

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of
John and Ruth Stauffer

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MURs 4568, 4633, 4634 & 4736

REPLY OF RESPONDENTS JOHN AND RUTH STAUFFER
TO THE GENERAL COUNSEL'S BRIEF

I. INTRODUCTION.

One amongst a series of "Triad" cases, the Commission here found reason to believe that the 1996 contributions at issue violated the Federal Election Campaign Act ("Act") on the grounds they "were shortly followed by each of the PACs making identical or nearly identical contributions" to the same candidate committee. Now, after nearly five years of investigating Triad and its activities, the Office of General Counsel ("OGC") bases a probable cause recommendation against John and Ruth Stauffer ("the Respondents") not on any facts it learned during its lengthy investigation but only on the very same circumstantial evidence upon which it originally relied. Its lengthy investigation having turned up only evidence that contradicts its assumptions and speculation, the OGC Brief can only repeat the very same "inferences" that the investigation has been unable to substantiate since the reason to believe finding. As a matter of law, real evidence rather than "inferences" and circumstantial evidence must be the basis of a probable cause finding. Thus, the OGC Brief has failed to meet its burden against these Respondents.

Respondents cannot know the overall scope of the Commission's Triad investigations, but the number of MURs and media reports suggest a broad examination into that group's methods, practices and procedures. The Stauffers, of Topeka, Kansas, have been caught up in that investigation. The Stauffers had participated in and contributed to election campaigns before 1996,

but became far more energized in that cycle because their son-in-law, Sam Brownback, was a candidate for the United States Senate.

They volunteered in their son-in-law's campaign. Because of their son-in-law's candidacy, the Stauffers, by their own admission, were much more concerned with the overall composition of the Congress and wanted to create a more conservative Senate in line with Mr. Brownback's philosophy. Through the recent sale of the family's business (Stauffer Communications), they were able to contribute to politics more heavily than in the past.

As people of means, the Stauffers came to the attention of Triad in its harvesting of some 250 federal campaigns. See OGC Brief at 8. The Stauffers did not know how to achieve their overall goal of a more conservative Congress. But Triad did, and provided the research and a ready-made plan for the Stauffers to meet their goal of giving to PACs to create a more conservative Congress. Only after each checked with Triad's counsel to receive assurances that their contributions were legal under the law did John and Ruth Stauffer follow Triad's plan for their PAC giving. J. Stauffer Depo. Tr. at 72-75; R. Stauffer Depo. Tr. at 40 & 44-45. Despite the OGC Brief's frequent "inferences", the record is uncontroverted that the Stauffers had no contact with any of the recipient PACs concerning the ultimate destination for their contributions and that no Triad official told them which candidates would ultimately benefit from their contributions. Furthermore, there is no evidence that their son-in-law, daughter or anyone with the Sam Brownback for US Senate Committee ("Brownback Committee") had any knowledge that the Stauffers were even making any PAC contributions. In other words, there was no "elaborate scheme for disguising" their actions. See OGC Brief at 4. The Stauffers followed Triad's plan and counsel. Whatever Triad may have done to achieve its goals, the Stauffers acted within the boundaries of the Act and Commission's regulations.

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Therefore, respondents John and Ruth Stauffer, by and through the undersigned counsel, hereby respectfully request that the Commission deny the Office of the General Counsel's recommendation to find probable cause to believe that the Stauffers knowingly and willfully violated 2 U.S.C. § 441a(a)(1) in the above referenced Matters Under Review ("MURs").

More specifically, the Commission should reach this conclusion because the OGC Brief fails:

- To acknowledge and analyze the sworn testimony described below that directly contradicts the assumptions upon which the OGC Brief rests.
- To meet its burden of presenting evidence that the Stauffers made the contributions to the nine PACs with the knowledge that a substantial portion of those contributions would, in turn, be contributed to the Brownback Committee. The Stauffers repeatedly testified under oath that they did not know how the contributions would be used by the nine PACs. Further, the Stauffers testified that Triad personnel and counsel advised the Stauffers that they had no control or input concerning how their contributions to the PACs would be used. The OGC Brief does not in any way refute this sworn testimony.
- To meet the three part test of 11 C.F.R. § 110.1(h) ("Contributions to Committees Supporting the Same Candidate"). First, the PACs that received contributions from the Stauffers were not principal campaign committees of Sen. Brownback's or other authorized or single candidate committees. Second, the OGC has not presented any evidence or made the allegation that the Stauffers retained control over their PAC contributions. Finally, the OGC cites only assumptions and innuendoes contradicted by sworn testimony to argue that the Stauffers had knowledge that a substantial portion of their contributions would be contributed by the PACs to the Campaign.
- To present anything other than circumstantial evidence appropriate to a reason to believe finding, but not a probable cause finding.

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It is the Respondents sincere hope that the Commission will consider this response and perform a careful examination of the factual record. In doing so, the Commission will discover that the OGC Brief has not satisfied its basic burden for a probable cause finding. Accordingly, for these reasons and those set forth below, the Commission should find no probable cause to believe that the Stauffers either violated the Act and Commission regulations or did so knowingly and willfully and dismiss these matters as applied to the Stauffers.

