



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 8, 1998

VIA CERTIFIED MAIL

Triad Management Services, Inc.
c/o E. Mark Braden, Esq.
Baker & Hostetler
1050 Connecticut Ave, N.W.
Washington, D.C. 20036

RE: MURs 4568, 4633 and 4634

Dear Mr. Braden:

On May 5, 1997, the Federal Election Commission notified your client, Triad Management Services, Inc., of a complaint, designated as MUR 4633, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of this complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, information supplied by your client and other sources, as well as information obtained in the normal course of its supervisory responsibilities, the Commission, on June 2, 1998, found reason to believe that Triad Management Services, Inc. violated 2 U.S.C. § 433, § 434, § 441a, §441b and § 441f. The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your response to the enclosed Subpoena to Produce Documents and Order to Submit Written Answers within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be

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entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Shonkwiler, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures:

Subpoena to Produce Documents and Order to Submit Written Answer
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Triad Management Services, Inc. MURs: 4568, 4633 and 4634

I. GENERATION OF THE MATTERS

MUR 4633 was generated via a complaint filed by James Anderson on April 30, 1997. *See* 2 U.S.C. § 437g(a)(1). The respondent was added to MURs 4568 and 4634 on the basis of information ascertained by the Commission in the normal course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

After reviewing the complaints, the responses, and publicly available material, the Commission believes that the specific incidents recounted in complaints in the three MURs and in related press reports are most appropriately viewed as possible examples of the way in which it appears Triad Management Services, Inc. ("Triad"), Citizens for Reform ("CR") and Citizens for the Republic Education Fund ("CREF") may have involved themselves in various 1996 campaigns. The Commission subsequently determined that it would jointly investigate MUR 4568, MUR 4633 and MUR 4634.

II. FACTUAL AND LEGAL ANALYSIS

During the latter part of 1996 and throughout 1997, there were a number of press accounts concerning the activities of Triad and two non-profit groups, CR and CREF, with which it appears that Triad worked in connection with the 1996 federal elections. In summary, it was reported that during both the primary and general elections, Triad came to the aid of a substantial number of Republican congressional campaigns (more than

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twenty-five) after learning of their needs through a process it referred to as a "political audit."

The assistance that was reportedly provided by Triad, CR and CREF came in several different forms. First, Triad is reported to have controlled the efforts of CR and CREF in raising funds for, as well as producing and broadcasting, over \$3 million worth of political advertising during the weeks prior to the 1996 federal elections in what appears to have been an effort to influence the outcome of certain elections. It has been reported that at least some of these advertisements were coordinated with particular congressional campaigns. Second, Triad reportedly communicated the results of its political audits, along with solicitations for contributions to specific campaigns, to wealthy individuals who received periodic "Triad Fax Alerts" and may have forwarded contributions from these individuals to different campaign committees. Third, Triad reportedly set up a plan to arrange contributions from individuals, who already had made the maximum legal contribution to certain congressional candidates, to various political action committees ("PACs"). These PACs reportedly then gave identical or nearly identical amounts back to the original contributor's preferred candidate. Finally, Triad reportedly provided free consulting services to various congressional campaign committees while conducting political audits.

In sum, the press reports state that Triad, CR and CREF received several million dollars in contributions and made several million dollars in expenditures/in-kind contributions for the purpose of influencing various 1996 federal congressional elections. If true, the allegations summarized above suggest that there may have been a pattern of

activity on the part of Triad, CR and CREF which may have had the effect of circumventing the registration and reporting requirements, as well as the contribution prohibitions and contribution limitations, established by the Federal Election Campaign Act of 1971, as amended, ("the Act").

A. THE APPLICABLE LAW

1. Political Committee Status

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a political committee as any committee, club, association, or other group of persons which receives "contributions" or makes "expenditures" aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). For the purposes of the Act, the term "person" is defined as including "an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons . . . " 2 U.S.C. § 431(11).

For the purpose of triggering political committee status, the Act defines the terms "contributions" and "expenditures" as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i) and § 431(9)(A)(i). The Commission has defined "anything of value" to include, among other things, all in-kind contributions, i.e., the provision of any goods and services without charge or at a charge which is less than the usual and normal charge for such goods and services . . . " 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

In Buckley v. Valeo, 424 U.S. 1 (1976) ("Buckley"), the Supreme Court, in order to avoid overbreadth, construed the Act's references to "political committee" in such a

manner as to prevent their "reach [to] groups engaged purely in issue discussion." The Court recognized that "[t]o fulfill the purpose of the Act [the designation 'political committee'] should encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at p. 79.¹

In FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) ("MCFL"), the Supreme Court affirmed its reasoning in this aspect of Buckley. In analyzing whether a non-profit, non-stock, incorporated advocacy organization that had made more than \$1000 in independent expenditures to influence federal elections was a political committee, the Court noted that the "central organizational purpose" of MCFL, which it found to be issue advocacy, did not meet the Buckley definition of a political committee, i.e., that it was not controlled by a candidate and did not have as a major purpose the nomination or election of a candidate. 479 U.S. 252, n.6. The MCFL Court also noted, however, that if the defendant organization's expenditures on behalf of a candidate or candidates should "become so extensive" that campaign activity became its "major purpose," then the organization would be deemed a political committee. 479 U.S. at 262. *But see* Akins v. FEC, 101 F.3d 731 (D.C. Cir. 1996); *cert. granted*, FEC v. Akins, 117

¹ In addition to the quintessential example of a political committee as an organization whose major purpose is to nominate or elect a particular candidate for federal office, "[a]lso reasonably included in the definition of 'political committee' is an organization whose major purpose is to elect a slate of named federal candidates." FEC v. GOPAC, 871 F.Supp. 1466, 1469-70 (D.D.C. 1994). The "major purpose" of an organization may be shown by public statements of its purpose or by other means "such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates for federal office. FEC v. GOPAC, 917 F.Supp. 851, 859 (D.D.C. 1996).

S.Ct. 2451 (1997)(argued, Jan. 14, 1998)(D.C. Circuit concluded that the "major purpose" test for political committees should only apply to independent expenditures, and that with regard to contributions, political committee status would be triggered whenever any organization made contributions in excess of \$1,000).

2. Reporting Requirements

The Act requires any organization which qualifies as a political committee to register with the Commission and file periodic reports of all receipts and disbursements. 2 U.S.C. § 433 and 434. In upholding the Act, the Supreme Court noted that "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributors to the light of publicity. This exposure may discourage those who would use money for improper purposes." Buckley v. Valeo, 426 U.S. 1, 9 (1976).

