalf for goods and services the vendors provided in support of the CLPAC direct mail fundraising campaign. ATA paid eleven third party vendors a total of \$1,195,204; the Viguerie Company paid third-party vendors \$418,147; and Mail Fund paid third-party vendors \$68,254. These corporations made indirect payments to CLPAC or gave CLPAC something “of value” and thereby made prohibited corporate contributions to CLPAC. 11 C.F.R.

§ 100.7(a)(1)(iii)(A). Thus, there is probable cause to believe that CLPAC violated 2 U.S.C. § 441b(a) by accepting prohibited corporate contributions totaling \$1,707,152 from ATA, the Viguerie Company, and Mail Fund, Inc.

3. ATA Disbursed \$465,000 to CLPAC

ATA's disbursement of \$465,000 to CLPAC constituted an additional corporate contribution. This payment clearly falls within the Act's definition of “contribution.” 2 U.S.C. § 441b(b)(2). The \$465,000 did not consist of fundraising proceeds because there were no net proceeds, only losses. The fundraising program cost \$8 million; it returned only about \$4 million and ATA absorbed a substantial portion of the resulting loss. The money for the \$465,000 distribution thus came from ATA itself. *See* 2 U.S.C. § 441b(a). Under the Act, corporate contributions, such as these distributions, are prohibited. 2 U.S.C. § 441b. Thus, there is probable cause to believe that CLPAC violated 2 U.S.C. § 441b(a) by accepting the \$465,000 disbursement from ATA.

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4. Corporate Loans

Mail Fund, Inc. loaned a total of \$1,443,849 to other vendors to pay for postage and direct mail services in advance of mailings. Mail Fund, Inc. did not provide goods and services; it simply lent money. When it made the loans, Mail Fund, Inc. made prohibited corporate contributions to CLPAC.

When a corporation loans money to another corporation to pay for goods and services provided to a committee, that loan constitutes a contribution. 2 U.S.C. § 441b(b)(2). The Commission has addressed arrangements comparable to the loans from Mail Fund, Inc. in two prior enforcement matters, one of which involved ATA's parent, the Viguerie Company. The first, MUR 3027, stemmed from an arrangement between the Viguerie Company and Direct Marketing Finance and Escrow, Inc. ("DMFE"), and led the Commission to issue an admonishment letter to DMFE. The second matter, also involving DMFE, MUR 5173, led the Commission to find probable cause to believe that DMFE had knowingly and willfully violated the Act.

In MUR 3027, the Viguerie Company engaged DMFE to provide loans for postage to benefit one of the Viguerie Company's clients, the Public Affairs Political Action Committee. Like Mail Fund, Inc., DMFE functioned as a third-party vendor, while the Viguerie Company, like ATA in the instant matter, served as the federal committee's primary vendor. The Commission found reason to believe that DMFE violated 2 U.S.C. § 441b by making corporate contributions when it made the postage loans. Even if this arrangement is common in contracts for direct mail marketing, the agreement between the Viguerie Company and DMFE violated the prohibition against corporate contributions because the beneficiary was a federal political committee. General Counsel's Brief, MUR 3027 (Direct Marketing Finance & Escrow, Inc.).

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Ultimately, the Commission issued DMFE an admonishment letter warning that “arrangements in which third-party, non-banking lenders finance the activities of federal political committees appear to violate 2 U.S.C. § 441b(a).” In MUR 5173, DMFE again provided short-term loans on behalf of a federal political committee (Republicans for Choice Political Action Committee) to pay vendors who supplied postage, donor lists and other fundraising services. The Commission found probable cause to believe DMFE and its president knowingly and willfully violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions in the form of short-term loans to other vendors. Like DMFE, Mail Fund, Inc. made loans to other vendors to finance work they did for a political committee. Like DMFE’s loans, Mail Fund, Inc.’s loans constituted a contribution to CLPAC. Thus, there is probable cause to believe that CLPAC violated 2 U.S.C. § 441b(a) by accepting a corporate contribution from Mail Fund, Inc.

