

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of	)	
Robert Riley, Jr.	)	MURs 4568, 4633, 4634 and 4736
Bob Riley for Congress and	)	
Hughel Goodgame, as treasurer	)	

**GENERAL COUNSEL'S BRIEF**

**I. STATEMENT OF THE CASE**

MUR 4633 was generated by a complaint filed with the Federal Election Commission on April 30, 1997 by James Anderson, and contained specific allegations against the above-captioned respondents. The respondents were internally generated in MURs 4568, 4634 and 4736 on the basis of information ascertained by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities. Because each of these four MURs relate to different activities of Triad Management Services, Inc. ("Triad"), the Commission decided that MURs 4568, 4633, 4634 and 4736 would be investigated together.<sup>1</sup>

On June 2, 1998, in connection with MURs 4568, 4633 and 4634, the Commission found reason to believe that, during the 1996 election cycle, Robert Riley, Jr. violated 2 U.S.C. § 441f, or in the alternative, § 441a(a)(1). These reason-to-believe findings were made in connection with \$5000 in contributions Mr. Riley made to five different political action committees ("PACs") in May 1996, which were shortly followed

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<sup>1</sup> Beginning in approximately January 1995, and continuing up to, and shortly after, the incorporation of Triad in May 1996, Triad President Carolyn Malenick operated a similarly-named sole proprietorship called Triad Management Services ("Triad"). This brief will use the word "Triad" to refer collectively to both entities.

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by each of the PACs making identical or nearly identical contributions to the Bob Riley for Congress Committee, the principal campaign committee of Robert Riley, Jr.'s father. The Commission also found reason to believe that the Bob Riley for Congress Committee and Hughel Goodgame, as treasurer ("the Riley Committee") had violated 2 U.S.C. § 441f and § 434, or in the alternative, § 441a(f) and § 434 by knowingly accepting these contributions and by failing to accurately report their true source, and that Congressman Bob Riley had violated 2 U.S.C. § 441f, or in the alternative, § 441a(f) by knowingly accepting these same contributions. On February 23 and July 20, 1999, the Commission internally generated, and made the same reason-to-believe findings against the respondents herein in connection with MUR 4736.

For the reasons set forth below, this Office is prepared to recommend that the Commission find probable cause to believe that Robert Riley, Jr. knowingly and willfully violated 2 U.S.C. § 441a(a)(1) by making excessive contributions to the Bob Riley for Congress Committee. This Office also is prepared to recommend that the Commission find probable cause to believe that that the Bob Riley for Congress Committee and Hughel Goodgame, as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting excessive contributions from Robert Riley, Jr.

## **II. FACTUAL AND LEGAL ANALYSIS**

### **A. THE APPLICABLE LAW**

The Federal Election Campaign Act of 1971, as amended, provides that no person 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).

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11 C.F.R. § 110.1(h), entitled "*Contributions to committees supporting the same candidate,*" provides that:

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

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

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

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

(emphasis added). In order to avoid excessive contributions after a donor has given the maximum amount to a candidate or his authorized committee, each of the three conditions set forth in 11 C.F.R. § 110.1(h) must be satisfied. The Act further provides that a candidate or political committee shall not knowingly accept a contribution in violation of § 441a(a)(1) of the Act. 2 U.S.C. § 441a(f).

"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. John A. 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, 214-15 (5<sup>th</sup> Cir. 1990). A knowing and willful violation may

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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. FACTS**

The essential facts in this matter revolve around two sets of political contributions; the first, by checks dated May 9, 1996, from Robert Riley, Jr to each of five PACs, and the second from each of the five PACs to the Riley Committee, the principal campaign committee of Mr. Riley's. In tabular form, this is the pattern:

**Robert Riley, Jr. Contributions to PACs and  
PAC Contributions to the Riley Committee**

<b>Name of PAC</b>	<b>Reported Receipt of Contribution</b>	<b>Amount of Contribution</b>	<b>Date of PAC Contribution to Campaign</b>	<b>Amount of PAC Contribution to Campaign</b>
Conservative Campaign Fund	5/09/96	\$1000	5/29/96	\$1000
American Free Enterprise	5/13/96	\$1000	5/23/96	\$1000
Citizens Allied for Free Enterprise	5/22/96	\$1000	5/24/96	\$1000
Faith, Family & Freedom	5/23/96	\$1000	5/24/96	\$500
Eagle Forum	7/12/96 <sup>2</sup>	\$1000	6/16/96 7/29/96 9/11/96	\$1000 \$500 \$500

<sup>2</sup> This Office has not been able to determine why Eagle Forum did not report receiving Mr. Riley's May 9, 1996 check until July 12, 1996.

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Although Mr. Riley appears to have never communicated directly with any of the five PACs, the evidence in this investigation strongly indicates that, through his communications with Triad and Carolyn Malenick, Mr. Riley knew that each of the five PACs would use his funds to make contributions to his father's campaign.

1. Background on Triad

Triad is a political consulting firm established and controlled by Carolyn Malenick. Triad describes itself as a for-profit company whose business is to charge fees for providing specialized information, advice and services to conservative Republican donors in connection with their political and charitable contributions.

