



FEDERAL ELECTION COMMISSION

Washington, DC

MEMORANDUM

TO: The Commission

FROM: Office of the Commission Secretary ^{VFV}

DATE: August 26, 2024

SUBJECT: AO 2024-06 American Target Advertising and The Conservative
Caucus Draft B (Comments)

Attached is a comment received from American Target Advertising and The Conservative Caucus. This matter is on the August 29, 2024 Open Meeting Agenda.

Attachment



AMERICAN TARGET ADVERTISING™ INC.
HOME OF VIGUERIE'S FOUR HORSEMEN OF MARKETING®
HOME OF THE FUNDING FATHER™ OF THE CONSERVATIVE MOVEMENT

RECEIVED

By Office of the Commission Secretary at 4:03 pm, Aug 26, 2024

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August 26, 2024

Ms. Lisa J. Stevenson
Acting General Counsel
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Via ao@fec.gov

Re: AO 2024-06 (American Target Advertising
and The Conservative Caucus) -- Draft B

Dear Ms. Stevenson:

I submit these comments for consideration by your office and the Commissioners at the upcoming August 29 open meeting that will now also consider Draft B of AO 2024-06, American Target Advertising and The Conservative Caucus,¹ and ask that these comments be distributed to the Commissioners and their staffs.

I respectfully urge the Commission to reject Draft B because it fails to recognize the distinct fundraising “purpose” of checks in check packages, and fails to establish that the face value of the checks² is an expenditure under campaign finance law. Draft B also unnecessarily and unreasonably intrudes on and chills First Amendment rights of nonprofit solicitations.³

As explained in my two prior submissions, the “purpose” of the checks in TCC’s mass mailings is nonprofit fundraising. The checks are used in TCC’s (and other of our clients’) fundraising mass mailings *that do not include express advocacy*, and therefore it is untenable that the face value of the checks constitutes an “expenditure” for campaign finance

¹ Agenda Document No. 24-30-B.

² Draft B at page 1 uses the phrase, “the face value of checks that The Conservative Caucus reasonably expects to be deposited or cashed after receipt” That will be what is meant throughout these comments as “face value of the checks.”

³ Draft A suffered the same legally fatal flaws.

purposes. Even before plans to use a check package in a fundraising letter for TCC that included express advocacy, ATA estimates it had mailed over a billion check packages for its 501(c)(3) charitable and 501(c)(4) social welfare clients' fundraising, and over 100 million just for TCC. Both the presumption and conclusion therefore must be that the purpose of the checks is not an expenditure under campaign finance law.⁴

The "purpose" of the checks is not to expressly advocate the election or defeat of a candidate,⁵ nor is the purpose "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office."⁶ Draft B fails to establish how the checks fit those statutory "purposes" required to identify the face value of the checks as an "expenditure." Therefore, the face value of the check legally may not be treated as an expenditure.

[Draft B also provides me an opportunity to boast a bit about what my 90-year-old boss has done during his career and continues to do to transform political, ideological, and charitable fundraising by opening political committees and non-political tax-exempt organizations to invested participation and financial involvement by tens of millions of small-dollar individual donors instead of just wealthy donors, corporations, and foundations.⁷]

⁴ Unlike other costs of *the medium* of any mass communication that is an Independent Expenditure, such as postcards with no donation reply envelopes, or radio time for radio ads, broadcast time for television ads, etc., the check is not a medium of an expenditure for campaign finance purposes.

⁵ 52 U.S.C. § 30101(17).

⁶ 52 U.S.C. § 30101(9)(A).

⁷ For those at the Commission who may be unfamiliar with him, Attachment A provides quotes about Richard A. Viguerie, such as how he is "the father of political direct marketing," that "[e]very non-profit mailer, whatever their political persuasion, owes Viguerie a debt," and "[i]n every election from 1966 onward, the Viguerie Company and its score of imitators . . . brought information to millions of Americans, information that quite often the people could not obtain from newspapers or television or mass-circulation magazines."