The Act also requires that, when registering with the Commission, a political committee include in its statement of organization "the name, address, relationship and type of any connected organization or affiliated committee." 2 U.S.C. § 433(b)(2).² If at least one member of a group of connected organizations or affiliated committees meets the definition of a "political committee" under the Act, all contributions made or received by any of the connected organizations or affiliated committees, regardless of whether they are "political committees" themselves, shall be considered to have been made or received by a single political committee. 11 C.F.R. § 110.3(a).

² The term "affiliated committee" includes all committees "established, financed, maintained or controlled by the same corporation, labor organization, person, or groups of persons, including any parent, subsidiary, branch, division, department, or local unit thereof . . ." 11 C.F.R. § 100.5(g)(2).

3. Limits on Contributions

Under the Act, no person, including a political committee, may contribute more than \$1,000 per election to any candidate for federal office or his authorized committee. 2 U.S.C. § 441a(a)(1). In addition, no person may contribute more than \$5,000 per calendar year to any other political committee that is not the authorized political committee of any candidate. 2 U.S.C. § 441a(a)(1)(c). Finally, the Act places a \$25,000 cap on the total amount of political contributions that an individual can make in any calendar year. This statutory provision also limits to \$5,000 the amount that a qualified multicandidate committee may contribute to a candidate or their authorized committee.³

For the purposes of the Act, "expenditures made by any person in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered a contribution to such candidate." 2 U.S.C. § 441a(a)(7). The Commission has ruled that expenditures for communications which favorably discuss candidates in an election-related context and are coordinated with such candidates constitute in-kind contributions to the candidates.⁴ See Advisory Opinion 1988-22.

³ A multicandidate committee is a committee which has been registered with the Commission for at least six months, has received contributions from more than 50 persons, and has made contributions to five or more candidates for federal office. 2 U.S.C. § 441a(a)(4).

⁴ Both the Triad Fax Alerts and the CR/CREF advertisements discussed below also appear to meet the definition of an "electioneering message." An electioneering message includes statements which tend to garner or diminish support for a candidate, or which is designed to urge the public to elect a certain candidate or party. See AOs 1985-14; AO 1984-15. See also United States v. United Auto Workers, 352 U.S. 567, 587(1957).

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The Act also prohibits a contributor from attempting to hide a contribution to a candidate or committee by making the contribution in the name of another person.

2 U.S.C. § 441f. Specifically, the Act prohibits (1) making a contribution in the name of another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. *Id.* In addition, no person may knowingly help or assist any person in making a contribution in the name of another.

2 U.S.C. § 441f, 11 C.F.R. § 110.4(b)(1)(iii).

11 C.F.R. § 110.(h), entitled "*Contributions to committees supporting the same candidate,*" provides that:

A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting the same candidate in the same election, as long as -

(1) The political committee is not the candidate's principal campaign committee or other authorized political committee or a single candidate committee;

(2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and

(3) The contributor does not retain control over the funds.

The Act further provides that a candidate may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

4. Prohibition Against Corporate Contributions

Notwithstanding certain narrow exceptions, the Act prohibits corporations from making contributions in connection with any election. 2 U.S.C. § 441b(a). Similarly, candidates and political committees are prohibited from accepting corporate contributions, including expenditures attributable as in-kind contributions, in connection with any election. 2 U.S.C. § 441b(a).

Corporations are prohibited from making "any direct or indirect payment, distribution, loan advance, deposit, or gift of money or any services, or anything of value (except a loan of money by a bank in accordance with applicable laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any federal election." 2 U.S.C. § 441b(b)(2).

Corporations also are prohibited from "facilitating the making of contributions" to candidates or political committees. 11 C.F.R. § 114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any federal election. *Id.* In this same context, a candidate, political action committee or other person is prohibited from knowingly accepting or receiving any prohibited contribution made or facilitated by a corporation. 11 C.F.R. § 114.2(d).

B. FACTS

1. Triad, CR and CREF

Triad, CR and CREF all appear to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fund-raiser for various political groups and campaigns, including, *inter alia*, Oliver

North's 1994 bid for the US Senate. At different times, Ms. Malenick reportedly has described herself as the President and Chief Executive Officer of Triad; the Director of Triad; and the Chief Operating Officer of Triad. *See, e.g.*, 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News; and Undated Triad Advertisement.

Triad advertises itself as a political consulting firm that provides services to donors interested in making political contributions to conservative candidates, campaigns, issues and projects. *See* Undated Triad Advertisement. Triad attempts to distinguish itself from other political consulting firms by claiming that it only works for donors, not for candidates or campaigns. *Id.*

Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors, providing research and analysis of upcoming elections, and dispensing advice on how to maximize the impact of political contributions. *See* 9/28/96 National Journal article. In sum, Triad reportedly seeks to give wealthy contributors advice on how to get the "biggest bang for the buck" with their contributions by telling them which conservative candidates look like winners and which ones need help. *Id.*

A newspaper article in The Hill stated that at an October 1997 press conference, Ms. Malenick represented that Triad makes money in three basic ways: a \$500 per year subscription for a fax service that keeps donors up-to-date on issues and candidates; management fees charged to nonprofit groups (which include CR and CREF); and an unspecified commission on the contributions that donors made as a result of Triad's advice. *See* 10/8/97 The Hill article.

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Other newspaper articles about Triad's sources of income have reported that Triad's early operations were financed with "\$600,000 in seed money" from an individual named Robert Cone.⁵ See 10/29/97 Minneapolis Star-Tribune article; *see also*, 10/29/97 Wall Street Journal Article. Several newspapers reported that Mr. Cone was actively involved in promoting Triad to other potential contributors, and accompanied Ms. Malenick in a visit to promote Triad with aides to a Republican Senator. See 11/8/97 National Journal article. It also has been reported that Mr. Cone and members of his family (including his brother Edward Cone) eventually made additional payments to CR and CREF which may have totaled as much as \$1.2 million. *Id.*

CR and CREF reportedly were founded in mid-1996. See 10/29/97 Minneapolis Star-Tribune article. Both groups are reported to initially have represented themselves as non-profit corporations formed under the social welfare organization provisions of 26 U.S.C. § 501(c)(4). See 10/24/97 Denver Post article. A newspaper article stated that CR's application for non-profit tax status was granted, but that CREF never made the necessary filings with the IRS. *Id.* In late 1997, both groups reportedly took action to change their tax status to that of political organizations under 26 U.S.C. § 527. *Id.*