In advertising itself to potential clients during 1995-1996, Triad used letterhead which described itself as acting on behalf of a "Privatized Republican National Coalition" and, in various "Fax Alert" newsletters, portrayed itself as working closely with the Republican Party leadership to expand and protect the Republican majority in Congress during the 1996 election cycle. *See e.g.*, Triad Fax Alert dated 2/5/96, FA16-17. A Triad promotional brochure and a widely-distributed videotape stated that Triad's "Goals" for 1996 were to (1) Return House Republican Freshmen; (2) Increase by 30 the Republican House Majority; [and] (3) Increase Senate Republicans to a Filibuster-proof 60." *See* Triad Brochure, TR10 000402-403; Transcript of 1996 Triad Videotape.

Triad claims to have contacted approximately 250 Republican congressional candidates during the 1996 election cycle in order to conduct a "political audit" of their campaigns. During these political audits, Triad obtained detailed information about the individual campaigns' plans, projects and needs, and selected particular candidates for a "Top Tier" that it deemed worthy of support from conservative donors. Triad's political

audits were overseen by Carlos Rodruguez, an experienced political consultant, who personally visited more than fifty of these campaigns to assess their viability.

## 2. Triad's Relationships with PACs

Information obtained as part of the investigation indicates that, during 1995-1996, Triad contacted numerous conservative organizations, membership groups and individual activists to encourage them to establish or resurrect dormant political action committees ("PACs") for the purpose of supporting conservative Republican congressional candidates in the upcoming 1996 elections. Representatives from several of these organizations and PACs stated during the investigation that Ms. Malenick approached them about forming a "coalition" or "network" of political action committees that could work together to support selected Republican candidates and offset the support that labor unions were expected to provide to Democratic candidates. As described in more detail later in this brief, several new PACs were formed in the Fall of 1995 as the result of Triad's efforts.

In a Triad promotional video, Carolyn Malenick stated that by working with political action committees and other donors, Triad would be able to provide "rapid fire" support to conservative Republican candidates in tightly contested races where additional funds were needed in a short amount of time. *See* Transcript of 1996 Triad Videotape. In this same video, a representative from a conservative group with a PAC stated that Triad "is bringing us all [conservative organizations] together . . . [s]o that all of us together, working together, can become a powerful force for change." *Id.* In its brochure, Triad stated that one of its activities was "[w]orking with conservative political action

committees and issue organizations for efforts to maximize their separate funding sources to accomplish common objectives." *See* Triad Brochure, TR10 000402-403.

Information obtained as part of the investigation indicates that, during 1995-1996, Triad representatives met on a regular monthly, and later bi-weekly, basis with a number of conservative organizations with PACs regarding their plans to support specific candidates. Carlos Rodriguez Dep. Tr. at 42-45. Various PAC representatives stated that they understood these inquiries as being intended to help Triad evaluate whether the PACs would be supporting the type of candidates that would be favored by its donor network. In at least one instance Triad asked a PAC what candidates it would be "pre-disposed to playing if the \$\$ [sic] were there. This will help us with our clients." *See* 7/16/96 Note on Fax Cover Sheet from Carolyn Malenick to Brent Bozell, Conservative Victory Committee.

Triad also informed selected conservative PACs that, given the ideology of candidates that they were willing to support, Triad would recommend that members of its donor network contribute to the PAC. During the Summer and Fall of 1995, Triad asked certain PACs to provide a one paragraph synopsis describing their philosophy and activities. *See, e.g.*, PAC Subpoena Responses. Triad compiled these descriptions into a "Political Action Committees" memorandum ("PAC Memorandum") that it began distributing to potential donors. JS 000002-04.<sup>3</sup>

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<sup>3</sup> In a later version of its promotional materials that were distributed in 1997, Triad stated that it could provide donors with a "[m]atrix of currently active, conservative, federally registered, like-minded political action committees who have been identified and agreed to consult on targeted candidates and campaigns." *See* TR10 000531.

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The Triad PAC memorandum, which described thirteen PACs, including the five PACs to which Mr. Riley contributed, stated that

Triad PAC Memorandum (emphasis added). Triad also maintained a database which kept track of the candidates to which each of the groups listed on its PAC Memorandum had contributed during the 1996 election cycle. *See* Triad Combined Candidate Status Report - Coalition Overview, KI 00572-590.

During its investigation, both Triad and Ms. Malenick entered into factual stipulations with the Commission which included:

6.7 Triad/CSM and Triad Inc. *informed individuals to whom it made contribution recommendations that it had discussions and conversations with representatives from the PACs as to the candidates and type of candidates they had targeted for their support.* Triad also asked if the PACs' list of candidates for their support might be expanded should the PAC receive additional funds.

Stipulations of Fact with Triad and Carolyn Malenick (emphasis added).

3. Background on Bob Riley for Congress and Robert Riley, Jr.

In 1996, Ashland, Alabama businessman Bob Riley, now Congressman Riley, ran for an open congressional seat in Alabama's Third Congressional District. Bob Riley had not previously run for any elected post except for one term as a councilman for Ashland town council twenty-five years earlier. He was virtually unknown outside of his district



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prior to obtaining the most votes in a seven candidate Republican primary held on June 4, 1996, and winning a run-off primary election held three weeks later. His son, Robert Riley, Jr., an Alabama attorney, testified that during the primary, "the campaign organization was largely my family." Riley Dep. Tr. at 36. He further testified that the seven candidates in the Republican primary "all had fairly similar positions on the major issues." Riley Dep. Tr. at 53. *See also* Riley Dep. Tr. at 87 ("[i]n a Republican primary, everybody's issues are basically the same. You won't find much difference in one Republican than the other") and at 53 (with regard to whether he had any sense that any of the seven primary candidates were more conservative or more liberal, "Ben Hand might have tried to come across as being a little more conservative than the others....But when you are trying to win a Republican primary, it is hard to out conservative the other guy").