In my August 12 comments about Draft A,⁸ I state, “this [check] is a fundraising technique originally employed for letters that are not Independent Expenditures” and, “there is no way the letters would include checks if their purpose were to expressly advocate without soliciting donations.” I added:

Check packages are used for the “*purpose of*” fundraising and other non-Independent Expenditure purposes, even if they happen to be in a letter which also expressly advocates election or defeat of a clearly identified candidate. Therefore, they are not payments “*for the purpose of* influencing any election for Federal office.” By our experience, over 97 percent of the checks are not deposited anyway.

Draft B unfortunately glosses right over the solicitation purpose of the checks.^{9 10} In some places, Draft B actually factually misstates our

⁸ https://www.fec.gov/files/legal/aos/2024-06/202406C_2.pdf.

⁹ My wise and thoughtful colleague at law Eric Wang expressed concern in his August 9 comments (https://www.fec.gov/files/legal/aos/2024-06/202406C_1.pdf) that the Commission’s erroneous characterization of the purposes of the checks in a fundraising solicitation mailing could eventually (and mischievously) be mischaracterized as “vote-buying,” which would be a malicious characterization given the widespread and common use of techniques of value in nonprofit fundraising, sometimes called “premiums” (such as pre-printed address labels or key chains) to gain attention to the fundraising solicitation. Another common fundraising technique is to show coins or even a dollar bill through a window. See, for example, “Gov. Ehrlich’s dollar bills turn into big bucks for campaign,” *Washington Examiner*, Dec. 26, 2006, https://www.washingtonexaminer.com/politics/13778/gov-ehrlichs-dollar-bills-turn-into-big-bucks-for-campaign/#google_vignette. A premium or dollar bill in a charitable solicitation appeal, for example, isn’t “*buying*” anything, especially not votes. And just as Governor Erlich used the dollar bill mailing as a “fundraising tactic” and not for buying votes, the **purpose** of the check in a fundraising package is *fundraising*. Nevertheless, in the sometimes-dirty world of prosecutions for political purposes, Mr. Wang’s concern is very well taken and much appreciated.

¹⁰ In Footnote 2 of my August 12 comments about Draft A I purposefully distinguish the message within the letter of The Conservative Caucus (TCC) from the direct mail solicitation in Madison Project (“I distinguish the TCC check package fundraising letters subject to this AO Request from the facts in LRA 1163 (Madison Project, Inc., Feb. 28, 2023, referenced in footnote 16. . . .”). Therefore, while I share my colleague at law Eric Wang’s wise and experienced concern about the potential for misinterpretation of AO

request.¹¹ For example, at page 2 Draft B states, “Recipients of these types of mailings may be asked to reply by sending back surveys, petitions, or donations to the sponsoring customer.” No, recipients of the letters mailed **are definitely asked to send donations**, not “may be.” And to reiterate a fact I previously stated, there would be no checks in any direct mail letter mailed by TCC unless the letter included a solicitation for contributions for its 501(c)(4) nonprofit purposes.¹² And, neither Draft B nor any comments cite to examples of any Independent Expenditures mass mailing checks to individuals where the letters do not include fundraising solicitations.¹³

2024-06 against direct mail solicitations that raise funds so an organization could *eventually* finance Independent Expenditures, this AO Request is much more of an outlier to ensure ATA and its clients aren’t surprised by any enforcement action when there clearly is express advocacy within the direct mail letter itself. See the preceding footnote. But our facts still do not support Draft B’s conclusion that this nonprofit direct mail fundraising technique itself constitutes an expenditure under campaign finance law.

¹¹ This AO Request, like so many others that the Commission reviews, addresses novel and rather technical issues, so I don’t wish to quibble too much because the Commission has a daunting task, especially considering the unique and important First Amendment playing field on which it operates and has statutory jurisdiction. However, I must point out that the Background section of Draft B, starting at page 1, has some troubling deviations of interpretation from the AO Request. ATA was retained by TCC not to “prepare and distribute letters” (page 2) like we were a political consultant placing direct mail ads, but to build a file of supporters, raise money, and market the organization. The description of our services there, I respectfully protest, misrepresents our AO Request, and cheapens our more than half century-long excellent reputation of services and innovation. See Attachment A. Secondly, on that same page, Draft B states “[TCC] contracts with [ATA] to prepare direct mail letters that, among other things, market [TCC’s] mission, solicit donations to [TCC], and ‘unambiguously express advocacy exhorting recipients to ‘Vote for Trump’ or ‘Elect Trump.’” No, the AO Request **does not say ATA and TCC contracted to send Independent Expenditures**, and our contract with TCC dating back decades predates the Trump run for President. The IE is a more recent project under ATA’s fundraising and marketing services, consistent with TCC’s 501(c)(4) mission. But to say TCC “contracted with” ATA to do pro-Trump IEs ignores TCC’s long and storied history promoting and defeating legislation -- and more -- and does not accurately represent its contractual relationship with ATA, **especially** for purposes of our AO Request.