II. FACTUAL AND LEGAL ANALYSIS.

A. Applicable Law.

1. Under the Act and Commission regulations, an individual may contribute no more than \$1,000 per election to a campaign committee and \$5,000 per calendar year to a PAC.

The Act limits the amount that individuals may contribute to political committees to \$1,000 per election to any federal candidate or his or her authorized campaign committee, and \$5,000 per calendar year to any PAC. 2 U.S.C. §§ 441a(a)(1)(A) & (C); 11 C.F.R. §§ 110.1 (b) & (d). There is also a \$25,000 aggregate annual limit applicable to individuals. 2 U.S.C. § 441a(a)(3); 11 C.F.R. § 110.5.

- a. The three part test under 11 C.F.R. § 110.1(h).

In drafting the Act, Congress foresaw the situation presented here of a person contributing to a candidate and then contributing to a PAC which also gives to the same candidate. Congress determined that this did not require the aggregation of contributions and was not a violation of the Act, so long as the criteria set forth in 11 C.F.R. § 110.1(h) were satisfied. The burden is on the Commission (not the donor or recipient) to demonstrate a violation of section

110.1(h) which provides:

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 action 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.¹

b. Commission Enforcement Actions.

The Commission's precedents hold that a violation can only occur when the contributor to a candidate donates to a PAC "with the knowledge that a substantial portion [of that contribution] will be contributed to ... that candidate." MUR 2898, General Counsel's Report at 10. The complaint in MUR 2898 involved three individuals charged with using a PAC as a conduit to evade their individual contribution limits to a candidate. The three individuals contributed to a candidate and then to a multi-candidate PAC at the recommendation of the candidate which also contributed to that candidate. The complaint further noted that the contributions from the individuals to the PAC came in close proximity to the PAC's contributions to the candidate, and that the PAC gave a disproportionate amount of its support to that candidate.

The Office of General Counsel in that case recommended a finding of no reason to believe because there was no evidence of any discussion, either directly or indirectly, by the PAC with its

¹ The Commission's initial policy statement on this regulation, issued as part of MUR 150 (1976) in the context of independent expenditures, confirms that "a person may contribute \$1,000 to a candidate, and also contribute to a political committee which has supported, or anticipates supporting that candidate without violating the \$1,000 per election limitations, so long as the contributor does not give to the committee with the knowledge that a substantial portion of the contributor's funds will be contributed by the committee to that candidate."

donors about which candidates would receive its contributions. In addition, the General Counsel's report noted that the candidate urged the individuals to contribute to the PAC on the grounds it was an "organization sharing his political philosophy". General Counsel's Report at 12-13.

In MUR 3313, the complaint charged that a PAC was an "alter ego" of a candidate's campaign committee so that any contribution to the PAC was also a contribution to that candidate. The General Counsel recommended the finding of a violation on the grounds that the contributors gave with the knowledge that a substantial portion of their contribution would aid the candidate since the solicitations themselves were allegedly made with the involvement of the candidate's committee. General Counsel's Report at 28. As a factual matter, this level of coordination existed because the PAC operated exclusively with contributions arranged by the candidate and all the PAC's expenses were devoted entirely to that candidate's race.

In MUR 2668, the Office of General Counsel's report recommended that the Commission find a violation because the PAC in question was formed exclusively by members of a family who owned a corporation that was also accused of making illegal contributions to a Senate race. The corporation was the PAC's connected organization, one family's contributions amounted to 99 percent of the money raised by the PAC and 47 percent of the PAC's contributions were to the one candidate. Under these circumstances, the General Counsel found a violation of 11 C.F.R. § 110.1(h) since the "individuals may have contributed to [the PAC] knowing that a substantial portion of their contributions would go to" the specific candidate. General Counsel's Report at 10-11.

2. Knowing and Willful.

Under the Act's enforcement provisions, Congress established a penalty structure which differentiates between simple violations and those violations found to be knowing and willful.

2 U.S.C. § 437g. In considering whether a violation of the Act is knowing and willful, and therefore sufficient to sustain the enhanced penalties provided by the Act, the United States Court of Appeals for the District of Columbia noted that to find a violation "‘willful,’ [the] violation must necessarily connote ‘defiance or such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the [statute].’ To hold otherwise would fail to distinguish between a ‘serious’ offense and a ‘willful’ one and would ‘disrupt the gradations of penalties’ established by Congress." American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) v. Federal Election Commission, 628 F.2d 97, 101; 202 U.S. App. D.C. 97, citing Frank Irey Jr., Inc. v. Occupational Safety and Health Review Commission, 519 F.2d 1200, 1207 (1975). The AFL-CIO decision also noted that "[i]t is clear that uncertainty as to the meaning of the law can be considered in assessing the element of willfulness in violation of the law." 628 F.2d at 101, citing James v. United States, 366 U.S. 213 (1961) (parallel citations omitted) and United States v. Garber, 607 F.2d 92 (5th Cir. 1979).

"Knowing and willful" actions are those that are "taken with full knowledge of all the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. FEC v. Dramesi for Congress Comm., 640 F.Supp 985 (D.N.J. 1986). A knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." U.S. v. Hopkins, 916 F.2d 207, 214-215 (5th Cir. 1990). A knowing and willful violation may be inferred "from the defendants' elaborate scheme for disguising [their actions and their] deliberate convey[ance of] information they knew to be false to the Federal Election

Commission.” Id. “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” Id. at 214, citing Ingram v. United States, 360 U.S. 672, 679 (1959).

