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2 **BEFORE THE FEDERAL ELECTION COMMISSION**
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4
5 In the Matter of Benjamin J. Hart
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)
) MUR 5635
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8 **GENERAL COUNSEL'S BRIEF**
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10 **I. INTRODUCTION**

11 On December 14, 2004, the Federal Election Commission (the "Commission") found
12 reason to believe that Benjamin J. Hart made contributions to the Conservative Leadership
13 Political Action Committee ("CLPAC" or the "Committee") that exceeded the limits of the
14 Federal Election Campaign Act of 1971, as amended ("the Act").¹ These excessive
15 contributions totaled \$128,021. Based on a review of the circumstances surrounding these
16 excessive contributions, this Office is prepared to recommend that the Commission find probable
17 cause to believe that Hart violated 2 U.S.C. § 441a(a)(1)(C) by making excessive contributions
18 to CLPAC.

19 **II. ANALYSIS**

20 **A. Background Information**

21 American Target Advertising, Inc. ("ATA"), is a direct mail marketing company owned
22 by the Viguerie Company ("TVC").² On July 6, 2000, CLPAC hired ATA to provide direct

¹ This matter was generated as a result of the Commission's audit of CLPAC. This 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 relevant 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. The Commission approved the Report of the Audit Division on CLPAC on November 18, 2004.

² TVC is a company headquartered in suburban Virginia and has been providing direct mail fundraising services since the mid-1960's.

1 mail, telemarketing and Internet fundraising services to the Committee in the months leading up
2 to the November 2000 general election.³ Hart worked as the creative director at ATA and
3 designed the content of the mailings used in the CLPAC fundraising program. ATA sought
4 vendors to produce and mail the fundraising solicitations, but did not itself advance the funds to
5 the vendors to pay for the postage for CLPAC's fundraising solicitations. Instead, in September
6 2000, Hart personally began advancing funds to the vendors to finance the purchase of postage.
7 ATA spreadsheets show that by November 2, 2000, Hart had advanced a total of \$133,021 to the
8 vendors to pay for postage to carry out CLPAC's fundraising solicitations. In the parlance of the
9 direct mail industry, such advances are generally referred to as "postal loans."⁴ Hart was repaid
10 in full from the CLPAC escrow account.

11 B. Hart Made Excessive Contributions to CLPAC

12 Pursuant to the Act, an individual may not contribute more than a total of \$5,000 in any
13 calendar year to any non-connected political action committee. 2 U.S.C. § 441a(a)(1)(C). The
14 term contribution includes a gift, subscription, loan, advance, or deposit of money or anything of
15 value made by any person for the purpose of influencing any election for Federal office.
16 2 U.S.C. § 431(8)(A)(i). Exempt from this definition are bank loans made in the ordinary course
17 of business. 11 C.F.R. § 100.7(b)(11). Hart's loans, totaling \$133,021, that subsidized the
18 fundraising of a federal political committee, exceeded the Act's \$5,000 limit for individual
19 contributions.

³ CLPAC is a multi-candidate committee that first registered with the Commission in 1972

⁴ This figure does not include interest Hart charged on the loan amounts. The Final Audit Report, which was mailed to Hart on January 11, 2005, stated that Hart billed CLPAC a total of \$135,681, which figure includes interest. Final Audit Report at page 8.

1 While the Act allows vendors to extend credit to political committees under certain
2 circumstances, *see* 11 C.F.R. § 100.55, Hart's activity was not the sort addressed by the Act and
3 regulations. The regulations define an extension of credit as including an agreement between a
4 creditor and a committee that full payment is not due until after goods and services are provided.
5 11 C.F.R. § 116.1(e). Hart provided no goods or services to CLPAC; he advanced over
6 \$130,000 to direct mail vendors to pay for CLPAC mailings. Even if postal lending (i.e.
7 advances to direct mail vendors to pay for postage) is common in contracts for direct mail
8 marketing, the arrangement by which Hart paid costs of CLPAC's fundraising benefited this
9 federal political committee. His payments were contributions under the Act. 2 U.S.C.
10 § 431(8)(A)(i).

11 The Commission has addressed arrangements comparable to the Hart postal loans in two
12 prior enforcement matters. The first case, MUR 3027, stemmed from an arrangement between
13 the Viguerie Company and Direct Marketing Finance and Escrow, Inc. ("DMFE"). The Viguerie
14 Company had engaged DMFE to provide loans (i.e. advances) for postage to benefit one of the
15 Viguerie Company's clients, the Public Affairs Political Action Committee ("PAPAC"). Like
16 Hart, DMFE functioned as a third-party vendor, while the Viguerie Company, like ATA in the
17 instant matter, served as PAPAC's primary vendor. The Commission found reason to believe
18 that DMFE made contributions to PAPAC when it made the postal loans and, because it was a
19 corporation, that its contributions violated the Act's prohibition on corporate contributions. *See*
20 2 U.S.C. § 441b. Ultimately, the Commission issued DMFE an admonishment letter warning
21 that "arrangements in which third-party, non-banking lenders finance the activities of federal
22 political committees appear to violate 2 U.S.C. § 441b(a)."

1 The second matter, also involving DMFE, MUR 5173, led the Commission to find
2 probable cause to believe that DMFE had knowingly and willfully violated the Act. In MUR
3 5173, DMFE again had provided short-term loans on behalf of a federal political committee
4 (Republicans for Choice Political Action Committee) to pay vendors who supplied postage,
5 donor lists and other fundraising services to that committee. The Commission found probable
6 cause to believe DMFE and its president knowingly and willfully violated 2 U.S.C. § 441b(a) by
7 making prohibited corporate contributions in the form of these short-term loans.

8 The facts in those two MURS are indistinguishable from the facts of this matter. Hart
9 used personal funds to make the postal loans and he received the interest on the loans. Like
10 DMFE, these loans were advances to vendors to finance work they did for a political committee,
11 and like DMFE's advances, Hart's advances constituted a contribution to CLPAC.

12 Pursuant to 2 U.S.C. § 441a(a)(1)(C), Hart was entitled to contribute \$5,000 to CLPAC
13 during calendar year 2000. However, in advancing funds to vendors to pay postage costs on
14 behalf of CLPAC, Hart contributed a total of \$133,021 to CLPAC. The difference (\$133,021-
15 \$5,000) represents an excessive contribution of \$128,021. Thus, this Office is prepared to
16 recommend that the Commission find that there is probable cause to believe that Benjamin J.
17 Hart made excessive contributions to Conservative Leadership Political Action Committee in
18 violation of 2 U.S.C. § 441a(a)(1)(C).

1 **III. RECOMMENDATION**

2 Find probable cause to believe that Benjamin J. Hart violated 2 U.S.C. § 441a(a)(1)(C) by
3 making excessive contributions to Conservative Leadership Political Action Committee.
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6 7/25/05
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