¹² Indeed, under state charitable solicitation laws TCC must report costs of its direct mail packages and total funds raised.

¹³ The check in a fundraising mailing is easily distinguished from a gift in a campaign mailer, such as a bumper sticker whose purpose is in fact express advocacy and/or

Another way Draft B incorrectly portrays the AO Request is to take a quote out of context. In what appears to be an attempt to portray the checks as expenditures, page 5 quotes the AO Request, to “encourage recipients . . . to open the letters’ because ‘[f]or the mass mailed letter to be effective, recipients . . . must first open the letters rather than discard them in the trash,” citing AOR002. But in context of the AO Request, *that language was referring to the fundraising purposes of the check*. Prefacing that quote the AO Request states:

In consultation with its clients, ATA prepares direct mail letters that, among other purposes such as marketing the nonprofit organization, solicit contributions for the organization.¹⁴

And:

Most ATA clients use caging companies to retrieve reply mail from designated U.S. Post Office boxes, open the mail in a secure setting, record replies (which may include surveys or petitions), and deposit donations into the respective bank accounts of the clients.¹⁵

The purpose of the check is fundraising for our nonprofit client, TCC. This is just one example of why so many nonprofit organizations, political candidates, political parties, and their consultants across the ideological spectrum have knowingly or unknowingly copied, adopted, or applied so many of the fundraising techniques, strategies, and principles that Mr. Viguerie first pioneered -- and continues to improve upon -- in the political and ideological nonprofit fundraising arenas. See Attachment A, below.

electing a candidate. The TCC mailings expressly ask recipients to return the checks (AOR003), further evidencing that they are not gifts. Political campaigns do not ask recipients to return actual gifts such as bumper stickers.

¹⁴ AOR001 – 002. Nor is “marketing the nonprofit organization” an expenditure under campaign finance law.

¹⁵ AOR002.

Since nonprofit solicitations such as those at issue here are, of course, protected by the First Amendment,¹⁶ it seems Draft B not merely ignores the statutory emphasis on “purpose” of expenditures under campaign finance law,¹⁷ but unreasonably cramps the breathing room for such constitutionally protected solicitation.

Lastly, Draft B does little to correct the flaws of reporting checks compared to Draft A, and seems to make the best efforts reporting requirements even vaguer and therefore more prone to error by those who report. For example, Draft B at page 7 states, “If Client later receives information that the actual cost of the independent expenditure differs from the estimate, Client should report the correct amount and reference the earlier estimate.” As stated at page 4 in my August 12 comments on Draft A:

TCC’s bank statements from the account from which funds are drawn to pay the deposited checks do not distinguish which checks are for Independent Expenditures, and which are not. Nor would the bank statements distinguish checks from one Independent Expenditure versus another.

The “later receives” language alone in Draft B is enough to chill and actually prevent the use of check packages.

While direct mail that does not include express advocacy -- such as the letters mailed by the Madison Project -- will be free to use check packages, Draft B would make them unusable to solicit donations for a 501(c)(4) organization that happens to include true express advocacy of even just three words (“vote for Trump” or “vote for Harris”) in a mass-

¹⁶ “Prior authorities . . . clearly establish that charitable appeals for funds . . . involve a variety of speech interests – communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes – that are within the protection of the First Amendment . . . [and] that without solicitation the flow of such information and advocacy would likely cease.” *Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600 (2003); *Riley v. National Federation of the Blind*, 487 U.S. 781 (1988); *Secretary of State v. Munson*, 467 U.S. 947 (1984); and *Schaumburg v. Citizens for Better Environment*, 444 U.S. 620 (1980).