Robert Riley, Jr. was heavily involved in his father's 1996 campaign, and held the title of "Advisor." *See* Bob Riley for Congress Subpoena Response. Mr. Riley testified that among other things, he took responsibility for trying to raise funds from various national groups and organizations from outside of the congressional district. Riley Dep. Tr. at 32-33, 45-46, 49-50 and 70-71. By May 9, 1996, Mr. Riley, his wife, and other family members had each contributed the maximum allowable amount to his father's campaign. The bulk of the primary campaign was financed by the candidate.<sup>4</sup>

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<sup>4</sup> According to the Committee's Twelve Day Pre-Run-off Report (May 16-through June 5, 1996, the day after the primary), contributions received year-to-date totaled \$90,959. The candidate himself had loaned the campaign \$116,000 during the same time period. During the May 16-June 5, 1996 period, total contributions totaled \$23,006; the candidate's loans to his campaign during that time-period totaled \$72,000.

4. Triad Contacts with the Riley Campaign

According to an affidavit from Billie Joe Johnson, Jr., campaign manager for the 1996 Bob Riley for Congress Committee, he and the candidate visited Washington, D.C. in March 1996. According to Mr. Johnson, "Congressman Joe Scarborough [a college friend of Robert Riley, Jr.]. . . recommended Triad as a good contact that we should make in our Washington visit with PACs and other political groups." He further states his belief that they met Carolyn Malenick at the Triad Office and were asked to "fill out an application/information type form." He continues, "she may have been present at a lunch meeting later that day of 15-20 PACs at which we (and other candidates) stopped by." According to Mr. Johnson, "Our understanding was that Triad was a consulting company that assessed the political viability of conservative candidates in order to recommend to PACs and to their individual clients whether to contribute to such candidates."

At some point after the Bob Riley for Congress Committee's first contact with Triad, Robert Riley, Jr. contacted Carolyn Malenick to promote his father's campaign. Mr. Riley testified that he hoped that Triad would help spread the word about the Bob Riley for Congress campaign among various PACs that listened to its advice. Riley Dep. Tr. at 76-77. While contacting Triad to urge it to use its influence to convince PACs to contribute to his father's campaign, Robert Riley, Jr. also made contributions, by checks dated May 9, 1996, of \$1000 each to five PACs recommended to him by Triad.<sup>5</sup>

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<sup>5</sup> Triad also produced copies of cover letters, dated May 10, 1996, transmitting Mr. Riley's contribution checks to each of the five PACs.

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Shortly thereafter, according to travel records submitted to Triad, Mr. Rodriguez visited Alabama on May 13-14, 1996 to audit the Bob Riley campaign for Triad.<sup>6</sup> On May 22, 1996, Triad sent a "96 Primary Election Alert" re "June 4 Primaries" to its potential donor list recommending contributions to three Congressional candidates including Bob Riley. See 96 Primary Election Alert - May 22, 1996, FA1-FA6. An attached "Congressional District Analysis" urges "[w]e must be certain that Bob Riley is the Republican nominee." The Alert states that all checks should be forwarded to Triad.

As detailed above, after receiving contributions from Robert Riley, Jr., each of the PACs sent a contribution to the Bob Riley for Congress Committee. In various written statements and in his deposition testimony, Mr. Riley has consistently denied that he was promised or guaranteed by Carolyn Malenick or Triad that any of his PAC contributions would be contributed, in turn, to his father's campaign. As discussed below, however, Mr. Riley has given conflicting or incomplete statements concerning the circumstances surrounding his contributions.

##### 5. The Five PACs

Carolyn Malenick and Triad had ongoing relationships with each of the PACs to which Mr. Riley contributed in 1996. In fact, Ms. Malenick controlled one of these PACs--Sacramento, California-based American Free Enterprise PAC ("AFE"). AFE was formed in the summer of 1995, but its treasurer resigned later that year, before the PAC had received or made any contributions. At some point in late 1995, Carlos Rodriguez,

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<sup>6</sup> Based on Triad travel records, it appears that the Bob Riley for Congress Committee was the only Republican primary campaign in the Alabama Third District which received an onsite visit from Mr. Rodriguez.

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Triad's political director, recruited David Bauer, an accountant who acted as a professional treasurer for a number of political committees, to serve as AFE's new treasurer. David Bauer Deposition Transcript ("Bauer Dep. Tr.") at 12. At his deposition, Mr. Bauer testified that Mr. Rodriguez described AFE as Carolyn Malenick's PAC. Id. Further, Mr. Bauer testified that all of the contributions received by AFE came through Triad and that all AFE decisions about candidate contributions were made by Ms. Malenick, whom he regarded as the PAC Director. Bauer Dep. Tr. at 16, 20, 27, 32-33, 46-47, 85-87. Mr. Bauer also testified that he simply performed the ministerial or administrative function of depositing donor checks from Triad in AFE's account and writing AFE checks to the federal political campaigns selected by Ms. Malenick, and that he had no discretion in terms of selecting candidates to support. Bauer Dep. Tr. at 48, 55, 85-87. Mr. Bauer said that the normal routine was for him to receive a Triad Fax Alert, and within a day or so to receive a phone call from either Ms. Malenick or her assistant, Triad Finance Director Meredith O'Rourke, instructing him to make a contribution to the candidate or candidates discussed in the Fax Alert. Bauer Dep. Tr. at 38-39.