Although CR and CREF purport to have been founded by Peter Flaherty and Lyn Nofziger respectively, it has been widely reported that CR and CREF are run by Triad. See, e.g., 10/29/97 Minneapolis Star-Tribune article; and 10/8/97 The Hill article. For

⁵ The documents appended as exhibits to the Final Report on Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns by the Senate Committee on Governmental Affairs (Senate Report) include what appear to be \$175,000 in checks from Mr. Cone's account that reflect payments to Triad at various points in 1995.

example, reports of interviews by Mr. Nofziger have stated that Ms. Malenick approached him to be the titular head of CREF, and that he had virtually nothing to do with the CREF political advertising campaigns. See Online U.S. News article; 5/5/97 Los Angeles Times article. Indeed, Ms. Malenick responded to news reports regarding Triad's alleged control of CR and CREF by acknowledging that Triad had "management contracts" to run various CR and CREF projects. See November 19, 1997 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Further indications of Triad's apparent control of CR and CREF can be found in documents attached as exhibits to the Senate Minority Report. These include what appear to be the "management contracts" to which Ms. Malenick referred. These contracts appear to reflect complete control by Triad over the execution of the CR and CREF "public education program[s]." See 9/26/96 Triad Consulting Agreements with CR and CREF (stating that "TRIAD shall be free to decide the means by which it will provide the Services").

Another exhibit appears to reflect that almost immediately after CREF's formation in June 1996, Ms. Malenick was appointed the President of CREF, and that two other Triad employees were appointed as CREF's secretary and treasurer. See Unanimous Written Consent In Lieu of the Organizational Meeting of the Board of Directors of the Citizens for the Republic Education Committee.⁶

⁶ Although the document appointing Ms. Malenick as President of CREF is undated, it utilizes the group's original name of "Citizens for the Republic Education Committee", which was changed to "Citizens for the Republic Education Fund" on or about July 12, 1996. See, 7/12/96 Unanimous Written Consent In Lieu of a Special Meeting of the Board of Directors of the Citizens for the Republic Education Committee.

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To date, neither the press reports nor any other information received by the Commission in connection with these matters reflect any activity by CR and CREF other than the advertising aired by these two organizations during the last few weeks prior to the 1996 federal elections. One newspaper account reported that a Triad spokesman stated that the CR and CREF ad campaigns were intended as a direct response to the AFL-CIO's "issue ad" campaigns in the districts of vulnerable Republican candidates. See 10/29/97 Minneapolis Star-Tribune article. The Triad spokesman also is reported to have said that "[i]f there had been no AFL-CIO campaign, there would have been no Citizens for the Republic Education Fund issue campaign." *Id.*

According to news reports, Triad raised more than \$3 million for the CR and CREF political advertising campaigns by soliciting contributions from a handful of wealthy conservative donors. The sources of these contributions, many of which reportedly exceeded \$5000, were not disclosed to the public prior to the 1996 elections.⁷

⁷ It has been reported, based on documents that the Senate Governmental Affairs Committee released to the press, that the list of contributors to CR and CREF included: Robert Cone and Edward Cone of Pennsylvania (\$1.2 million); the Economic Education Trust, reportedly controlled by the Koch family of Kansas (\$1.3 million); California developer Fred R. Sacher (\$200,000); Minneapolis entrepreneur Robert Cummins (\$100,000); Foster and Lynette Friess (\$25,000), Bruce D. Benson (\$25,000); Cracker Barrel Old Country Store (\$18,000); and Walt Disney Co. (\$10,000). See 10/30/97 Washington Post article; and 10/29/97 Wall Street Journal article. Other CR and CREF donors reportedly include: Dan Garawn (\$100,000), Peter and Patricia Cloeren (\$20,000), KCI (\$50,000), and Firecheck (\$10,000). See October 29, 1997 Minneapolis-St. Paul Star-Tribune article, and 11/1/97 Houston Chronicle article.

2. Triad's Political Audits

At least one news account has reported that Triad personnel and consultants performed what Triad labeled as "political audits" on approximately 250 campaigns during the 1996 election cycle. See 10/29/97 Minneapolis Star-Tribune article. This news account also reported that a Triad spokesperson described the purpose of these political audits, many of which reportedly included meetings with the candidate or senior campaign officials, as the identification of "races where donors could support candidates who shared their ideological views and had a viable campaign." *Id.*

The political audit reports released as exhibits to the Senate reports suggest that Triad conducted a standardized review of congressional campaigns. The first point reflected in many of these audit reports was a date on which a Triad representative met with someone from the campaign to obtain the information contained in the audit. Most of the audit reports included as Exhibits to the Senate Report follow a standard format discussing some or all of the topics listed below.

FORMAT OF TRIAD "POLITICAL AUDIT" REPORT

- I. Finances - (assessment of planned expenditures, current cash-on-hand and possible fundraising shortfalls)
- II. Polling - (review of polling trends in race)
- III. Key Issues - (list of issues considered critical to the campaign's success)
- IV. Needs - (campaign's self-identification of specific nonmonetary needs; e.g., big name speaker to attract supporters to upcoming rally)

General Observations (Comments on campaign organizations)

Good Points about Campaign - (Subjective analysis of strengths)

<u>Bad Points about Campaign</u> -	(Subjective analysis of weaknesses)
<u>Prospect for Victory</u> -	(Assessment of Candidate's Chance to Win)
<u>Action</u> -	(Follow-up Actions for Triad personnel)
<u>Conclusion</u>	(Recommendation on support for campaign)

See, e.g., Triad political audit attached as exhibits to the Senate Report.

Indeed, in each of the three campaigns specifically addressed by the MURs that are the subject of this Factual and Legal Analysis, it appears that a Triad representative personally met with the candidate and/or staff to discuss the specific strengths and weaknesses of their campaign, and to learn what help the campaign needed to successfully compete in the upcoming election. The audit reports and other information available to the Commission also suggest that in some instances, after completing an audit, Triad may have had ongoing contacts with some campaigns to assess the developing prospects and needs of particular campaigns.

After completing its political audit on a campaign, Triad reportedly provided the results of its research and analysis to prospective political donors. It appears that rather than waiting for donors to make specific requests for information about a particular campaign, Triad periodically sent general "Fax Alerts" to prospective donors which extolled the virtues of various campaigns and provided Triad's recommendations for political contributions. Based on documents attached as exhibits to the Senate reports, it appears that Triad sent no fewer than sixty (60) separate fax alerts between February and December 1996. *See* Triad Fax Alert Index. Further, while the Commission currently lacks information as to how many potential contributors received each Triad Fax Alert,

one of the fax alerts in the middle of the known range (No. 28 out of 60) notes that "over 160 businessmen and women have been added to the Fax Alert in the last 18 months."