¹⁷ Specifically, 52 U.S.C. § 30101(9)(A).

mailed 3,000-word letter whose purposes are multiple. That stifles yet another avenue of communication, and will work uniquely against 501(c)(4) organizations that wish to be a voice in providing independent, non-Party-, and non-candidate-generated information and advocacy about choosing our political leaders.

I respectfully urge the Commission to reject Drafts A and B, and that a Draft C be prepared for consideration.

Respectfully submitted,



Mark J. Fitzgibbons
President of Corporate Affairs

cc: The Conservative Caucus

Attachment A

Richard A. Viguerie is Chairman of American Target Advertising, Inc., America's oldest ideological direct marketing agency, and one of the largest.

He pioneered the art and science of direct mail marketing to build and fund grassroots groups ranging from ideological and political campaigns to charitable organizations. He developed ways for conservatives to go 'over the heads' of the gatekeepers in the mainstream media. His marketing expertise and innovations increased the influence of grassroots Americans, and brought countless citizens into the political process for the first time.

In 1965, he started an advertising agency with one employee. Combining computer technology with political direct mail, he made possible hundreds of political candidacies and causes that could not have existed otherwise. Viguerie's efforts produced think tanks, magazines, newsletters, and dozens of organizations and successful political campaigns. Viguerie motivated millions of Americans to participate in politics for the first time.

Viguerie was called "one of the creators of the modern conservative movement," (*The Nation* magazine), and was also dubbed "the funding father of the conservative movement." The communications director for the 1964 Goldwater campaign, Lee Edwards, wrote in *The Washington Times* in 1999 that Viguerie was one of 13 "conservatives of the century." Also in 1999, the late John F. Kennedy Jr.'s political magazine, *George*, called the founding of Viguerie's company one of the "defining political moments of the 20th Century."

He has been called "the father of political direct marketing" (*Direct* magazine), "the metaphorical Henry Ford of direct mail fundraising and political solicitation" (*The New York Times*), the man who "perfected" direct mail as a way of bypassing the media and raising money (*The Atlantic Monthly*), the "direct-mail kingpin" (*Publishers Weekly*), and "the master of direct mail and fundraising" (Aaron Brown, CNN). *The National Observer* noted his "entrepreneurial brashness" and called him "dean of direct mailers." Viguerie, the Associated Press reported, "envisioned the letter as a tool to inform people and to induce them to take action, as well as to tap their pocketbooks."

NewsMax CEO Christopher Ruddy called him “probably the grandfather of the new media. . . . [H]e started it, and paved the way for the whole Reagan revolution 10 years later by writing those letters exposing what Ted Kennedy was doing in Congress, exposing what the left was doing in the media. ” (“The New Media,” *Policy Counsel*, Fall 2005). *The Washington Post* called him “the Conservatives’ Voice of America.” *The Baltimore Sun* called him the “architect of the New Right,” and *The Edmonton Sun* called him “the uncrowned king of the Right”. The AFL-CIO News said that Viguerie “made it all possible” for conservatives.

Praise for Viguerie comes from across the political spectrum. “Every non-profit maverick, whatever their political persuasion, owes Viguerie a debt,” noted Ray Shultz, publisher of *Direct*, the magazine of direct marketing. Lanny Davis, a top adviser to Bill and Hillary Clinton, called Viguerie a man of “integrity, character, and honor.” Data-mining guru (and former Al Gore campaign manager) Hal Malchow declared that Viguerie is one of “the few who actually change the world in profound and far-reaching ways.” Viguerie is, Malchow said, “the father of my profession,” “the creator of grassroots politics in America, a pioneer, and a visionary.”

A native of Houston, Texas, Viguerie first stepped onto the national stage in 1961 as executive secretary (director) of Young Americans for Freedom, the youth group founded by William F. Buckley Jr. In succeeding years, he helped unite conservatives into a movement that put Ronald Reagan in the White House and changed the course of history.

In 1979 *Time* magazine named him one of 50 future leaders of America, and in 1981 *People* magazine named him one of the 25 most intriguing people of the year.

Ronald Reagan’s 1968 campaign manager Cliff White and journalist William Gill wrote in their 1981 book *Why Reagan Won*: “In every election from 1966 onward, the Viguerie Company and its score of imitators . . . brought information to millions of Americans, information that quite often the people could not obtain from newspapers or television or mass-circulation magazines.”