B. Summary of the Facts.

John and Ruth Stauffer of Topeka, Kansas, are the in-laws of Senator Sam Brownback, who in the summer of 1996 was a member of the United States House of Representatives and a candidate for the United States Senate seat being vacated by Bob Dole. The Stauffers described themselves as political conservatives, see Amended Affidavit of John H. Stauffer ¶¶ 2-3 (“J. Stauffer Aff.”); Amended Affidavit of Ruth G. Stauffer ¶¶ 2-3 (“R. Stauffer Aff.”). They were extremely interested in the political process as a result of their son-in-law’s candidacy. J. Stauffer Aff. ¶ 2; R. Stauffer Aff. ¶ 2; J. Stauffer Depo. Tr. at 115. Each contributed to the Brownback campaign. J. Stauffer Aff. ¶ 3; R. Stauffer Aff. ¶ 3. In addition, the Stauffers volunteered for the Brownback Committee by answering phones, stuffing envelopes and running errands. J. Stauffer Depo. Tr. at 16, 22 & 27; R. Stauffer Depo. Tr. at 20. They did not exercise any decision making authority at the Brownback Committee. J. Stauffer Depo. Tr. at 23, 25 & 26; R. Stauffer Depo. Tr. at 20. In addition to their volunteer efforts, the Stauffers wrote a few letters to, and discussed the Brownback Committee with, friends who they asked to support the campaign. J. Stauffer Depo. Tr. at 22; R. Stauffer Depo. Tr. at 22-23.

Their son-in-law’s candidacy deepened their interest in politics and they became more concerned about the makeup of the Congress and its members. J. Stauffer Aff. ¶ 2; R. Stauffer Aff. ¶ 2. As part of this interest in the makeup of Congress, and believing that the country needed additional conservative legislators, they began to search for groups which shared their political beliefs and values. J. Stauffer Aff. ¶ 3; R. Stauffer ¶ 3; R. Stauffer Depo. Tr. at 36, 41, 438, 54-55, 85 & 110-11. They were not certain how to achieve this goal. Cf. J. Stauffer Depo. Tr. at 74-75. One

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day at Brownback Committee headquarters, Tim McGivern made a casual comment to the Stauffers that they might be interested in watching a promotional video on Triad. J. Stauffer Depo. Tr. at 37-39; R. Stauffer Depo. Tr. at 31 & 35. After viewing the video, the Stauffers understanding of Triad was that it promoted the conservative causes with which they agreed. J. Stauffer Depo. Tr. at 71-72; R. Stauffer Depo. Tr. at 54-56.² In seeking a way to achieve their goal of aiding conservative PACs which would aid conservative candidates so that the Congress might become more conservative, the Stauffers turned to Triad. Their research into which PACs met their criteria consisted of contacting Triad and taking their recommendations. R. Stauffer Depo. Tr. at 41, 48, 54-55 & 85. The Stauffers made their PAC contribution decisions based upon a list of conservative PACs received from Triad. RS 000002-000007. This list provided information concerning the political philosophy of each PAC and basic biographical information concerning the individuals associated with each PAC. Id. Triad's PAC information reviewed by the Stauffers did not name the specific candidates to be supported by each PAC. Id.

As their level of interest increased, John and Ruth Stauffer also sought to educate themselves about the Act and its contribution limits and rules. They wanted both to participate and to insure that nothing they did would violate the law or in any way damage Mr. Brownback's candidacy. J. Stauffer Aff. ¶ 4; R. Stauffer Aff. ¶ 4; J. Stauffer Depo. Tr. at 34, 66, 72 & 74-74 ("election rules are very complicated, far above my understanding . . ."); R. Stauffer Depo. Tr. at 29. As part of this educational process with Triad, they learned they could participate in the process by contributing to PACs with which they agreed, but that they could not specify or direct that a PAC contribute to any specific candidate. J. Stauffer Aff. ¶ 5; R. Stauffer Aff. ¶ 5; J. Stauffer Depo. Tr. at 34, 66 & 72; R.

² Mr. McGivern did not request or suggest that the Stauffers become clients of Triad or that they contribute to any PACs. After reviewing the Triad video, the Stauffers did not discuss the Triad video or Triad with anyone at the Brownback Committee during the campaign. J. Stauffer Depo. Tr. at 43; R. Stauffer Depo. Tr. at 39.

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Stauffer Depo. Tr. at 29. As a result, they gave no such direction to any PAC to which they contributed or to Triad. They did not seek or receive assurances from Triad or any PAC that any of their contributions would be used in any particular manner, including a contribution to any specific candidate, including Sam Brownback. J. Stauffer Aff. ¶ 7; R. Stauffer Aff. ¶ 7; J. Stauffer Depo. Tr. at 86; R. Stauffer Depo. Tr. at 87 & 126. The Stauffers had no knowledge how any of the PACs to which they contributed funds would use their money. J. Stauffer Aff. ¶ 8; R. Stauffer Aff. ¶ 8; J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01. They also did not know that any of the PACs that received their contributions had endorsed Sam Brownback. J. Stauffer Depo. Tr. at 114; R. Stauffer Depo. Tr. at 88 & 113. In fact, the Stauffers were explicitly informed by Triad's counsel that they could not and would not have any input or control over how the PACs would use the contributions from the Stauffers and that once the Stauffers made the contributions, they had no control over their use. J. Stauffer Depo. Tr. at 72-75; R. Stauffer Depo. Tr. at 40 & 44-45. The Stauffers did not make any additional contributions to any PACs after the middle of July because they believed they had reached their \$25,000 annual contribution limits. J. Stauffer Depo. Tr. at 108; R. Stauffer Depo. Tr. at 82.