See 10/10/96 Triad Fax Alert titled "Countdown to Election Day: 27 Days."

As discussed below, Triad appears to have used the information derived from its "political audits" in a number of different ways.

a. Advertising Campaigns

It appears that, on at least some occasions, Triad used the knowledge of the needs of specific congressional campaigns gained through its political audits in managing a number of political advertising campaigns sponsored by CR and CREF. Indeed, documents attached to the Senate report suggest that Triad solicited donors to provide financial support for the CR and CREF campaigns with explicit representations that such advertisements would help re-elect candidates whose needs had been reviewed in a Triad audit report. Further, it appears that Triad may have used information obtained in the political audits to select some, if not all, of the congressional districts in which advertisements were run; and to select some, if not all, of the issues raised in CR and CREF advertisements.

During the latter half of 1996, Triad began to solicit prospective contributors for money to fund the advertising campaigns by what it described as 501(c)(4) social welfare organizations for the stated purpose of countering organized labor's efforts to defeat various Republican candidates. *See* 9/27/96 and 10/24/96 Triad Fax Alerts. Specifically, Triad sent Fax Alerts to an unidentified number of potential contributors informing them of the opportunity to fund last minute CR and CREF advertising campaigns designed to

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help Republican candidates whose election or re-election was purportedly endangered by organized labor spending.⁸

For example, in one of its Fax Alerts, Triad states that the "the left has wasted their resources by buying Christmas cards in July" while Triad has conserved its resources so that CR and CREF "can begin the fall harvest." Triad Fax Alert, dated 9/27/96. (emphasis in original). As part of an effort to convince contributors that it is not too late for the CR and CREF efforts to effectively counter union-sponsored advertisements, Triad reminds readers of the Fax Alert that "[p]eople do not start focusing attention on the General Elections until the political season begins following Labor Day which has come and gone." *Id.* (emphasis added).

Based on documents attached to the Senate reports, it appears that CR and CREF spent approximately \$3 million on political advertising campaigns that may have been intended to influence what has been reported as somewhere between twenty-six (26) and thirty-four (34) House and Senate races. See 10/29/97 Minneapolis Star-Tribune article; 10/29/97 Wall Street Journal article; and 10/30/97 Washington Post article. See also undated Exhibit to Senate report summarizing twenty-six races in which CR and CREF reportedly sponsored political advertising. In different congressional districts, the CR and CREF advertising campaigns reportedly included (in order of frequency) television, radio, direct mail and phone bank efforts. *Id.*

⁸ A 10/7/96 Triad Fax Alert states that corporate contributions are accepted and welcome; and that there is no limit on the amount that an individual or corporation can contribute to a 501c(4) organization. See 10/7/96 Triad Fax Alert.

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A good example of the Triad-managed political advertising is the television advertisement that CR ran on Montana television stations shortly before the 1996 congressional election between Republican Rick Hill and Democrat Bill Yellowtail. The text of the CR-sponsored advertisement was reported as follows:

Television Ad Transcript

Who is Bill Yellowtail ?

He preaches family values, but he took a swing at his wife.

Yellowtail's explanation ? He only slapped her, but her nose was not broken.

He talks law and order, but is himself a convicted criminal.

And though he talks about protecting children, Yellowtail failed to make his own child support payments, and then voted against child support enforcement.

Tell Bill Yellowtail you don't approve of his wrongful behavior.⁹

According to a document attached to the Senate report, Triad performed one of its political audits on the Rick Hill campaign just a few weeks before CR began its anti-Yellowtail campaign. See Rick Hill audit report; see also, November 25, 1997 Associated Press Political Service article. During this political audit, representatives of the Hill campaign reportedly gave a Triad consultant access to news clippings which contained stories about Mr. Yellowtail admitting to slapping his wife 20 years earlier,

⁹ The CR ad refers to historical facts whose truth apparently are not contested by Mr. Yellowtail, and are a matter of public record. CR's last minute efforts to inform the public of these unfavorable facts about Mr. Yellowtail may have had a significant impact on the election. Mr. Yellowtail reportedly was leading Mr. Hill in the polls prior to the CR advertising campaign, but eventually lost the election. Mr. Hill won with 50% of the vote, as opposed to 46% for Mr. Yellowtail and 4% for a third party candidate.

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having once fallen behind on child support payments, and having burglarized a camera store while a teen-age college student. *Id.* As set forth above, each of these topics are referenced in the CR-sponsored political advertising. *See* November 3, 1997 TIME article (reporting that a Triad consultant advised Carolyn Malenick that the Rick Hill campaign needed a “third party to expose Yellowtail” on the wife beating allegation).

While it is unclear at this time the extent to which the information in the audit reports actually may have guided the advertising efforts by Triad and CR, the Rick Hill audit report attached as an exhibit to the Senate Report, as well as the other Triad audit reports, raise some important questions in this regard. The Rick Hill audit report appears to have been based on a meeting between a Triad consultant named Carlos Rodriguez and representative(s) of the Hill Committee.¹⁰ *See* Rick Hill audit report. The audit report on the Rick Hill campaign states that the “Key Issues” identified by the campaign included somewhat dated allegations that Rick Hill’s opponent, Bill Yellowtail, had been accused of: “1) wife beating; 2) Robbery of camera store in College; 3) [being a] dead-beat dad.” *Id.* The audit report also states that the number one item on the list of the Hill campaign’s “Needs” was “1) 3rd Party to ‘expose’ Yellowtail.” *Id.* CR appears to have initiated its anti-Bill Yellowtail advertising campaign, which reportedly cost more than \$100,000, shortly after the date on which Ms. Malenick received the political audit memorandum

¹⁰ The Triad audit report on the Hill Campaign makes a specific reference to a conversation between the Triad representative and Betty Hill (Rick Hill’s wife and the head of his volunteer organization), and also names three other representatives of the Hill campaign (including consultants and vendors) who may or may not have been in contact with Triad.

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regarding the Hill Committee's needs. See Spreadsheet on cost of different Triad-managed advertising campaign attached to Senate Report.