Carolyn Malenick and Triad also were involved in the formation and operation of Citizens Allied for Free Enterprise ("CAFE"). CAFE was formed by David Gilliard and his political consulting firm, Gilliard and Associates. Gilliard, who formerly was a partner in a consulting firm with Carlos Rodriguez and later acted as a vendor for Triad political advertising campaigns, testified that Carolyn Malenick contacted him with the request that he form a new PAC to help support Republican candidates. He further testified that Ms. Malenick told him that Triad would do all of the fundraising for his PAC from its donor network, and that Triad also would provide his new PAC (CAFE)

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with research and recommendations as to the federal candidates that it deemed worthy of contributions. Mr. Gilliard testified that all of the contributions received by CAFE came through Triad. Gilliard Dep. Tr. at 24. Mr. Gilliard testified that Ms. Malenick had told him that he was not bound by her recommendations and that he had autonomy in deciding which candidates CAFE would support. Gilliard Dep. Tr. at 22-23. Notwithstanding Mr. Gilliard's claim of autonomy, all of the federal candidates to which CAFE contributed had been recommended by Triad. *See generally*, CAFE Subpoena Response and Gilliard Dep. Tr. at 26 (only purported exceptions were actually endorsed by Triad).<sup>7</sup> Mr. Gillard also acknowledged that CAFE probably would not have contributed to Mr. Riley's campaign absent Triad's recommendation. Gilliard Dep. Tr. at 131-132. Notwithstanding this acknowledgment of Triad's influence in CAFE's decisions, Mr. Gilliard testified that he did not link CAFE's receipt of a contribution from Robert Riley, Jr. to the PAC's contribution to Bob Riley for Congress campaign two days later. Gilliard Dep. Tr. at 128-129.

Triad also played a role in encouraging the formation of Faith Family & Freedom PAC ("FFF"), which was registered with the Commission in November 1995. Carlos Rodriguez testified that he encouraged Congressman David McIntosh, who he knew from prior campaign work, to form FFF. Rodriguez Dep. Tr. at 114-116. Congressman McIntosh appeared in the Triad Videotape presentation to potential donors, and stated

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<sup>7</sup> Notably, sixteen of the twenty-three candidates to which CAFE contributed during 1995-1996, including all of the contributions made prior to contested primaries, also received contributions from AFE. Further, Mr. Gilliard acknowledged helping Ms. Malenick coordinate the contribution activities of AFE and CAFE by sending a memo to Mr. Bauer with Ms. Malenick's instructions as to the candidates who were to receive AFE contributions. Gilliard Dep. Tr. at 75-77, Bauer Dep. Tr. at 35-36.

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"I'm absolutely committed to TRIAD." *See* Transcript of 1996 Triad Videotape. FFF treasurer Devin Anderson was Congressman McIntosh's Chief of Staff, and FFF was a frequent recipient of contributions forwarded by Triad and a frequent contributor to candidates recommended by Triad.<sup>8</sup> FFF's 1998 response to a Commission subpoena and order to answer written questions, during 1996, its treasurer would speak to Ms. Malenick at least two or three times per month regarding upcoming congressional elections, and the PAC would seek information from Triad prior to contribution decisions being made by the PAC. Although Mr. Anderson testified that FFF PAC did not make a practice of getting involved in Republican primaries, FFF PAC made exceptions to this policy in making contributions in at least six contested Republican primaries, including Bob Riley's, where Triad had recommended a particular candidate. *See* 1996 FFF Disclosure Reports, Anderson Dep. Tr. at 85-95. Although Mr. Anderson testified that he did not remember receiving any advice from Triad regarding these contested primaries, he also could not explain what caused FFF to pick Bob Riley from the field of seven Republicans running in the Alabama Third District 1996 Republican primary. Anderson Dep. Tr. at 106-109. Notwithstanding evidence that FFF made its contribution to the Bob Riley campaign the day after receiving a Triad-forwarded contributions check from Robert Riley, Jr., Mr. Anderson testified that he did not recall viewing the two events as being related. Anderson Dep. Tr. at 143-152.

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<sup>8</sup> During December 1995, FFF received \$28,650 of its total \$33,650 in receipts through Triad. FFF also contributed to many of the same candidates who received contributions from AFE and CAFE after being "recommended" in a Triad Fax Alert.

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Conservative Campaign Fund ("CCF") treasurer Peter Flaherty had a relationship with Triad through a contract by which Triad managed a non-profit organization called Citizens for Reform that Mr. Flaherty had created to broadcast candidate-specific political "issue education" advertising during the 1996 election cycle. Information obtained as part of the investigation indicates that in 1995-1996, CCF received \$32,500 in contributions through Triad's donor network.<sup>9</sup> See CCF Disclosure Reports and Triad Contribution Records. CCF's response to a Commission subpoena and order to answer written questions indicates that Mr. Flaherty recalls speaking to Ms. Malenick at least two or three times per month, and to Triad Finance Director Meredith O'Rourke approximately once a week. CCF's subpoena response further indicates that Mr. Flaherty received various written communications from Triad which recommended making contributions to specific candidates, including Bob Riley. A review of CCF's receipts indicate that the PAC also made contributions to many of the same candidates in contested primaries that were recommended by Triad, and who also received contributions from AFE, CAFE and FFF. At his deposition, Mr. Flaherty claimed not to recall any conversations with Triad or Ms. Malenick regarding the Riley campaign. Flaherty Dep. Tr. at 113. In CCF's subpoena response and again at his deposition, Mr. Flaherty stated that CCF contributed to the Riley campaign because [Riley's] primary opponent, whose name he did not recall, was a moderate.<sup>10</sup> Flaherty Dep. Tr. at 113.