The contribution amounts from the Stauffers to the PACs were determined by the Stauffers' understanding of the contribution limits from individuals to PACs and the annual limit, not the contributions limits from PACs to candidates. J. Stauffer Depo. Tr. at 79 & 100; R. Stauffer Depo. Tr. at 74, 76-77 & 109. The timing of the Stauffers' PAC contributions was based upon receipt of the PAC information from Triad, not upon the date of any election. J. Stauffer Depo. Tr. at 86.

Mr. and Mrs. Stauffer have each stated explicitly that none of their contributions to PACs was made with the knowledge that a substantial portion (or any portion) would be contributed to the Brownback campaign. J. Stauffer Aff. ¶ 5; R. Stauffer Aff. ¶ 5. Neither John nor Ruth Stauffer ever told any of the PACs that they were related to or knew Sam Brownback. J. Stauffer Aff. ¶ 9; R.

Stauffer Aff. ¶ 9. The Stauffers had no communications with either Sam Brownback or their daughter, Mary Brownback, or anyone working on his campaign concerning their contributions to the PACs. J. Stauffer Aff. ¶ 10; R. Stauffer Aff. ¶ 10; J. Stauffer Depo. Tr. at 48; R. Stauffer Depo. Tr. at 39, 87, 96 & 112-113.

C. Legal Analysis.

1. The Stauffers did not make an excessive contribution to the Brownback Committee because their PAC contributions complied with 11 C.F.R. § 110.1(h).

Under the law, the facts of this case and the Commission's precedents, John H. Stauffer and Ruth G. Stauffer did not violate the Act or the Commission's regulations. The contribution limits of 2 U.S.C. § 441a(a) were not violated since all the contributions by the Stauffers to multi-candidate PACs complied with 11 C.F.R. § 110.1(h). The OGC Brief contains suppositions but no evidence to the contrary.

The Commission's regulations and precedents are explicit in permitting a contributor to donate to both a candidate and a PAC that also contributes to that candidate as long as the contributor does not give with the knowledge that a substantial portion will be contributed to that candidate for the same election. 11 C.F.R. § 110.1(h)(2). The burden is on the Commission to prove otherwise. Despite OGC attorneys asking repeated questions during sworn testimony, the OGC Brief offers only assumptions and circumstantial hypotheses, but no evidence from the record to support its case.³ A perfect example of the OGC's lack of the evidence needed to make its case is the statement that "it is likely" that Carolyn Malenick advised the Stauffers that the recipient PACs would contribute to the Brownback campaign. Although the very crux of its case, the OGC Brief

³ For example, there is no evidence to support the notion that the Stauffers may have known that "Triad was recommending Sam Brownback to donors," OGC Brief at 20, and, even of true, the notion is irrelevant. The recipient PACs were not donors to Triad, and Triad urging support for a conservative candidate is without legal significance as it pertains to the Stauffers in these MURs.

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can offer only this conjecture, but no evidence developed in its lengthy investigation. By contrast, both John and Ruth Stauffer provided sworn testimony that they never received such advise or had such a conversation with Ms. Malenick or anyone from Triad. J. Stauffer Aff. ¶5; R. Stauffer Aff. ¶5; J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84; 87 & 100-01. Each testified unequivocally that neither had any knowledge or assurances or expectations that any of their contributions to the PACs would go to any specific candidate, including Sam Brownback. J. Stauffer Aff. ¶5; R. Stauffer Aff. ¶5; J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84; 87 & 100-01. The only knowledge or assurances that the Stauffers had was that their contributions would go to candidates whom each PAC believed held the general conservative positions with which the Stauffers agreed. J. Stauffer Aff. ¶5; R. Stauffer Aff. ¶5. Both Stauffers believed that what they were doing was in full compliance with the Act and Commission regulations. J. Stauffer Depo. Tr. at 72-75; R. Stauffer Depo. Tr. at 40 & 44-45. There is no evidence to the contrary.

In addition, the Stauffers' affidavits and sworn testimony state that they retained no control over the funds they contributed to any of the PACs. J. Stauffer Aff. ¶¶ 6-8; R. Stauffer Aff. ¶¶ 6-8; J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84; 87 & 100-01; see also 11 C.F.R. § 110.1(h)(3). Moreover, there is absolutely no evidence that the Stauffers had any contact with any of the PACs beyond reviewing written materials and writing checks. J. Stauffer Depo. Tr. at 97, & 113-14; R. Stauffer Depo. Tr. at 87. There is no evidence that the Stauffers in any way instructed the PACs about the use of their contributions, either directly or indirectly, expressly or implicitly, orally or in writing. J. Stauffer Aff. ¶¶ 6-8; R. Stauffer Aff. ¶¶ 6-8; J. Stauffer Depo. Tr. at 84, 86, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84; 87, 100-01 & 126; see 11 C.F.R. §§110.1(h)(2) & (3). There is no evidence in the OGC Brief to the contrary and no citations to the record in the OGC Brief to support its opposite contentions.