Another reported example of Triad-managed political advertising in the weeks just before the 1996 election involves a CREF advertising campaign which praised Republican Sam Brownback and criticized his opponent, Democratic candidate Jill Docketing. CREF reportedly spent \$410,000 on pro-Brownback/anti-Docketing advertisements. See 12/12/97 Washington Post article; and 12/5/97 Kansas City Star article.

b. Fundraising Efforts

It appears from the text of the audits attached as exhibits to the Senate report and from examples of the solicitations set forth in what Triad called "Fax Alerts," that the audits were also a source of information based on which Triad decided where to focus its fundraising resources.

The Triad Fax Alerts urged the recipients to make contributions and otherwise support various Triad-recommended candidates in both the primary and general elections. One example of a Triad recommendation in a primary election is the following statement regarding the Sam Brownback for US Senate campaign:

The rapidly approaching August 6th primary is a microcosm of the ideological battle to maintain the Republican Revolution. The liberals are represented by Governor Bill Graves (R - Kansas) temporary appointee, former Lieutenant Governor and current U.S. Senator Sheila Frahm (R - Kansas). The conservative standard bearer and the TRIAD recommended candidate is freshman Congressman Sam Brownback (R - Topeka).

The campaign to replace Dole is our best opportunity to send a message to the liberals who would weaken the

principles upon which the Republican Party is based. The election of Brownback will send shockwaves throughout the Republican National Convention scheduled one week later. Sheila Frahm must be defeated !

Triad Fax Alert titled "96 Primary Election Alert - July 18, 1996."

In a subsequent Fax Alert, after the primary described above, Triad noted:

In Kansas, America's heartland, we count a Senate victory in Representative Sam Brownback's defeat of recently appointed, liberal Sheila Frahm. The final totals 55% to 42%. Congressman Sam Brownback had this to say, "I cannot even begin to thank TRIAD enough for its help in my Senate campaign. TRIAD played an essential role in my effort to educate voters about my conservative message and ideas for restoring the American dream."

Triad Fax Alert titled "96 Primary Election Results - August 7, 1996."

Other Triad Fax Alerts contain similar statements designed to encourage donors to make contributions to specific candidates. See other Triad Fax Alerts attached as exhibits to Senate Report.

Some of the audit reports refer to what appears to have been a practice Triad had of soliciting donors who already had made the maximum legal contribution to particular candidates Triad was seeking to support. It has been alleged, and some of the audit reports seem to indicate, that Triad may have tried to interest such donors in making contributions to certain selected political action committees ("PACs"), which made subsequent, and often identical, contributions to the original donor's preferred candidate(s).¹¹

¹¹ It has been reported that Ms. Malenick acknowledged that Triad would try and match donors referred to it by a candidate to PACs who were likely to support the same candidate, but denied that there was any coordination between the individual contribution

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For example, an excerpt from the Triad audit report of the campaign of Pete Sessions, which is attached to the Senate Minority report, states: "Both Sessions and [the campaign manager] clearly understand the Triad concept and will have a list of their maxed out donors for our inspection as soon as there is a call from Washington." *See* excerpt from Pete Sessions audit report. Another audit report states that "Ed Merritt has a number of maxed out donors who might want to be introduced to Triad. Towards that end, I have recommended over the telephone to [a Triad employee] that we check out their receptance." *See* Ed Merritt audit report. In what appears to be a reference to the same practice, the Triad audit report on the Sam Brownback for US Senate campaign, notes that Triad will "[n]eed to work with potential clients that may be recommended by the Brownback campaign and with the finance chairman to ensure that Triad is properly advertised." *See* Brownback audit report.

In this context, the complaint in MUR 4633 alleges that Robert Riley, Jr., the son of Congressman Bob Riley, who had made the maximum legal contribution to his father's campaign, used Triad's services to make \$5000 in contributions to five PACs, which within a few weeks, and in some cases a few days, made identical or nearly identical contributions to the Riley Committee.

to the PACs and the PAC contributions to the candidate. *See* October 8, 1997 Article in The Hill. Triad's advertisements seem to hint at this by stating that its "services to clients" include "[w]orking with conservative political action committees and issue organizations for efforts to maximize their separate funding sources to accomplish common objectives." *See* Triad Advertisement.

Name of PAC	Date of Contribution by Riley, Jr.¹²	Amount of Contribution by Riley, Jr.	Date of PAC Contribution to Campaign	Amount of PAC Contribution to Campaign
Conservative Campaign Fund	5/09/96	\$1000	5/29/96	\$1000
American Free Enterprise	5/13/96	\$1000	5/23/96	\$1000
Citizens Allied for Free Enterprise	5/22/96	\$1000	5/24/96	\$1000
Faith, Family & Freedom	5/23/96	\$1000	5/24/96	\$500
Eagle Forum	7/12/96 ¹³	\$1000	6/16/96 7/29/96 9/11/96	\$1000 \$500 \$500

Similarly, it appears that during the 1996 election cycle, John and Ruth Stauffer ("the Stauffers"), the father-in-law and mother-in-law of Sam Brownback ("Senator Brownback"), who had made the maximum legal contribution to Sam Brownback for US Senate ("the Brownback Committee"), made \$32,500 in contributions to seven political action committees ("PACs"), which within a short time, made identical or nearly identical contributions to the Brownback Committee.

¹² The reported date of the contribution is based on the date of receipt reported by the PACs. The Commission has other information which suggests that Robert Riley, Jr. wrote the checks for all five contributions on May 9, 1996 and that Triad forwarded the five checks to the different PACs with cover letters dated May 10, 1996.

¹³ The current record does not offer any explanation for why the Eagle Forum did not report receiving this contribution until more than two months after it reportedly was mailed.

Name of PAC	Date¹⁴ of Stauffers' Contribution	Amount of Stauffers' Contribution	Date of PAC Contribution to Brownback	Amount of PAC Contribution to Brownback
American Free Enterprise PAC	7/19/96	\$5000	7/12/96 7/29/96	\$1000 \$3500
Citizens United Political Victory Fund	7/05/96	\$5000	7/18/96	\$5000
Conservative Victory Committee	7/12/96	\$5000	6/28/96 7/16/96 7/22/96 10/17/96	\$500 \$1000 \$2000 \$1000
Eagle Forum PAC	7/10/96	\$5000	7/02/96 9/11/96 10/11/96 10/25/96	\$4000 \$1000 \$1000 \$1000
Faith, Family & Freedom	7/26/96	\$2500	6/26/96 7/29/96	\$1000 \$4000
Free Congress PAC	7/16/96	\$5000	7/16/96	\$4500
The Madison Project	7/29/96	\$5000	7/31/96	\$5000

c) **Consulting Assistance to Campaigns**

In addition to the questions raised with regard to whether the political audits were used to help direct contributions, documents attached as exhibits to the Senate reports suggest that Triad's political audit process was used to provide other assistance to specific congressional campaigns both during and after the audit. The text of some of the Triad audit reports, most of which were written by an experienced political consultant

¹⁴ The reported date of the contribution is based on the date of receipt reported by the PACs in their FEC reports.

named Carlos Rodriguez, suggest that Triad personnel may have provided uncompensated consulting services to various congressional campaigns as part of the Triad audit process.

