



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 8, 1998

VIA CERTIFIED MAIL

Robert Cone

Elverson, PA 19520

RE: MURs 4568, 4633 and 4634

Dear Mr. Cone:

On June 2, 1998, the Federal Election Commission found reason to believe that you violated 2 U.S.C. § 441a(a)(1)(c) and §441a(a)(3), which are provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). 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 intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

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.

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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. For your information, we have enclosed a brief description of the Commission's procedures.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures:

Subpoena to Produce Documents and Order to Submit Written Answer
Factual and Legal Analysis
Designation of Counsel Form
Procedures

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Robert Cone

MURs: 4568, 4633 and 4634

I. GENERATION OF THE MATTERS

The respondent was added to MURs 4568, 4633 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

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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"). As discussed below, Robert Cone appears to have been one of the principal sources of funds for Triad, and is reported to have made contributions to Triad of at least \$175,000, and possibly up to \$600,000.

A. THE APPLICABLE LAW

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).

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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

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).

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 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. 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.²

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

² 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).

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.

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.³ 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.*

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 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

³ 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.

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.⁴

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

⁴ 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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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.⁵

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

⁵ 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.

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)

Bad Points about Campaign - (Subjective analysis of weaknesses)

Prospect for Victory - (Assessment of Candidate’s Chance to Win)

Action - (Follow-up Actions for Triad personnel)

Conclusion (Recommendation on support for campaign)

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

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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 help Republican candidates whose election or re-election was purportedly endangered by organized labor spending.⁶

⁶ 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 501(c)(4) organization. *See* 10/7/96 Triad Fax Alert.

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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.*

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.⁷

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, 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 also November 3, 1997 TIME

⁷ 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.

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.⁸ 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 regarding the Hill Committee's needs. See Spreadsheet on cost of different Triad-managed advertising campaign attached to Senate Report.

⁸ 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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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 Docking. CREF reportedly spent \$410,000 on pro-Brownback/anti-Docking 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 urge 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).⁹

⁹ 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.

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 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)).¹⁰ 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.

¹⁰ 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.*

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.

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.

C. ANALYSIS

The Commission has made reason-to-believe findings against Robert Cone based on the theory that Triad, either acting separately or acting together with CR and CREF, constitutes a political committee which received excessive contributions. As set forth below, the Commission has found reason to believe that Robert Cone may have violated 2 U.S.C. § 441a(a)(1)(c) by making contributions to Triad in excess of the \$5000 limit on contributions to a political committee. The Commission also finds reason to believe that Robert Cone may have violated 2 U.S.C. § 441a(a)(3) by making contributions in excess of the \$25,000 yearly limit on total contributions by an individual.

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

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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.

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

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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.

b. Excessive Contributions

From the information the Commission has obtained to date, including press reports and exhibits to the Senate reports, it appears 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 has found reason to believe that Robert Cone may have violated 2 U.S.C. § 441a(a)(1)(c) by making contributions to Triad in excess of the \$5000 limit on contributions to a political committee. The Commission also finds reason to believe that Robert Cone may have violated 2 U.S.C. § 441a(a)(3) by making contributions in excess of the \$25,000 yearly limit on total contributions by an individual.

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