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The Commission's precedents also demonstrate why this matter should be dismissed. It is not disputed in the OGC Brief that the Stauffers had no knowledge, and gave no directive of any kind, that their contributions to any PAC should be expended on behalf of Sam Brownback, or any other candidate. Cf. MUR 3313. John and Ruth Stauffer did contribute to PACs they determined shared their political views, and believed that the PACs would contribute to candidates of whom they generally approved, but the Stauffers gave no direction to the PACs or Triad about any specific candidate or candidates. J. Stauffer Aff. ¶ 5; R. Stauffer Aff. ¶ 5. Neither John nor Ruth Stauffer had any knowledge whether any portion of their contribution to the PACs would accrue to the benefit of any specific candidate, including Sam Brownback. J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01; see also MUR 3313. All of the PACs involved supported far more than one candidate, so even accepting the OGC's theory, the Stauffers could not know under the circumstances whether their funds would help any specific candidate, including Sam Brownback. See MUR 1309; MUR 1052.

None of the Stauffers' contributions went to a closely held PAC like the one investigated in MUR 2668. None of the contributions went to PACs controlled by the Stauffer family and the Stauffers did not know and had no control over whether the PACs to which they contributed would give to Sam Brownback. J. Stauffer Aff. ¶¶ 5-9; R. Stauffer Aff. ¶¶ 5-9. The Stauffers never advised, and did not ask, what, if any, portion of their contributions to any of the PACs would go to any candidate, including Sam Brownback. See J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01; J. Stauffer Aff. ¶¶ 5-9; R. Stauffer Aff. ¶¶ 5-9. There is no evidence in the OGC Brief to the contrary.

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2. The Stauffers were not aware of any contacts between Triad and the PACs concerning the PACs' support of the Brownback Committee. Further, the Stauffers did not contribute to the PACs with the knowledge that any portion of their monies would support the Brownback Committee.
 - a. The Stauffers did not discuss the Triad video, Triad or their PAC contributions with anyone at the Brownback Committee.

Contrary to the OGC Brief's unsupported assumptions, the Stauffers did not have specific knowledge of Triad operations beyond that Triad provided advice to people who wanted to aid conservative causes and Triad's boilerplate materials sent to them. The OGC Brief makes several unsupported assumptions and suppositions leading to the incorrect conclusion that the Stauffers had knowledge that a substantial portion of their PAC contributions would be used to support the Brownback Committee. For example, the OGC Brief relies repeatedly upon one casual comment by Tim McGivern that the Stauffers might be interested in watching the Triad promotional video. See, e.g., OGC Brief at 20. The OGC Brief also states that "Triad consultant Carlos Rodriguez informed the Brownback campaign that Triad was supporting its efforts." Id. at 20. However, even if true, the OGC Brief does not cite any evidence that Carlos Rodriguez or anyone at either Triad or the Brownback Committee told the Stauffers that Triad was helping the campaign. See id. After reviewing the video, the Stauffers did not discuss the Triad video, Triad or their PAC contributions with anyone at the Brownback Committee. J. Stauffer Depo. Tr. at 43, 48-49, 96 & 104; R. Stauffer Depo. Tr. at 39, 124 & 136. The OGC Brief contains no evidence to the contrary. See OGC Brief at 24-25.

- b. The Stauffers believed that Triad was a legitimate organization because Oklahoma Senator Don Nickles appeared in the Triad promotional video and because of assurances from Triad's counsel.

The OGC Brief alleges that it "strains credibility to believe" that the Stauffers made PAC contributions based upon a relative stranger's advice without assurances concerning how the monies would be used. OGC Brief at 25-26. The Stauffers turned to Triad because they were not certain of

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how to achieve their goal of aiding conservative candidates. Triad offered a program on how to do it. Their research into conservative PACs was provided by Triad. The Triad information made a situation that looked very complicated achievable. The Stauffers further relied on Triad's advice concerning PAC contributions because they were assured in the promotional video and by Triad counsel and personnel that the organization was legitimate and proper. After viewing the Triad promotional video, the Stauffers' understanding of Triad was that it promoted conservative causes. J. Stauffer Depo. Tr. at 71-72; R. Stauffer Depo. Tr. at 54-56. Given the Stauffers' lack of political experience, the appearance of Senator Don Nickles of Oklahoma legitimized Triad in their eyes because he is a well-known conservative Senator. See J. Stauffer Depo. Tr. at 40-41; R. Stauffer Depo. Tr. at 35-36. Moreover, the Stauffers also received assurances from Triad personnel and its counsel that Triad as an organization and the PAC giving it recommended to the Stauffers were legal and proper. See J. Stauffer at 72-75; R. Stauffer Depo. Tr. at 40 & 44-45. Accordingly, it does not "strain credibility to believe" that the Stauffers would follow Triad's advice.

- c. The Stauffers did not know that Triad was recommending Sam Brownback to the PACs. The Stauffers were told they had no control over how the PACs would use their contributions and the Stauffers did not know how the PACs would use their contributions.