Questions regarding possible Triad consulting assistance also are raised by a note of thanks that congressional candidate Robert Riley sent to Triad which read:

TRIAD was instrumental in our victory. Without their help the possibility of our success would have been reduced. Not only the monetary contributions TRIAD helped us secure, *but their political expertise in formulating a winning strategy was instrumental.*

See 11/8/96 Triad Fax Alert (reprinting note from Representative Elect Bob Riley (emphasis added)).¹⁵ This note raises particular questions, because the audit reports and other information available to the Commission suggest that Triad stayed in regular contact with campaigns it had recommended after their political audit and up to the date of the election.

Additional questions regarding Triad consulting assistance stem from news reports stating that, on at least two occasions, Triad's Finance Director, Meredith O'Rourke met with Senator Brownback to provide training and assist him in making fundraising telephone calls. See 12/12/97 Washington Post article and 12/5/97 Kansas City Star article.

¹⁵ Triad received similar, if not quite as explicit, notes of thanks from a number of other congressional candidates, including: Sam Brownback; Jim Ryun; Anne Northup. John Thune, and J.C. Watts. *Id.*

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Still further examples of possible Triad consulting assistance can be found in an audit report where Mr. Rodriguez notes that he spent several hours visiting with a congressional campaign staff, and convinced them to expand their budget to hire a professional phone bank, something which represented a change in their plans. *See* Jay Mathis audit report. In another audit report, Mr. Rodriguez states that he gave a congressional campaign “a plan to work out with regards to fundraising, establishing specific financial goals and programs to achieve those objectives.” *See* Vince Snowbarger audit report. With regard to a different campaign, Mr. Rodriguez wrote that “I have suggested to [the congressional candidate] specific steps that need to be taken regarding his fundraising. I have asked the campaign chairman to inform me if [the congressional candidate] does what he has been told he needs to do.” *See* Christian Leinbach audit report. Similarly, in yet another audit report, Mr. Rodriguez gave himself an action item to “call within the next week to 10 days to make sure that [the congressional candidate] is following the advice we gave him with regards to fundraising techniques.” *See* Bob Kilbanks audit report. Finally, several audit reports suggest that Mr. Rodriguez recommended consultants and vendors to campaigns which needed assistance in a particular area of expertise. *See, e.g.,* Jim Ryun audit report, Mark Sharpe audit report, and Steve Stockman audit report.

3. Triad's Service as a Conduit for Contributions

A final component of Triad's service appears to involve assisting an unspecified portion of its clients in physically forwarding their contribution checks to the recipient campaign or organization. Indeed, Triad often concluded its Fax Alerts with the

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recommendations that recipients “[i]mmediately contact the TRIAD office so we know when to expect your checks and the amounts you will contribute. Because each race has unique dynamics, please contact TRIAD before determining which races to support. . . . PLEASE MAIL ALL CHECKS TO THE TRIAD OFFICES.” *See* Triad Fax Alert titled “96 Primary Election Alert - July 18, 1996.”

The complaint in MUR 4633 alleges that Triad forwarded \$5000 in donor checks to five different PACs in MUR 4633. Further, the Commission has information indicating that one of the PACs which received a contribution from the Stauffers reported receiving the check in an envelope with Triad listed as the return address. This suggests that Triad was involved in forwarding some, if not all, of the \$32,500 in checks that the Stauffers sent to the seven different PACs, which made subsequent contributions to the Brownback campaign.

In addition to forwarding checks from contributors to PACs, Triad also appears to have forwarded checks from PACs to campaign committees. For example, the Commission has information indicating that one PAC which reported receiving a contribution from the Stauffers, also reported sending a subsequent contribution to the Sam Brownback for US Senate committee “c/o Triad Management Services, Inc.” *See* 10/17/96 Disclosure Report of Free Congress PAC.

C. ANALYSIS

The Commission has made reason-to-believe findings under two alternative theories regarding the status of Triad; one as a political committee which failed to register and report, and which also may have made and received excessive contributions, in

violation of 2 U.S.C. §§ 433, 434, 441a(a)(1), 441a(f); and the other as a corporation which made prohibited expenditures and contributions in violation of 2 U.S.C. § 441b. The Commission also finds there is reason-to-believe that Triad may have violated 2 U.S.C. § 441f by assisting Robert Riley, Jr. and the Stauffers in making contributions in the name of another person to the Riley Committee and the Brownback Committee.

**1. Theory One: Triad, CR and CREF Operate as an
Unregistered and Nonreporting Political Committee**

a. The Political Committee Status of Triad, CR and CREF

The available information suggests that the reported activities of Triad, either acting separately or acting together with CR and/or CREF, may satisfy both the Supreme Court's "major purpose" test for, and the statutory definition of, a political committee.

(i) The "Major Purpose Test"

The Commission believes that the information currently available raises questions as to whether Triad, either acting separately or acting together with CR and/or CREF, constitutes a political committee. The only activities of Triad, CR and CREF of which the Commission is currently aware, appear to be designed to influence the election of candidates to public office. As discussed above, the available information suggests that Triad, CR and CREF select candidates to support, on the basis of both ideological criteria and chances of success, and then, either individually or collectively, engage in activities intended to assist in the election of those candidates to federal office. Specifically, the information currently available suggests that Triad selects candidates through its "political audits" and then proceeds to furnish their campaigns with what appears to be

uncompensated fundraising and campaign management assistance and, through CR and CREF, advertising assistance.

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Reports of statements by Triad leadership and documents discussing Triad's goals that appear as exhibits to the Senate Report further suggest that Triad's major purpose may be to influence federal elections. For example, in an interview shortly before the 1996 election, Ms. Malenick reportedly stated that one Triad goal is to help re-elect specific conservative candidates. See 9/28/96 National Journal article (quoting Ms. Malenick as stating "[o]ne of our goals is to help Republican freshman."). In addition, numerous Triad Fax Alerts request that prospective contributors support various candidates being recommended by Triad.

