FEDERAL ELECTION COMMISSION
Washington, DC 20463

VIA CERTIFIED MAIL

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John and Ruth Stauffer
c/o Benjamin L. Ginsberg
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037

cc: John H. Stauffer, Jr., Esq.
Goodell, Stratton et al.
515 S. Kansas Avenue
Topeka, KS 66603

RE: MURs 4568, 4633 and 4634

Dear Messrs. Ginsberg and Stauffer:

On May 12,1997, the Federal Election Commission notified your clients, John and Ruth Stauffer, of a complaint, designated as MUR 4634, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of this complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaints, 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 John and Ruth Stauffer violated 2 U.S.C. § 441a(a)(1) and § 441f. The Factual and Legal Analysis, which formed a basis for the Commission's finding, 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 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.

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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

RESPONDENTS: John and Ruth Stauffer MURs: 4568, 4633 and 4634

I. GENERATION OF THE MATTERS

MUR 4634 was generated by a complaint filed by Micheline Z. Burger. *See* 2 U.S.C. § 437g(a)(1). After reviewing the complaints, the responses, and the publicly available material relating to MUR 4634 as well as MURs 4633 and 4568, the Federal Election Commission ("Commission") determined that it would investigate the three matters jointly. The respondents were added to the latter MURs based on information ascertained by the Commission in the normal course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2)

II. FACTUAL AND LEGAL ANALYSIS

The Commission believes that the specific incidents recounted in the subject MURs are most appropriately viewed in the context of Triad Management Services, Inc.'s ("Triad") involvement in the 1996 election cycle. During the latter part of 1996 and throughout 1997, there were a number of press accounts concerning the activities of Triad in connection with these 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, including the Sam Brownback for US Senate

Committee, after learning of their needs through a process it referred to as a "political audit."

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." It appears that the firm then may have forwarded contributions from these same individuals to different campaign committees. Triad also 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.

The Commission has found reason to believe that, during the 1996 election cycle, John and Ruth Stauffer ("respondents") may have violated the Federal Election Campaign Act of 1971, as amended (" the Act") by making contributions to the Sam Brownback for U.S. Senate committee in the name of another person.[1] In the alternative, the Commission has found reason to believe that the respondents may have made excess, contributions to the Brownback campaign after directly contributing to certain PACs, because the contributions to those PACs were made with the knowledge that said entities would then contribute a substantial portion of the funds received back to Sam Brownback, to whom the couple had already made the maximum legal contribution.

[1] The candidate, Sam Brownback, is the respondents' son-in-law.

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A. THE APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that 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).

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

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

B. FACTS

1. Triad

Triad appears 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; 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.*

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2. **Triad Fundraising Efforts**

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 Triad political audit reports released 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") 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).[2]

[2] 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 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.

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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.

It was in this context that John and Ruth Stauffer, who had already donated the maximum legal amount of money to their son-in-law's campaign, made $32,500 in contributions to seven PACs, which within a short time, made identical or nearly identical contributions to the Brownback Committee. These contributions are summarized below.

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Name of PAC	Date[3] 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

Another component of Triad's service to various congressional campaigns appears to involve assisting an unspecified portion of the donors it solicited in physically forwarding their contribution checks to the recipient campaign or organization. Indeed, Triad often concluded its Fax Alerts with the recommendation that recipients inform the firm as to when their checks were due to arrive as well as the amount of the donation. The Commission has information indicating that one of the PACs to which the Stauffers

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

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donated 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 worth of checks that the Stauffers made out to the seven different PACs, which in turn made subsequent contributions to the Brownback campaign.

In addition to this practice of forwarding checks from contributors to PACs, Triad also appears to have forwarded checks from PACs to some 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."

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C. LEGAL ANALYSIS

Given the allegations and information in each complaint, response, and additional information from public sources, the Commission has made findings against John and Ruth Stauffer under two alternative theories. Under the first theory, 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. Alternatively, the contributions made through the PACs by the individual donors may constitute excessive contributions made in violation of 2 U.S.C. § 441a(a)(1), because the contribution was made with the knowledge that a substantial portion of the contributions would be subsequently contributed to a particular candidate to whom the original donor already had contributed. 11 C.F.R. §110.1(h).

The following information from the complaint in MUR 4634 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 John and Ruth Stauffer 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 report 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 Brownback Committee. In addition, the Stauffers. had no prior history of contributing to the PACs involved in this alleged scheme, and all of the PACs that received his contributions and subsequently contributed to the Brownback Committee. Further, 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 legally contribute to the Brownback Committee.

In MUR 4634 the respondents denied any knowledge that their funds had been funneled through the PACs to the Sam Brownback for US Senate Committee. Notwithstanding these conclusory denials, the Commission believes that there are substantial unanswered questions regarding the subject contributions.

It appears, however, that Triad may have had communications with both the contributor (the Stauffers) and with the Triad-recommended PACs to which they

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contributed. These communications would have created an opportunity for the PACs to have agreed to make a contribution to a Triad-recommended candidate (Senator Brownback) in an amount identical to, or nearly identical to, the contributions that they received from a Triad client (i.e., John and Ruth Stauffer).[4]

The factors outlined above caused the Commission to find reason to believe that John and Ruth Stauffer may have violated the Act by making contributions in the name of another person (the PACs) in violation of 2 U.S.C. § 441f. In the alternative, the Commission has found reason to believe that John and Ruth Stauffer may have violated 2 U.S.C. § 441a(a)(1) by making excessive indirect contributions to the Sam Brownback for US Senate Committee after directly making the maximum legal contribution, because the contributions to the PACs were made with the knowledge that those entities would then turn around and contribute a substantial portion of the funds to the Brownback for US Senate Committee. 11 C.F.R. § 110.1(h).

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[4] 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.