Further, the OGC Brief erroneously states that the "Stauffers knew that Triad was recommending Sam Brownback to donors", id. at 20, and mischaracterizes Ruth Stauffer's deposition transcript at pages 88 and 92 through 93 in an attempt to show that the Stauffers knew Triad was recommending Sam Brownback to donors. See OGC Brief at 20. The OGC brief states:

This information [the Triad PAC list], when combined with the knowledge that Triad was endorsing Sam Brownback, would have told the Stauffers that each of the listed PACs shared Triad's view of their son-in-law's candidacy and that each of the PACs were [sic] likely to work together to support Sam Brownback. . . . Triad, which represented itself as having organized a coalition of PACs, would have no reason not to follow its usual practice of revealing to donors – in this case, the Stauffers – its contacts and knowledge regarding specific PACs' views of the Brownback candidacy.

Id. at 20 (emphasis added). That the OGC Brief recommending probable cause must revert to such speculative language demonstrates the lack of actual evidence supporting its argument.

Specifically, the OGC Brief fails to refute (or even mention) the Stauffers' sworn testimony that they did not have any knowledge about how the PACs would use their contributions. For example, Mrs. Stauffer testified under oath that Triad personnel and counsel informed her that the Stauffers did not have any "say-so" concerning the PACs' use of their contributions.

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Id. at 114. The Stauffers testified repeatedly under oath that they had no knowledge concerning how the PACs would use their monies. J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01. The OGC Brief presents no evidence to refute the Stauffers' sworn testimony, because there is none. Accordingly, the Stauffers did not know that Triad was recommending Sam Brownback to the PACs.

Given the Stauffers' lack of experience in PAC giving, the OGC Brief's reliance on a statement that a PAC agrees with Triad's "targeting strategy" in fact has no specific meaning much less support for the OGC's theory that it conveyed support for the Brownback Committee. The Stauffers understood Triad to be an organization that provided advice to individuals on aiding conservative causes. J. Stauffer Depo. Tr. at 82-84; R. Stauffer Depo. Tr. at 41. Discussion of targeting strategies and maximizing contributions may make sense to some, but not to the Stauffers whose lack of experience prompted them to seek and receive assurances that their contributions to the PACs recommended by Triad were legal and proper. J. Stauffer Depo. Tr. at 72-75; R. Stauffer Depo. Tr. at 40 & 44-45⁴. There is no evidence in the OGC Brief to the contrary.

- d. The Stauffers had no knowledge of Carolyn Malenick or Triad's contacts with the PACs, the information was not shared with them, and they did not direct Triad to contact the PACs.

Despite the OGC's assertions to the contrary, OGC Brief at 18-19, the record shows that the Stauffers did not have any knowledge concerning Triad's operations, such as how the organization generated revenue. J. Stauffer Depo. Tr. at 51-53; R. Stauffer Depo. Tr. at 97-98 & 117. The Stauffers were never invoiced or billed for the advice they received from Triad. J. Stauffer Depo. Tr. at 54-55; R. Stauffer Depo. Tr. at 50. Against this background, the OGC Brief continues

⁴ In fact, the record shows that the overriding factor in the Stauffers' determination of the amount they would give to each recommended PAC was the applicable contribution limits for that PAC and for the Stauffers for the year. J. Stauffer Depo. Tr. at 79.

to weave a tangled web of assumptions and innuendoes to allege that the Stauffers had knowledge of Carolyn Malenick's contacts with the PACs. For example, the OGC Brief states:

Given the stipulation set forth above [CMS & Triad stipulation], it is likely that Carolyn Malenick advised the Stauffers about all of the relationships and contacts which would have provided assurances that a substantial portion of their [Stauffers] funds would go to the Brownback Committee.

OGC Brief at 19 (emphasis added). As stated before, other than the receipt of the Stauffers' contributions, the OGC Brief contains no evidence that the Stauffers discussed their PAC contributions with the PACs or that they were informed by Triad that their PAC contributions would be used to support the Brownback Committee. Even if Triad or Ms. Malenick instructed or requested that the PACs use the Stauffers' contributions to support the Brownback Committee, the Stauffers have testified, and the OGC has not refuted, that the Stauffers had no knowledge of this, the information was not shared with them, and that they did not direct Triad to do so. See J. Stauffer Depo. Tr. at 96-97, 102, 104 & 112-14; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01. In fact, the Stauffers testified repeatedly in response to OGC questioning that Triad personnel consistently informed them that their PAC contributions, once they left their possession, were out of their control and beyond their ability to influence the use to which they were put. J. Stauffer Depo. Tr. at 96-97, 102, 104 & 112-14; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01.

- e. The OGC Brief takes out of context quotations from the Stauffers' deposition transcripts to create a false inference that the Stauffers had knowledge that a substantial portion of their PAC contributions would be used to support Sam Brownback's candidacy. When analyzed in context, and in conjunction with the rest of their testimony, the quotations demonstrate that the Stauffers had no knowledge that the PACs would use their monies to contribute to the Brownback Committee.