As also discussed above, the Triad-managed CR and CREF advertising campaigns appear to have been intended to influence the nomination or election of candidates to federal office. The available information suggests that contributors to CR and CREF were solicited by Triad with the representation that 501(c)(4) "education" efforts were needed to counter organized labor's attacks on conservative candidates. It appears that most, if not all, of the Triad-managed CR and CREF advertisements either mentioned a Republican congressional candidate for the broadcast area in a favorable manner, or mentioned that Republican candidate's Democratic opponent in a negative manner. Further, the information available to the Commission at this time appears to indicate that most, if not all, of the advertisements ran within the sixty day period prior to the 1996 federal elections. Finally, the available information raises questions as to whether Triad

may have coordinated the CR and CREF political advertising with the beneficiary candidates and campaign committees through the earlier "political audits."

(ii) **Triad, CR and CREF Received "Contributions" and Made "Expenditures" in Excess of \$1000**

In addition to the possibility that the activities of Triad, CR, and CREF satisfy the "major purpose" test, it appears that Triad, either acting separately or acting together with CR and/or CREF satisfies the statutory definition of a "political committee" as a committee which receives more than \$1000 in contributions or makes more than \$1000 in expenditures for the purpose of influencing federal elections. 2 U.S.C. § 431(4)(A).

Triad may have qualified for political committee status as early as 1995, when Robert Cone began making contributions to Triad for the apparent purpose of influencing federal elections. If Triad had not already met the statutory requirements for political committee status by the end of 1995, Triad also may have qualified for political committee status when, in the Spring of 1996, it appears that Triad began making expenditures for the apparent purpose of influencing federal elections in the various ways described above.

Triad also may have qualified for political committee status in connection with "managing" the activities of CR and CREF when those entities began to receive large contributions or when they actually began to make expenditures to prepare and broadcast political advertisements described above which appear to have been for the purpose of influencing federal elections in the Fall of 1996.

Based on the information discussed above, the Commission finds reason to believe that Triad, either acting separately or acting together with CR and/or CREF,

constitutes a political committee which has failed to register and report as such, in violation of 2 U.S.C. § 433 and § 434.

b. Excessive Contributions

From the information the Commission has obtained to date, it appears that Triad, either acting separately or acting together with CR and/or CREF, made numerous coordinated expenditures during the 1996 election cycle which constitute in-kind contributions to the beneficiary candidates and committees, and that many of these in-kind contributions exceeded the \$1000 per election limit imposed by the Act. 2 U.S.C. § 441a(a)(7) and § 441a(a)(1)(a).¹⁶ Further, the available information suggests that Triad also accepted contributions, including the \$175,000 in checks from Robert Cone in 1995, which exceeded the \$5000 limit on contributions to political committees. 2 U.S.C. § 441a(a)(1)(c) and § 441a(f).

(i) Making Excessive In-Kind Contributions

The information available to date appears to raise questions as to whether Triad made "coordinated expenditures" that constitute excessive in-kind contributions to beneficiary campaign committees through its fundraising operation, through providing assistance in campaign management, and through its management of the CR and CREF advertising campaigns that appear to have been based on information learned through "political audits" of the different beneficiary campaigns. 2 U.S.C. § 441a(a)(7). Given what is known about the costs associated with these efforts, the available information

¹⁶ Because Triad never registered with the Commission as political committees, it cannot not meet the requirements to qualify as a multicandidate committee which can make contributions of up to \$5000. 2 U.S.C. § 441a(a)(2).

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suggests that if Triad is a political committee, it may have exceeded the \$1000 limit established by the Act with respect to several campaigns. 2 U.S.C. § 441a(a)(1).

For the reasons discussed above, the Commission finds reason to believe that Triad violated 2 U.S.C. § 441a(a)(1) by making various types of excessive in-kind contributions to a number of candidates and campaign committees.

(ii) Receipt of Excessive Contributions

As discussed above, press reports and exhibits to the Senate reports suggest that Robert Cone contributed at least \$175,000, and possibly up to \$600,000 in start-up money for Triad's operations. Accordingly, the Commission finds reason to believe that Triad violated 2 U.S.C. § 441a(f) by accepting excessive contributions.

2. Theory Two: Corporate Contributions

In addition to finding that there is reason to believe that Triad, either acting separately or acting together with CR and/or CREF, is a political committee, with attendant registration and reporting responsibilities and contribution limitations, the available information suggests that, in the alternative, there is reason to believe that Triad violated 2 U.S.C. § 441b by making prohibited corporate contributions and expenditures and by using corporate resources to engage in fundraising and to facilitate the making of political contributions. 11 C.F.R. § 114.2(f).

a. Corporate Contributions

The information currently available raises questions as to whether Triad, acting either separately or acting together with CR and/or CREF, made prohibited corporate contributions or expenditures.

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First, as discussed above, the available information raises questions as to whether Triad, CR and CREF spent several million dollars on political advertising that was broadcast to the general public during the 1996 election cycle. Further, it has been reported that many, if not all, of the Triad-managed CR and CREF advertisements, including the anti-Bill Yellowtail advertisement, mentioned a candidate for federal office in a favorable manner or the candidate's opponent in an unfavorable manner, and that these communications were made in an election-related context. Finally, based on documents attached to the Senate reports, it appears that some, if not all, of the CR and CREF advertising campaigns were coordinated with the beneficiary campaigns through Triad's political audit process.

Second, as discussed above, the available information raises questions as to whether Triad spent a unknown amount of money communicating information about candidates and campaigns to prospective contributors through the sixty (60) or so Triad Fax Alerts that reportedly were sent during the 1996 election cycle. As discussed above, many of the Triad Fax Alerts reference candidates in an election-related context, and together with the evidence of coordination, suggest that these communications may constitute in-kind contributions from Triad to the candidate or committee. AO 1988-22.

Third, as discussed above, the audit reports attached to the Senate reports suggest that a number of campaigns received what appear to have been uncompensated political consulting services from a Triad representative acting on behalf of the corporation. For example, as noted above, Congressman Riley sent Triad a note of thanks which specifically referenced its help in developing a winning strategy. Similarly, it appears

that, on at least two occasions, Meredith O'Rourke, who is identified on Triad's advertisements as the corporation's Finance Director, assisted Senator Brownback with fundraising telephone calls.