C. Excessive Contributions

Pursuant to the Act, an individual may not contribute more than a total of \$5,000 in any calendar year to any non-connected political action committee. 2 U.S.C. § 441a(a)(1)(C).⁵ Edward Adams (“Adams”), Benjamin Hart (“Hart”), and Marc Roffman (“Roffman”) each made contributions to CLPAC of over \$5,000. Adams lent a total of \$180,325 to third-party vendors to pay for postage and list rentals for CLPAC mailings. Hart lent a total of \$135,681 and Roffman lent a total of \$75,480 to third-parties for CLPAC postage.

In the present matter, Adams, Hart and Roffman performed the same function as DMFE did in MURs 3027 and 5173. At the behest of a federal committee’s primary vendor, in this case ATA, these individuals made short-term loans, on behalf of CLPAC, to pay other vendors for postage and voter lists. Pursuant to 2 U.S.C. § 441a(a)(1)(C), these individuals were entitled to

⁵ An individual may not use his personal funds, including a personal credit card, to pay for goods and services used by or on behalf of a political committee unless the payment falls under certain exemptions for travel. 11 C.F.R. §§ 100.7(b)(8) and 116.5.

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contribute only \$5,000 to CLPAC during calendar year 2000. Out of the \$180,325 that Adams advanced on behalf of CLPAC for postage and voter lists to direct mail vendors, \$175,325 represents excessive contributions to that committee ($\$180,325 - \$5,000 = \$175,325$). Similarly, Hart and Roffman made excessive contributions of \$130,681 and \$70,480, respectively. In addition, Adams paid other vendors a total of \$25,727 for goods and services they provided for CLPAC. CLPAC never compensated Adams and he wrote off the debt. Accordingly, Adams made an additional impermissible contribution of \$25,727 to CLPAC in violation of 2 U.S.C. § 441a(a)(1)(C). In sum, there is probable cause to believe that CLPAC violated 2 U.S.C. § 441a(f) by accepting contributions from Adams, Hart, and Roffman that exceeded the limitations of the Act by a total of \$402,213.

D. Reporting Violations

1. Failure to Report Debt

The Act requires committees to report debt, 2 U.S.C. § 434(b)(8). But CLPAC's reports for calendar year 2000 currently show no debt despite the fact that it owes millions of dollars to ATA and other vendors. CLPAC should have reported a total of approximately \$13.9 million of vendor debt. Initially, it reported approximately \$9.9 million in debt. However, in June and July 2000, CLPAC amended its reports and deleted all of the debt it previously reported on the grounds that the debt was not CLPAC's debt, but rather ATA's obligation.

The ATA/CLPAC Contract provided that "all third-party invoices will be incurred in ATA's name." It also established an escrow account, funded by the contributions individuals made to CLPAC in response to the fundraising program. The escrow account thus consisted of CLPAC funds and it was these funds that were used to pay vendor invoices. In fact, CLPAC reported payments from the escrow account as its own disbursements. And CLPAC originally

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reported \$9.9 million of the debt as debt that it owed. Finally, while third party vendors mailed their invoices to ATA's street address, they addressed their invoices to CLPAC. The failure to pay vendors in full for goods and services they provided for CLPAC's benefit resulted in CLPAC debt. CLPAC should have reported that debt as debt it owed to third-party vendors or debt it owed to ATA. Thus, there is probable cause to believe that CLPAC violated 2 U.S.C. § 434(b) by failing to report debt.

2. Failure to Disclose Occupation and/or Name of Employer

The Act requires committees to identify contributors who make aggregate contributions of over \$200 in a calendar year. 2 U.S.C. § 434(b)(3)(A). When committees identify contributors, they must include the contributor's occupation and the name of the contributor's employer. 11 C.F.R. § 100.12. CLPAC, however, failed to identify the occupation and/or name of employer for 93% of the contributions reviewed during the Commission's audit. CLPAC explained that its vendors failed to obtain or maintain this information. While the vendors' failure explains why the information is missing, it does not excuse the committee from its obligation to comply with the Act.