The OGC Brief rests on out-of-context quotations from the Stauffers deposition transcripts. For example, page 22 of the OGC Brief misuses a quotation to support the erroneous assumption that Ruth Stauffer knew the Stauffers' PAC contributions would be used to support the Brownback

Committee. However, when read in context, it is apparent that Mrs. Stauffer did not understand the questions, see R. Stauffer Depo. Tr. at 119 and, if taken as the OGC Brief suggests, contradicts all her other testimony that the Stauffers did not know how the PACs would use their contributions. Id. at 83-84, 87 & 100-01.

The OGC Brief also takes a quotation from John Stauffer's deposition out of context. OGC Brief at 23. The OGC Brief states that Mr. Stauffer's testimony concerning the transmittal of PAC contributions to Triad via overnight mail is evidence that he knew their PAC contributions would be used to support the Brownback Committee. This falsely implies that the checks were sent by overnight mail so that those monies could be contributed to the Brownback Committee before the August 6, 1996 primary election. See OGC Brief at 23. However, Mr. Stauffer actually testified:

J. Stauffer Depo. Tr. at 111. Mr. Stauffer testified repeatedly that he and his wife had no knowledge of or control over how the PACs would use their contributions. Id. at 84, 95, 97, 102 & 106. Mr. Stauffer also testified that he was aware of other primaries around the country taking place in the same time frame. Id. at 111.

- f. The Stauffers did not discuss their contacts with Triad or PAC contributions with anyone because of privacy beliefs, not because they had something to hide.

The OGC Brief also attempts to color the Stauffers legitimate contributions as nefarious activity because they did not discuss their activity with anyone on the Brownback Committee or with their daughter or son-in-law. See id. at 24-25. The OGC even attempts to cast this fact as unusual:

Mrs. Stauffer testified that she didn't tell her daughter or son-in-law about the PAC contributions because it wasn't any of their business, and also because "they might have said, you have given enough money." The notion that the Stauffers had "given enough" seems odd given both that the Stauffers had recently sold their reported multi-million dollar

interest in Stauffer Communications, and that the Stauffers had not made a significant number of large political contributions prior to the Triad-recommended PAC contributions.

OGC Brief at 25 n. 15 (emphasis added). The Stauffers testified that they did not discuss their PAC contributions with anyone because they believed it was no one else's business. R. Stauffer Depo. Tr. at 88. Indeed, the Stauffers stopped participating in the political process through political contributions because of the negative publicity generated by the complaint filed with the Commission. See J. Stauffer Depo. Tr. at 121; R. Stauffer Depo. Tr. at 118. There was no attempt to hide any activity by the Stauffers, they knew the contributions would be publicly reported. But the Stauffers believed that their contributions were something they wanted to do, but not talk about.

3. The burden of proof lies with the OGC to support its probable cause recommendation and not with the Stauffers to prove their innocence. The use of assumptions and innuendoes by the OGC in a probable cause brief unfairly shifts the burden of production and the burden of persuasion to the Respondents.

The OGC has wrongly attempted to shift both the burden of production and the burden of persuasion to the Stauffers. Throughout the 26-page brief, the OGC uses only inferences and assumptions to support its probable cause recommendation, rather than basing its recommendation on the factual record it had well over four years to develop. Statements and arguments such as "the evidence in this investigation strongly indicates that . . .", OGC Brief at 5, "it is reasonable to infer . . .", *id.* at 13, "neither of the Stauffers could offer any explanation why . . .", *id.* at 21, and "[i]t strains credibility to believe . . .", *id.* at 26, are not a substitute for the evidence that should be required to justify a probable cause recommendation.

An example that goes to the heart of the weakness of the OGC's case is its attempted burden shifting and innuendo on pages 24 and 25 during its discussion of the "apparent secrecy" of the Stauffers concerning their PAC contributions.

If the Stauffers simply wanted to contribute to conservative candidates, it seems likely that their son-in-law, a sitting member [sic] of Congress, could have provided them with advice as to specific candidates and causes.

OGC Brief at 25 (emphasis added). Basing a probable cause recommendation on these types of statements demonstrates the lack of evidence against the Stauffers, and the OGC Brief's failure to meet its burden of proof. It is not the Stauffers' burden to show their innocence – if they wanted to participate, but not ask their son-in-law about their contributions, that is their business and certainly within the law. It is the OGC's burden to produce sufficient evidence that the Act and Commission regulations were violated. Yet, the OGC Brief presents no factual evidence -- as it must -- that:

- the Stauffers were involved, much less aware of, any discussions between Triad's Carolyn Malenick and the nine PACs;
- the Stauffers had any knowledge about how the PACs would use their contributions; and
- the Stauffers contributed to the PACs for any reason other than their interest in supporting conservative causes.

Indeed, the sworn, on-the-record evidence is all contrary to the OGC's theories, assertions and assumptions. The OGC Brief confuses its desire for evidence against the Stauffers with the irrefutable evidence presented in the form of sworn testimony, including the reasonable measures taken by the Stauffers (e.g., seeking assurances from Triad's counsel about the legality of Triad and PAC contributions) that directly contradicts the probable cause recommendation.