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<sup>9</sup> The Triad-forwarded contributions comprised 47% of CCF's itemized receipts (those over \$200) during 1995-1996.

<sup>10</sup> Mr. Flaherty's representation as to the reason for CCF's contributions is called into question by the deposition testimony of Robert Riley, Jr., who testified that all seven of the candidates in his father's 1996 Republican primary were equally conservative.

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The fifth PAC to which Mr. Riley contributed in May 1996 was Eagle Forum, an organization for which Ms. Malenick had performed work in 1994. Although the Eagle Forum's subpoena response denied that its employees had anything other than social contacts with Triad or Ms. Malenick, two former Eagle Forum staff members contacted during the investigation remember having periodic contacts with Triad regarding the receipt of contribution checks from Triad donors, and also receiving Triad Fax Alerts which discussed various 1996 congressional campaigns.

For reasons that remain unclear, Eagle Forum did not report receiving the Riley, Jr. contribution until July 12, 1996, after both the primary and the run-off.<sup>11</sup> Eagle Forum contributed \$1000 to the Riley campaign in June 1996, which was after the date on which the Riley, Jr. contributions were reportedly forwarded by Triad, but prior to the date of their reported receipt. Eagle Forum also made two additional \$500 contributions to the Riley campaign in late July and September 1996.

6. Ms. Malenick's Fifth Amendment Assertion

Carolyn Malenick asserted her Fifth Amendment privilege against self-incrimination by affidavit rather than submit to a deposition in this matter. Therefore, this Office was not able to obtain her version of what she told Robert Riley, Jr. regarding

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<sup>11</sup> This Office was not able to discover if Triad held back that contribution or passed along the others during May, when the other PACs reported receiving the contributions.



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the likelihood that various PACs would contribute his funds to his father's campaign.<sup>12</sup>

### C. Analysis

The evidence gathered in the investigation indicates that there is probable cause to believe that Robert Riley, Jr. knew that all, or a substantial portion, of his contributions to the five PACs would find their way to his father's campaign. Any analysis must begin with the fact that all five PACs to which Mr. Riley contributed thereafter contributed to Bob Riley for Congress. In four cases, the PACs made their contributions within a few days after their reported receipt of the contributions. In all but one case, the PACs contributed the same amount as Mr. Riley's contribution. Under any circumstances, this would be a striking coincidence, and even more so, given that the candidate was virtually unknown outside his district, and was one of seven conservative Republicans running in a House primary. Other factors, however, dispel that explanation. Triad had ongoing relationships with each of the five PACs, which included soliciting their views on making contributions to specific candidates. Triad also was in contact with at least some of the

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<sup>12</sup> Ms. Malenick's assertion of the Fifth Amendment also prevented obtaining her testimony whether she was quoted correctly in a press report on an October 1997 question and answer session regarding allegations raised in a 1997 Senate Governmental Affairs Committee Investigation. According to the article, Ms. Malenick reportedly:

acknowledged that in a few cases, the candidates themselves steered their own donors to her organization. Malenick would then match these donors with political action committees (PACs) who were likely to support that same candidate, in effect allowing the donor to give more money to the candidate - albeit indirectly and with no coordination, she said - than the maximum they would otherwise be able to give.

"Triad's Stealth Campaigns Elect Lawmakers," The Hill, October 8, 1997, p. 43.

PACs regarding their views as to Bob Riley's candidacy. Further, the evidence indicates that Triad advised Robert Riley, Jr. to contribute his funds to those specific PACs.

As detailed above, Triad had a relationship with all five of the PACs, and advertised the fact that the five PACs agreed with its "targeting strategy" for the 1996 congressional elections. Further Triad was in regular contact with each of the five PACs regarding their plans to support various congressional candidates, and what candidates the PACs would support as additional funds became available to them. *See Stipulations of Fact with Triad and Carolyn Malenick at Paragraph 6.7.*

At the same time that it was discussing the PACs' contribution plans, Triad also was providing each of the PACs with contribution checks from its contributor network. In the case of AFE and CAFE, Triad was the PACs' only source of funds, and in the case of FFF and CCF was a major source of the PACs' funds.

The treasurer of AFE has admitted that Carolyn Malenick actually directed all of the PAC's contributions, including the contribution to the Bob Riley campaign. Thus, Ms. Malenick knew with certainty that AFE would contribute Mr. Riley's funds to the Bob Riley campaign. Further, even assuming that Ms. Malenick had not obtained explicit guarantees from each of the other PACs, Triad's relationships with each of these groups, which included providing the funding for prior contribution activity which resulted in support for Triad-recommended candidates, would have given Ms. Malenick assurance that CAFE, FFF and CCF would contribute Mr. Riley's funds to the Bob Riley campaign.