Regardless of the vendors' failings, CLPAC could have avoided this violation by making best efforts at compliance. The Act provides that where a committee can show that best efforts were used to obtain or maintain information, the committee will be considered to be in compliance with the Act. 11 C.F.R. § 104.7(b). A committee will be deemed to have exercised best efforts to obtain contributor information where: (1) its solicitations include a clear request for the name, address, occupation and name of employer of the contributor and a statement that such reporting is required by law; (2) within thirty days of receipt of the contribution, the committee makes at least one effort to obtain the missing information in either a written request

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or an oral request that the committee documents; and (3) the committee reports contributor information obtained in a follow-up communication or contained in committee records or in prior reports filed within the same two-year election cycle.

CLPAC, however, did not make best efforts at compliance. It did not produce copies of all of its solicitations and thus it did not demonstrate that its solicitations included the required provisions. It produced no evidence that it contacted contributors in an effort to obtain the missing information. CLPAC cannot blame its vendors for these failings. It was the Committee's responsibility to contact contributors for the missing information and it was the Committee's responsibility to maintain copies of all written solicitations mailed in its name. Thus, there is probable cause to believe that CLPAC violated 2 U.S.C. § 434(b) by failing to report its contributors' occupations and the names of their employers.

3. Failure to Disclose Purpose of Disbursements

The Act requires committees to report the name and address of any person to whom the committee makes disbursements that total over \$200 in a calendar year and to state the purpose of the disbursement. 2 U.S.C. § 434(b)(5)(A). CLPAC failed to comply with this statutory requirement for 56 disbursements totaling \$1,848,416. CLPAC explained that information regarding the purpose of the disbursements was not maintained by its vendors and thus it did not have the information it was required to report. Again, while the vendors' failings may explain the violation, they do not excuse it. In the end, CLPAC bears the responsibility for complying with the Act.

Moreover, the Commission's auditors provided CLPAC with a schedule of the disclosure errors. Based on that schedule, CLPAC could have filed amended reports and provided the missing information. CLPAC, however, filed no amended reports to address this violation.

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Thus, there is probable cause to believe that CLPAC violated 2 U.S.C. § 434(b) by failing to report fully its disbursements.

III. RECOMMENDATION

Find probable cause that Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441b(a).

5/23/05
Date

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Attachment

A. Summary Chart of American Target Advertising, Inc. Mailings

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American Target Advertising, Inc.