Based on the evidence discussed above, the Commission finds reason to believe that Triad violated 2 U.S.C. § 441b by making prohibited corporate contributions and expenditures in connection with various federal congressional elections.

b. Corporate Facilitation of Fundraising

The Commission also believes that the information currently available raises questions as to whether Triad used corporate resources to facilitate the making of contributions to various candidates and campaigns in violation of 2 U.S.C. § 441b and 11 C.F.R. 114.2(f).

Corporations are prohibited from using their resources or facilities to engage in fundraising activities in connection with any federal election, other than specific exceptions made for separate segregated funds which do not apply in this case. 11 C.F.R. § 114.2(f)(1). Examples of prohibited corporate facilitation include ordering or directing subordinates to plan, organize or carry out fundraising projects as part of their work responsibilities using corporate resources unless the corporation receives advance payment for the fair market value of such services. 11 C.F.R. 114.2(f)(2)(i)(A). Another example of prohibited facilitation is to use a corporate list of customers, clients or vendors to solicit contributions, unless the corporation receives advance payment for the fair market value of the list. 11 C.F.R. 114.2(f)(2)(i)(C). A third example of prohibited corporate facilitation is to collect and forward contributions earmarked for a candidate,

unless such activity is conducted by a separate segregated fund. 11 C.F.R. 114.2(f); § 114.2(f)(3).

The available information suggests that Triad facilitated corporate contributions in a number of different ways. First, the Triad Fax Alerts appear to represent a fundraising effort designed to help different candidates for federal office that was planned, organized and carried out by Triad's employees, apparently at the direction of Triad management, and with corporate resources for which Triad apparently did not receive advance payment. Second, Triad sent fundraising solicitations for specific candidates named in the Triad Fax Alerts to a list of its clients without receiving advance payment for the use of that list. Finally, Triad appears to have acted as a corporate conduit by collecting and forwarding checks for different candidates.¹⁷

Based on the evidence discussed above, the Commission finds reason to believe that Triad violated 2 U.S.C. § 441b by facilitating the making of contributions to a number of candidates and committees.

3. Indirect Contributions from Contributors Who Already Had Made the Maximum Legal Contribution to a Committee

The information currently available suggests that Triad may have been engaged in a pattern of activity through which it would encourage individual donors who had made

¹⁷ Triad claims that it was providing a service for which it was compensated, however, the current record does not contain evidence that Triad received compensation for the services it provided in connection with each campaign, much less compensation equivalent to the normal and usual charge for such services. Triad argues that it is exempt from the prohibition on acting as a conduit, because it was acting as an agent of the donor. The Commission believes that Triad's position is incorrect as a matter of law. The exemptions to the definition of the term "conduit or intermediary" provided for agents is limited to persons or entities that represent a recipient organization, and do not apply to groups purporting to represent a donor. See 11 C.F.R.. § 110.6(b)(2)(i).

the maximum contribution to a particular candidate to make contributions to political action committees ("PACs") which would then make identical or nearly identical contributions to the original donor's preferred candidate. This pattern of activity raises the possibility of violations of the Act by both Triad and other participants.

The information available raises questions as to whether some or all of these contributions, when funneled through a Triad-selected PAC, may constitute contributions made in the name of another person (the PACs) in violation of 2 U.S.C. § 441f.

The following information relating to the PAC donations made by Robert Riley, Jr. and the Stauffers demonstrates how contributions from "maxed out" donors which appear to have been arranged by Triad may constitute violations of 2 U.S.C. § 441f and/or § 441a(a)(1). Some of the reasons for believing that the PAC contributions by Robert Riley, Jr. and the Stauffers may have constituted contributions in the name of another person can be summarized as follows. As noted above, documents attached as exhibits to the Senate reports appear to indicate that Triad had a practice of asking campaigns that Triad decided to support for lists of their "maxed out" donors. At this time, there is no other explanation for the proximity in timing and similarity in amounts between the contributions to the PACs and the subsequent PAC contributions to the Riley Committee and the Brownback Committee. In addition, neither Robert Riley, Jr. nor the Stauffers had any prior history of contributing to the PACs involved in this alleged scheme, and all of the PACs that received contributions from Robert Riley, Jr. and the Stauffers subsequently contributed to, respectively, the Riley Committee and the Brownback Committee. Further, while the PACs could have contributed up to \$5000 to

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Congressman Riley's campaign, each of their contributions were very similar in amount to the \$1000 contributions that Robert Riley, Jr. made to the PACs. Finally, while the Stauffers could have contributed up to \$5000 apiece to each PAC (for an aggregate contribution of \$10,000), they limited their total aggregate contribution to each PAC to \$5000, an amount equivalent to the maximum amount that the recipient PACs could contribute to the Brownback Committee.

Triad has asserted that the contributions to the PACs were not earmarked for any particular campaign. Triad claims that it does not submit earmarked contributions, and that it advises its clients that donations to multicandidate political committees cannot be directed for specific candidates or political committees. See Triad Letters attached to responses to complaints.¹⁸ Notwithstanding Triad's conclusory denial regarding the alleged earmarking of these contributions, the Commission believes that there are substantial unanswered questions regarding these contributions.

It appears, however, that Triad had communications with both the contributors (Robert Riley, Jr. and the Stauffers) and with the Triad-recommended PACs to which they contributed. These communications, as acknowledged in MUR 4633 and as alleged in MUR 4634, would have created an opportunity for the PACs to have agreed to make a

¹⁸ The responses to the complaints include copies of the letters that Triad used to transmit Robert Riley, Jr.'s contributions to the PACs. The Triad cover letters state that the contributions were not earmarked for any purpose. See May 10, 1996 Triad Letters attached to responses to complaints. Notwithstanding the claim set forth in Triad's letter, a written disclaimer of earmarking cannot negate the presence of circumstances which constitute earmarking or a scheme to make contributions in the name of another. See Massachusetts Citizens for Life, Inc., 479 U.S. 238, 249 (1986)(written disclaimer of express advocacy could not negate presence of express advocacy).

contribution to a Triad-recommended candidate (Congressman Riley or Senator Brownback) in an amount identical to, or nearly identical to, the contributions that they received from a Triad client (i.e., Robert Riley, Jr. or the Stauffers).¹⁹

These specific factors, together with the information set forth above indicating that such activities were a regular part of Triad's fundraising programs, raise a number of questions which cause the Commission to find reason to believe that Triad violated 2 U.S.C. § 441f by assisting in making contributions in the name of another person.

¹⁹ The fact that all of the PACs involved in the communications subsequently did make identical, or nearly identical, contributions to the Triad-recommended political committees raises further questions about whether there was an agreement to make contributions in the name of another person.