



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 8, 1998

VIA CERTIFIED MAIL

Citizens for the Republic
Education Fund
c/o Carolyn Malenick
Triad Management Services
53 D Street, S.E.
Washington, D.C. 20005

RE: MURs 4568, 4633 and 4634

Dear Ms Malenick:

On June 2, 1998, the Federal Election Commission found reason to believe that Citizens for the Republic Education Fund ("CREF") violated 2 U.S.C. § 433, § 434, § 441a(a)(1) and § 441b, 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

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Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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

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

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

RESPONDENTS: Citizens for the Republic
 Education Fund

MURs: 4568, 4633 and 4634

I. GENERATION OF THE MATTERS

After reviewing the complaints, the responses, and publicly available material relating to MURs 4568, 4633 and 4634, the Commission believes that the specific incidents recounted 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 investigate MUR 4568 jointly with MUR 4633 and MUR 4634, and the respondent was added to all three MURs 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).

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, CR and CREF came to the aid of a substantial number of Republican congressional

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campaigns (more than 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. Specifically, 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.

In sum, the press reports state that Triad, CR and CREF received several million dollars in contributions and made several million dollars in expenditures/in-kind contributions for the purpose of influencing various 1996 federal congressional elections. If true, the allegations summarized above suggest that there may have been a pattern of activity on the part of Triad, CR and CREF which may have had the effect of circumventing the registration and reporting requirements, as well as the contribution prohibitions and contribution limitations, established by the Federal Election Campaign Act of 1971, as amended, ("the Act").

A. THE APPLICABLE LAW

1. Political Committee Status

The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a political committee as any committee, club, association, or other group of persons which receives "contributions" or makes "expenditures" aggregating in excess of \$1,000 during

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a calendar year. 2 U.S.C. § 431(4)(A). For the purposes of the Act, the term "person" is defined as including "an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons . . . " 2 U.S.C. § 431(11).

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

In Buckley v. Valeo, 424 U.S. 1 (1976) ("Buckley"), the Supreme Court, in order to avoid overbreadth, construed the Act's references to "political committee" in such a manner as to prevent their "reach [to] groups engaged purely in issue discussion." The Court recognized that "[t]o fulfill the purpose of the Act [the designation 'political committee'] should encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." 424 U.S. at p. 79.¹

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).

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In FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) ("MCFL"), the Supreme Court affirmed its reasoning in this aspect of Buckley. In analyzing whether a non-profit, non-stock, incorporated advocacy organization that had made more than \$1000 in independent expenditures to influence federal elections was a political committee, the Court noted that the "central organizational purpose" of MCFL, which it found to be issue advocacy, did not meet the Buckley definition of a political committee, i.e., that it was not controlled by a candidate and did not have as a major purpose the nomination or election of a candidate. 479 U.S. 252, n.6. The MCFL Court also noted, however, that if the defendant organization's expenditures on behalf of a candidate or candidates should "become so extensive" that campaign activity became its "major purpose," then the organization would be deemed a political committee. 479 U.S. at 262. *But see* Akins v. FEC, 101 F.3d 731 (D.C. Cir. 1996); cert. granted, FEC v. Akins, 117 S.Ct. 2451 (1997)(argued, Jan. 14, 1998)(D.C. Circuit concluded that the "major purpose" test for political committees should only apply to independent expenditures, and that with regard to contributions, political committee status would be triggered whenever any organization made contributions in excess of \$1,000).

2. Reporting Requirements

The Act requires any organization which qualifies as a political committee to register with the Commission and file periodic reports of all receipts and disbursements. 2 U.S.C. § 433 and 434. In upholding the Act, the Supreme Court noted that "disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing

large contributors to the light of publicity. This exposure may discourage those who would use money for improper purposes." Buckley v. Valeo, 426 U.S. 1, 9 (1976).

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

3. Limits on Contributions

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

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

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calendar year. This statutory provision also limits to \$5,000 the amount that a qualified multicandidate committee may contribute to a candidate or their authorized committee.³

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

4. Prohibition Against Corporate Contributions

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

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

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

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

B. FACTS

1. Triad, CR and CREF

Triad, CR and CREF all appear to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fund-raiser for various political groups and campaigns, including, *inter alia*, Oliver North's 1994 bid for the US Senate. At different times, Ms. Malenick reportedly has described herself as the President and Chief Executive Officer of Triad; the Director of Triad; and the Chief Operating Officer of Triad. *See, e.g.*, 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News and Undated Triad Advertisement.

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

Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors, providing research and analysis of upcoming elections, and dispensing advice on how to

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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.