The evidence suggests that Triad advised Mr. Riley on the merits of these particular PACs, and would have had no reason not to reveal its influence with these particular PACs. Triad's influence with the PACs is reflected in the PAC Memorandum

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which claims that each of the five PACs agreed with Triad's targeting strategy for the 1996 elections. Notwithstanding Mr. Riley's deposition testimony that he did not remember receiving this document, there is evidence that it was transmitted to Mr. Riley. First, it appears to have been Triad's usual practice to provide the PAC Memorandum to potential PAC donors. Second, in a September 16, 1997 interview with Senate Governmental Affairs Committee investigator Jerry Campana, Mr. Riley reported receiving a Triad brochure and other materials which described the PACs to which he contributed.

In addition to the evidence of the contribution pattern itself and Triad's relationship with the PACs, there are the testimony and prior statements of Robert Riley, Jr., himself. In the absence of testimony from Carolyn Malenick, who asserted her Fifth Amendment privilege regarding her communications with both Mr. Riley, the only person who can describe the conversations with Ms. Malenick is Mr. Riley himself. Therefore, the consistency and logic of his version of events is important in evaluating the likelihood that, when he gave contributions to the five PACs by checks dated May 9, 1996, he knew that a substantial portion of those contributions would, in turn, go to his father's campaign.

In a notarized statement to the Commission, dated July 28, 1998, Mr. Riley states his belief that he first heard of Triad when he learned that Carlos Rodriguez, Triad's political consultant, was coming to Alabama to assess Bob Riley's campaign. He further states that "[a]t some point after Carlos visited Alabama, I spoke with either Carolyn Malenick or Meredith O'Rourke" of Triad. While not recalling how many times he spoke to Ms. Malenick or Ms. O'Rourke, he thought that there could not have been more than

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ten brief conversations on how the Riley campaign was succeeding. He recalled them asking "later in the campaign" if there were people in Riley's District who might be interested in contributing to PACs supporting conservative candidates that could be potential winners in November.

"Shortly thereafter," Mr. Riley states, "I decided to make a contribution of \$5,000 to PACs recommended by Ms. Malenick or Ms. O'Rourke."<sup>13</sup> According to Mr. Riley's July 28, 1998 statement, he made the contribution because "I was very grateful to Triad for its ongoing help and encouragement for my father's campaign, and I was greatly impressed by the PACs they recommended and the fact they supported conservative candidates." Mr. Riley's account is called into question, however, by the fact that he made his PAC contributions on May 9, 1996, a time by which, according to his own testimony, there had yet to be any ongoing help and encouragement to the Riley campaign. The Robert Riley, Jr. PAC contributions, in fact, even preceded the visit to the Bob Riley campaign by Triad consultant Carlos Rodriguez.

At his deposition on September 15, 2000, while not remembering whether he had first spoken to Carolyn Malenick before or after Carlos Rodriguez's May 13-14, 1996 Alabama visit, Mr. Riley did recall his impressions of that telephone conversation, and they are not consistent with feelings of gratitude for Triad's help. According to Mr. Riley, he was trying to "sell" Ms. Malenick on the viability of his father's campaign, but she was "kind of stand-offish, non-committal....[I]t was almost like I'm really busy,

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<sup>13</sup> As noted above, Ms. Malenick has asserted her Fifth Amendment privilege with regard to her conversations with Mr. Riley. Ms. O'Rourke testified that she cannot recall ever speaking to Robert Riley, Jr.

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and get to the point quick, I got to go....It was like she thinks I'm wasting her time, you know." Riley Dep. Tr. at 76-77. Again, while not remembering if he spoke to her before or after Carlos Rodriguez visited Alabama, Mr. Riley testified that he did not recall Ms. Malenick telling him before that visit that she was sending someone to assess the campaign. Riley Dep. Tr. at 77. Given this testimony, and then confronted at his deposition with the dates of his contributions and the date of Mr. Rodriguez' later visit, Mr. Riley's earlier statement that he made the PAC contributions because he was "grateful to Triad for its ongoing help and encouragement for my father's campaign," he acknowledged, "must have been incorrect in terms of the timing." Riley Dep. Tr. at 210.

The most plausible scenario is that Mr. Riley contacted Ms. Malenick and spoke to her at least once or twice before May 9, 1996 and Carlos Rodriguez's visit to Alabama on May 13-14, and that during one or more of those telephone conversations, they discussed Mr. Riley making PAC contributions. This scenario draws support from a memorandum of a telephone interview that Mr. Riley gave to Senate investigator, Jerry Campana, on September 16, 1997.

According to Mr. Campana's interview memorandum, Mr. Riley told him that it was probably Florida Congressman Joe Scarborough, "an old college buddy of Rob," who mentioned Carolyn Malenick and Triad as possibly being "able to help with Mr. Riley's candidacy." Robert Riley, Jr. reportedly then called Ms. Malenick, who reportedly told him that "Triad had a 'coalition' of PACs who were willing to help conservative Republican candidates, but only where they thought their money and support would be worthwhile." Mr. Riley reportedly told Mr. Campana that he believed he talked with Ms. Malenick approximately ten times before the June 4, 1996 primary. Reportedly, Mr.

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Riley "tried to convince Malenick that his father could win and that Triad and its coalition of PACs should support him." According to the Campane memorandum, "Malenick was noncommittal at first, she did not think Bob Riley was a viable candidate, but she did agree to "put the word out to our PACs" that Bob "Riley's candidacy was worth looking into....She also agreed to send a consultant to the Riley campaign to analyze it for Triad."