Year 2000	Job Description	Prospect	House	Quantity	Total Cost	Total Income	Net Income
7/28/00	"Stop Hillary Now!" 10 Closed Face, Personalize	P		13,478	\$ 25,206.61	\$ 79,938.00	\$ 54,731.39
7/28/00	"Stop Hillary Now!" 10 Window Format	P		16,329	\$ 13,946.16	\$ 8,733.00	\$ (5,213.16)
8/1/00	"Stop Hillary Now!" #10 Window Version	P		358,369	\$ 193,928.46	\$ 172,866.48	\$ (21,061.98)
8/4/00	"Stop Hillary Now!" #10 Window Version with Cong.	P		26,036	\$ 15,943.43	\$ 15,085.00	\$ (858.43)
8/17/00	"Stop Hillary!" #9 SLW First Class Format	P		88,359	\$ 74,884.45	\$ 197,551.66	\$ 122,667.21
8/21/00	"Stop Hillary!" #10 SLW Format	P		2,728,573	\$ 1,460,318.50	\$ 803,338.24	\$ (656,980.26)
8/28/00	"Stop Hillary Now!" #10 Package to NY Registered	P		193,187	\$ 76,073.54	\$ 50,480.00	\$ (25,593.54)
9/5/00	"Defeat Gore!" #10 SLW Carrier	P		2,729,480	\$ 1,443,872.30	\$ 914,747.46	\$ (529,124.84)
9/9/00	"Defeat Gore!" #10 SLW Package - First Class Test C	P		51,280	\$ 30,330.23	\$ 24,035.50	\$ (6,294.73)
9/11/00	"Thank you Package - "Stop Hillary" #10 SLW Format		H	19,413	\$ 826.14	\$ 30,837.50	\$ 30,011.36
9/18/00	9 x 12 CLPAC HP		H	12,604	\$ 38,681.13	\$ 50,948.98	\$ 12,267.85
9/22/00	"Defeat Gore!" High & Prospect #10 window - PERS	P		110,208	\$ 68,250.75	\$ 74,794.00	\$ 6,543.35
9/29/00	\$1 Bill Polybag		H	10,263	\$ 24,279.19	\$ 112,709.11	\$ 88,429.92
10/2/00	\$2.50 check, Pistol Grip Carrier		H	20,458	\$ 14,571.77	\$ 20,633.44	\$ 6,061.67
10/3/00	"Stop Hillary!" 9x12 Window Format	P		479,108	\$ 339,213.87	\$ 168,735.03	\$ (170,478.84)
10/4/00	1 Bill Polybag, Shadow File	P		13,216	\$ 24,381.09	\$ 81,952.00	\$ 57,570.91
10/4/00	"Stop Gore!" #10 Window	P		1,968,745	\$ 1,027,131.40	\$ 258,257.97	\$ (768,873.43)
10/5/00	"Defeat Gore!" 9x12 Window Format	P		1,008,474	\$ 559,927.31	\$ 196,703.91	\$ (363,223.40)
10/5/00	New York Hillary	P		752,204	\$ 373,505.46	\$ 53,286.18	\$ (320,219.28)
10/6/00	Secretary of State, Hillary; 1st Class	P		99,889	\$ 71,939.21	\$ 18,588.00	\$ (53,351.21)
10/10/00	E-mail	P		0	\$ 55.97	\$ 9,548.18	\$ 9,492.21
10/12/00	\$2.50 Check Remail	P		99,889	\$ 80,552.74	\$ 7,921.75	\$ (72,630.99)
10/12/00	Gore 1st Class Secretary of State	P		99,888	\$ 59,497.28	\$ 9,038.00	\$ (50,459.28)
10/13/00	Gore Western Union Prospect	P		27,020	\$ 31,471.95	\$ 4,883.00	\$ (26,588.95)
10/13/00	Gore Western Union Housefile		H	44,275	\$ 43,282.04	\$ 39,144.10	\$ (4,137.94)
10/20/00	True Certified, Shadow File	P		14,098	\$ 36,166.69	\$ 39,255.00	\$ 3,088.31
10/20/00	True Certified, High Dollar		H	8,802	\$ 20,943.13	\$ 54,957.90	\$ 34,014.77
10/20/00	Non Certified, Low Dollar		H	28,074	\$ 17,713.53	\$ 13,240.93	\$ (4,472.60)

American Target Advertising, Inc.

Year 2000	Job Description	Prospect	House	Quantity	Total Cost	Total Income	Net Income
10/24/00	Gore Gram, 8 1/2 x 14, Shadow File	P		13,749	\$ 9,751.09	\$ 4,900.00	\$ (4,851.09)
10/24/00	Gore Gram, 8 1/2 x 14		H	49,215	\$ 25,354.54	\$ 30,095.81	\$ 4,741.27
10/25/00	Gore Polybag, shadow File	P		13,759	\$ 29,139.34	\$ 3,435.00	\$ (25,704.34)
10/25/00	Gore Polybag		H	50,780	\$ 103,144.35	\$ 60,503.10	\$ (42,641.25)
10/27/00	Western Union Priority Letter - Gore Prospect	P		5,770	\$ 9,116.89	\$ 25.00	\$ (9,091.89)
10/27/00	Western Union Priority Letter - Gore H/F		H	5,273	\$ 7,279.35	\$ 3,950.00	\$ (3,329.35)
10/28/00	\$1 Bill to #10		H	49,056	\$ 81,715.28	\$ 116,272.15	\$ 34,556.87
10/31/00	Western Union Priority Letter - Hillary Prospect	P		5,770	\$ 10,328.30	\$ 0.00	\$ (10,328.30)
10/31/00	8 1/2 x 14, Gore Gram Canary		H	45,215	\$ 23,162.48	\$ 10,339.00	\$ (12,823.48)
10/31/00	Western Union Priority Letter - Hillary H/F		H	1,766	\$ 3,164.33	\$ 2,975.00	\$ (189.33)
11/14/00	Debt Reduction H/F		H	64,350	\$ 42,595.80	\$ 18,410.90	\$ (24,184.90)
	GRAND TOTAL			11,326,422	\$ 6,511,646.08	\$ 3,763,116.28	\$ (2,748,529.80)