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

Although CR and CREF purport to have been founded by Peter Flaherty and Lyn Nofziger respectively, it has been widely reported that CR and CREF are run by Triad. *See, e.g.,* 10/29/97 Minneapolis Star-Tribune article; and 10/8/97 The Hill article. For example, reports of interviews by Mr. Nofziger have stated that Ms. Malenick approached him to be the titular head of CREF, and that he had virtually nothing to do with the CREF

political advertising campaigns. See Online U.S. News article; 5/5/97 Los Angeles Times article. Indeed, Ms. Malenick responded to news reports regarding Triad's alleged control of CR and CREF by acknowledging that Triad had "management contracts" to run various CR and CREF projects. See November 19, 1997 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Further indications of Triad's apparent control of CR and CREF can be found in documents attached as exhibits to the 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"). The exhibits 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").

To date, neither the press reports nor any other information received by the Commission in connection with these matters reflect any activity by CR and CREF other than the advertising aired by these two organizations during the last few weeks prior to the 1996 federal elections. One newspaper account reported that a Triad spokesman stated that the CR and CREF ad campaigns were intended as a direct response to the AFL-CIO's "issue ad" campaigns in the districts of vulnerable Republican candidates. See 10/29/97 Minneapolis Star-Tribune article. The Triad spokesman also is reported to

have said that "[i]f there had been no AFL-CIO campaign, there would have been no Citizens for the Republic Education Fund issue campaign." *Id.*

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

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.

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 followed 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 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 reports attached to Senate Report.

Indeed, in each of the three campaigns specifically addressed by the MURs that are the subject of this Factual and Legal Analysis, it appears that a Triad representative personally met with the candidate and/or staff to discuss the specific strengths and weaknesses of their campaign, and to learn what help the campaign needed to successfully compete in the upcoming election. *See, e.g.,* Triad Audit Reports. The audit

reports 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."

3. 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

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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

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

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

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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 listing congressional 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.*

One 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. The documents released as exhibits to the Senate Report indicate that Senator Brownback’s campaign also was one of the campaigns on which Triad performed a political audit. *See* Brownback Audit Report.

C. ANALYSIS

The Commission has made reason-to-believe findings under two alternative theories regarding the status of CREF; one as a political committee which failed to

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register and report, and which also may have made excessive contributions, in violation of 2 U.S.C. §§ 433, 434, 441a(a)(1); and the other as a corporation which made prohibited expenditures and contributions in violation of 2 U.S.C. § 441b.

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

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

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

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Reports of statements by Triad leadership and documents discussing Triad's goals that appear as exhibits to the Senate Report further suggest that Triad's and, by virtue of the control established by its management contract, CREF'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 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 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 CREF advertisements either mentioned a Republican congressional candidate for the broadcast area in a favorable manner, or mentioned that Republican candidate's Democratic opponent in a negative manner. Further, the information available to the Commission at this time appears to indicate that most, if not all, of the advertisements ran within the sixty day period prior to the 1996 federal elections. Finally, the available information raises questions as to whether CREF may have coordinated its political advertising with the beneficiary candidates and campaign committees through the "political audits" conducted by Triad.

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

In addition to the possibility that the activities of CREF satisfy the "major purpose" test, it appears that CREF, either acting separately or acting together with Triad and/or CR, 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). CREF may have qualified for political committee status either when it began to receive large contributions or when they actually began to make expenditures to prepare and broadcast political advertisements described above which appear to have been for the purpose of influencing federal elections in the Fall of 1996.

Based on the information discussed above, the Commission finds reason to believe that CREF, acting either separately or acting together with Triad and/or CR, constitutes a political committee which has failed to register and report as such, in violation of 2 U.S.C. § 433 and § 434.

b. **Excessive Contributions**

From the information the Commission has obtained to date, it appears that CREF made numerous coordinated expenditures during the 1996 election cycle which constitute in-kind contributions to the beneficiary candidates and committees, and that many of these in-kind contributions exceeded the \$1000 per election limit imposed by the Act. 2 U.S.C. § 441a(a)(7) and § 441a(a)(1)(a).⁷ Given what is known about the costs

⁷ Because CR never registered with the Commission as political committees, they do not meet the requirements to qualify as a multicandidate committee which can make contributions of up to \$5000. 2 U.S.C. § 441a(a)(2).

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

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

2. Theory Two: Corporate Contributions

In addition to finding that there is reason to believe that CREF, either acting separately or acting together with Triad and/or CR, is a political committee, with attendant registration and reporting responsibilities and contribution limitations, the available information suggests that CREF violated 2 U.S.C. § 441b by making prohibited corporate contributions and expenditures in connection with a federal election.

The Commission believes that the information currently available raises questions as to whether CREF made prohibited corporate contributions or expenditures in connection with the CREF advertising programs.

As discussed above, the available information raises questions as to whether CREF spent several million dollars on political advertising that was broadcast to the general public during the 1996 election cycle. Further, it has been reported that many, if not all, of the Triad-managed CREF advertisements, including the pro-Brownback/anti-Docking advertisements, mentioned a candidate for federal office in a favorable manner or the candidate's opponent in an unfavorable manner, and that these communications

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were made in an election-related context. Finally, based on documents attached to the Senate Report, it appears that some, if not all, of the CREF advertising campaigns were coordinated with the beneficiary campaigns through Triad's political audit process.

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

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