4. The Stauffers' version of events has been consistent throughout this investigation.

One of the more questionable insinuations in the OGC Brief is its speculation that the Stauffers' version of events has not been consistent. *Id.* at 21-22. To the contrary, the Stauffers' version of events has been consistent. What is "unusual" about this argument is its demonstration of OGC misreading the factual record. First, the Stauffers have stated in both affidavits and sworn testimony that their reason for contributing to the PACs was to support like-minded conservative causes. J. Stauffer Aff. ¶¶ 3 & 5; R. Stauffer Aff. ¶¶ 3 & 5; J. Stauffer Depo. Tr. at 71-72; R. Stauffer

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Depo. Tr. at 36, 41, 48, 54, 55, 85 & 110-11. Second, the Stauffers have stated in both affidavits and sworn testimony that they had no knowledge concerning how their PAC contributions would be used by the PACs. J. Stauffer Aff. ¶¶ 5-8; R. Stauffer Aff. ¶¶ 5-8; J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01. Third, the Stauffers have stated in both affidavits and sworn testimony that they did not control or direct how their contributions to the PACs would be used by the PACs. J. Stauffer Aff. ¶¶ 5-8; R. Stauffer Aff. ¶¶ 5-8; J. Stauffer Depo. Tr. at 84, 95, 97, 102 & 106; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01. Finally, the Stauffers have stated in both affidavits and sworn testimony that they did not discuss their PAC contributions with either Sen. Sam Brownback or anyone working on his campaign. J. Stauffer Aff. ¶ 10; R. Stauffer Aff. ¶ 10; J. Stauffer Depo. Tr. at 48-49, 96 & 104; R. Stauffer Depo. Tr. at 39, 124 & 136. There is no evidence in the OGC Brief to the contrary.

5. The Stauffers did not knowingly and willfully violate the Act and Commission regulations.

Based on the factual record presented in these matters, the Stauffers' contributions to the PACs during the 1996 election cycle cannot constitute knowing and willful violations. The factual record before the Commission contains no evidence indicating that the Stauffers acted in defiance, or with a knowing, conscious and deliberate flaunting of the Act. Even if the Commission was to find that the Stauffers violated the Act and Commission regulations (and there is no basis in law or in fact to make such a finding), the record shows the Stauffers did not make the PAC contributions with defiance or disregard of the consequences of their actions or with full knowledge of all of the facts and a recognition that their actions were prohibited by law. See American Federation of Labor and Congress of Industrial Organizations, 628 F. 2d 97, 101 (citations omitted); 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The record shows that the Stauffers had a good faith basis to believe that they were not violating the Act and Commission regulations governing contribution limits from individuals to PACs and campaign committees. J. Stauffer Depo. Tr. at 72-75; R. Stauffer Depo. Tr.

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at 40 & 44-45. The Stauffers' contributions to the Brownback Committee did not exceed the \$1,000 per election limit and the contributions to the PACs did not exceed the \$5,000 per calendar year limit. OGC Brief at 4 & 6. Moreover, the Stauffers specifically asked Triad personnel and its legal counsel whether contributing to the PACs Triad recommended in the manner they recommended contributing was legal and proper and whether Triad itself was a legal and proper organization. J. Stauffer Depo. Tr. at 72-75; R. Stauffer Depo. Tr. at 40 & 44-45. Triad's counsel assured the Stauffers that contributing to the PACs and Triad's activities was legal and proper. J. Stauffer Depo. Tr. at 72-75; see also R. Stauffer Depo. Tr. at 40 & 44-45. It was only after receiving those assurances (including from Triad's counsel) that the Stauffers made their contributions to the PACs. Further, the Stauffers were not party to or aware of any contacts between Triad and the PACs that received their contributions concerning contributions from the PACs to the Brownback Committee. See J. Stauffer Depo. Tr. at 96-97, 102, 104 & 112-14; R. Stauffer Depo. Tr. at 83-84, 87 & 100-01. Accordingly, there is no basis in law or fact to find that the Stauffers knowingly and willfully violated the Act and Commission regulations.

III. CONCLUSION.

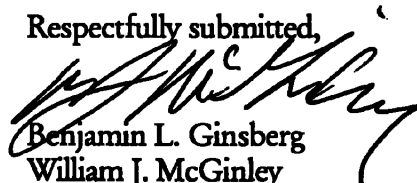
The review of the law and factual record in these matters leads to the inescapable conclusion that the Stauffers' PAC contributions complied with the Act and Commission regulations. The Stauffers state in sworn testimony that they did not have any knowledge that their PAC contributions would be used by the PACs to contribute to the Brownback Committee. The OGC Brief contains no evidence to the contrary. Even if Triad or Carolyn Malenick contacted the PACs to urge them to contribute to the Brownback Committee, the Stauffers state in sworn testimony that they were not a party to those discussions nor were they aware of those discussions. The OGC Brief contains no evidence to the contrary.

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A fair-minded review of the OGC Brief and its absence of substantiated evidence (as opposed to "assumptions") shows that the OGC has failed to meet its burden for a probable cause finding against the Stauffers, much less a knowing and willful violation. For these reasons, the Stauffers respectfully request that the Commission carefully examine the OGC Brief and the testimonial and documentary evidence developed during the course of this four-year investigation. This examination will reveal an absence of actual evidence so that the OGC's probable cause recommendation must fail.

Accordingly, the Respondents respectfully request that the Commission find no probable cause to believe that the Stauffers violated the Act and Commission regulations and dismiss these matters as applied to the Stauffers.

Respectfully submitted,



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