In the Campane interview, Mr. Riley correctly recalled that he spoke with Ms. Malenick prior to Mr. Rodriguez' Alabama visit. He reportedly told Mr. Campane that "[b]y April, [he] and other family members had 'maxed out' on their individual contributions to their father's campaign." According to the Campane memorandum, Ms. Malenick asked that Mr. Riley send her a list of other maxed-out Riley campaign contributors who she would like to work with "as potential clients to help the Republican cause in general." Mr. Riley reportedly "mentioned that he had approximately \$5,000 that he wanted to contribute to the Republican cause," and Ms. Malenick then reportedly "helped him select particular PACs to contribute to." In "late April or early May," the Campane memorandum states, Mr. Riley "donated \$1,000 to five PACs that Malenick helped select."

The conclusion that Mr. Riley knew that a substantial portion of his contributions would go to his father's campaign is boosted by the evidence in the Campane memorandum that indeed there had been discussion, by that time, of the Triad-affiliated PACs supporting the Bob Riley campaign. Further, according to the interview memorandum, Mr. Riley acknowledged that Carolyn Malenick helped him select the recipient PACs. With the possible exception of Eagle Forum, it appears Carolyn

Malenick steered Mr. Riley to the PACs over which she had considerable influence, and which she knew would use Mr. Riley's funds to contribute to his father's campaign.

At his deposition, however, Mr. Riley departed from his earlier reported interview statements, and sought to de-emphasize Ms. Malenick's assistance in selecting the PACs, claiming that he himself chose the recipients from a much larger group. He testified, "I said, tell me some PACs that you might recommend and she named probably 10, 12, and I picked five of them...." Riley Dep. Tr. at 160. He further testified, "And I said, tell me about some of these PACs and she ran through about 10. I wrote some down on a piece of paper. I may have thought about it overnight, did it the next morning." He testified that he was familiar with Eagle Forum, and he knew the name David McIntosh, and he thought he had heard of Faith Family and Freedom, "[b]ut I just picked them." (Riley Dep. Tr. at 167-168. At his deposition, Mr. Riley could not recall specifically what Ms. Malenick had told him about any of the PACs or, except for Eagle Forum and Faith, Family and Freedom PAC, pick out the names of the PACs to which he contributed from a document listing them. Riley Dep. Tr. at 171. By testifying that it was he, and not Ms. Malenick, who chose the PACs to which he contributed, it appears that Mr. Riley attempted to undercut the conclusion that he knew that she could successfully direct his contributions to his father's campaign. But his deposition testimony is not consistent with his previous interview, nor is it credible that he simply "chose" those particular five PACs, especially AFE and CAFE, out of a much larger universe.

Prior to his deposition, Mr. Riley's two responses to the Commission simply indicated that he "chose" or had "decided" to make the PAC contributions, as if the idea

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had emanated from him.<sup>14</sup> For the first time, at his deposition, Mr. Riley stated that Ms. Malenick put "the sell" on him. Riley Dep. Tr. at 164. According to Mr. Riley, he and Ms. Malenick discussed not only his father's campaign, but fears that the Republicans might lose the House in 1996. Riley Dep. Tr. at 157-158. According to Mr. Riley, Carolyn Malenick,

hit me with the big hard question, well, if you really believe that, you know, are you helping any other candidates? I was like, well, no. She is like, well, if your father was elected, he is going to want to have a majority and not only that, if you are maxed out and you can't do anything else, that doesn't prevent you from helping other candidates....I couldn't argue about that....I told her I would like to be a part of that. I got some money. I have done everything I can for my father. My wife has done everything she can do for my father and I would like to be a part of that. I don't know where to do it though.

Riley Dep. Tr. 158-161. Then, according to Mr. Riley, instead of asking Ms. Malenick to suggest other candidates to whom he might directly contribute, he followed her suggestion to give money to PACs. Other than this single instance, which took place after he had contributed the maximum legal amount to his father's campaign in a tightly contested primary, Mr. Riley had never before nor since given money to PACs. Riley Dep. Tr. 165-166.

Unlike many of Triad's wealthy donors, it appears that Mr. Riley did not have readily available cash to expend. In fact, Mr. Riley testified that the \$5,000 he contributed came from his savings. Riley Dep. Tr. at 192. Mr. Riley testified that during his father's campaign, he had a wife and child to support, and that in addition to working as an associate at a law firm, he was teaching "at that time for some extra money." Riley

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Dep. Tr. at p. 33. Mr. Riley also testified that he did not think he had a cell phone that he used on campaign business in 1996, explaining that he had a cell phone in his car, "and it was a source of contention between me and my wife at one point because I was being paid an associate's salary. . . ." Riley Dep. Tr. at 106. Even under those circumstances, Mr. Riley claims that he spent \$5,000 in savings at that point in time to support candidates other than his father. In addition, Mr. Riley admitted that when he contributed to the PACs through Triad, the only relationship he had with Ms. Malenick was over the phone and that he did not know her "real well."<sup>15</sup> Given the other information about his financial situation, it is doubtful that Mr. Riley would trust Ms. Malenick's advice as to how to distribute \$5000 of his savings to PACs with which he had little or no familiarity, and no assurances as to whom the PACs would contribute.<sup>16</sup> Mr. Riley's PAC contributions are only consistent with his testimony as to his financial situation if he knew where the money was ultimately going.

Finally, the apparent secrecy with which Mr. Riley conducted his relationship with Triad raises an inference that he had something to hide. Mr. Riley did not discuss his ongoing relationship with, much less his PAC contributions made through, Triad with his

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<sup>15</sup> Because Ms. Malenick asserted her Fifth Amendment privilege against self-incrimination in this matter, this Office was unable to ask her about a statement attributed to her in the press, in which she claimed in effect to be a longtime friend of the Riley family at the time of Mr. Riley's contributions. See April 1997 Wall Street Journal article attached to MUR 4633 Complaint. Mr. Riley's testimony seems to indicate that Ms. Malenick's reported claim of a prior friendship with his family was contrived.

<sup>16</sup> Theoretically, these PACs could have contributed his funds to his father's primary opponents. The only other explanation that makes any sense is that Mr. Riley made the contributions in an effort to encourage Triad to send Mr. Rodriguez to Alabama to assess the campaign, so that Triad might possibly recommend it in the future to potential Triad donors and PACs. However, Mr. Riley disavowed this scenario. Riley Dep. Tr. at 209-210).

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father's own campaign manager. In an affidavit to the Commission dated July 28, 1998, Billie Joe Johnson, Jr., the Riley Campaign Manager, averred that "[t]o my knowledge, the only Committee staff that had contact or communicated with Triad personnel during the campaign were myself and Donna Suggs, the campaign office manager." However, not only did Mr. Riley admit he spoke to Ms. Malenick approximately 10 times before the primary, he testified that he called Carlos Rodriguez periodically throughout the campaign to report on recent events, and that probably anytime he called Mr. Rodriguez, he would call Carolyn Malenick. Riley Dep. Tr. 113, 130. He was not able to estimate the number of these calls as over or less than 50. *Id.* at 131.

In an affidavit dated May 23, 1997, Mr. Johnson averred that "[i]t became evident in the final days before the primary and into the Run-off period that the campaign was receiving substantial support from the PAC community. I believed a significant portion of that support was the direct result of Triad's recommendations or the indirect result of early influential PAC support that Triad had helped facilitate (including the endorsement of the National Rifle Association prior to our heavily contested primary election)." <sup>17</sup>

In this affidavit, Mr. Johnson also avers that "Rob Riley [Jr.] and I may have discussed at that time the fairly obvious help in raising funds from PACs that Triad was then providing." Despite such a possible conversation, "[u]ntil publication of the recent

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<sup>17</sup> In fact, in the Committee's Report to the FEC covering the period from May 16-June 5, 1996 (the primary was on June 4, 1996), aside from the NRA PAC and the Alabama Realtors PAC, the only reported PAC contributions were from four of the PACs to which Mr. Riley had made his contributions through Triad. Mr. Riley testified that he did not know in 1996 that the PACs to which he contributed donated to father's campaign. Riley Dep. Tr. at 205. This is not credible in view of Mr. Riley's active involvement in fundraising for his father's campaign.

news story that is the basis for the complaint in this matter, however, I was unaware Rob Riley, Jr. had contributed to any PACs in 1996.” If Mr. Riley had no concerns about the legality of the PAC contributions that he made through Triad, it seems highly unusual that he did not disclose them, or his numerous ongoing contacts with Triad, to his father’s campaign manager, especially since it appears that Triad played such an important role in Bob Riley’s winning campaign.<sup>18</sup>

Finally, Congressman Riley stated in an affidavit filed in response to the Complaint in MUR 4633, that he was aware before the primary that his son “was grateful to Triad for their recommendations to donors regarding our campaign, and he was impressed with Triad’s consulting services and that he was considering making contributions to conservative PACs that had been recommended by Triad as supportive of good candidates across the country.” Affidavit of Congressman Bob Riley (emphasis added). As we have shown, however, at the time Robert Riley, Jr. was considering making his PAC contributions, the only Triad recommendations to donors regarding the Riley campaign that he could have been grateful for were those he knew would accompany his own contributions.

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<sup>18</sup> After the election, Triad reprinted what it represented as a thank-you note from Congressman Riley, which stated:

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). Notably, the Bob Riley for Congress Committee also hired Mr. Rodriguez as its general political consultant for its 1998 re-election campaign.

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In sum, the evidence strongly indicates that Mr. Riley knew that all, or a substantial portion, of his funds would, as they did, end up with his father's campaign. Since these funds, when viewed along with Mr. Riley's direct contributions, exceed the \$1000 per election maximum, *see* 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.1(h), Mr. Riley made excessive contributions to Bob Riley for Congress in 1996. The totality of the evidence, as set forth above, indicate that Mr. Riley's violations of the law were knowing and willful.

Accordingly, this Office is prepared to recommend that the Commission find probable cause to believe that Robert Riley, Jr. knowingly and willfully violated 2 U.S.C. § 441a(a). Based on the same evidence, and given Mr. Riley's involvement and position with his father's campaign, this Office also is prepared to recommend that Bob Riley for Congress Committee and Hughel Goodgame, as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting these excessive contributions.

### III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that Robert Riley, Jr. knowingly and willfully violated 2 U.S.C. § 441a(a)(1).
2. Find probable cause to believe that Bob Riley for Congress Committee and Hughel Goodgame, as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f).

Date 2/22/01

  
Lois G. Lerner  
Acting General Counsel