



FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 8, 1998

VIA CERTIFIED MAIL

Bob Riley for Congress Committee
and Anthony Humphries, as treasurer
c/o Robert Alan Dahl, Esq.
1156 15th Street, N.W.
Washington, D.C. 20005

RE: MURs 4568, 4633 and 4634

Dear Mr. Dahl:

On May 5, 1997, the Federal Election Commission notified your client, Bob Riley for Congress Committee and Anthony Humphries, as treasurer,¹ of a complaint, designated as MUR 4633, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of this complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaints, information supplied by your client and other sources, as well as information obtained in the normal course of its supervisory responsibilities, the Commission, on June 2, 1998, found reason to believe that Bob Riley for Congress Committee and Anthony Humphries, as treasurer, violated 2 U.S.C. § 434, § 441a(f), § 441b and § 441f. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office along with your response to the enclosed Subpoena to Produce Documents and Order to Submit Written Answers within 30 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General

¹ Donna Suggs was the treasurer of Bob Riley for Congress at the time the respondents were notified of the complaint in MUR 4633.

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Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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

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

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

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Enclosures:

Subpoena to Produce Documents and Order to Submit Written Answer
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Bob Riley for Congress Committee
and Anthony Humphries, as treasurer¹

MURs: 4568, 4633 and 4634

I. GENERATION OF THE MATTERS

MUR 4633 was generated via a complaint filed by James Anderson. 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 4633 jointly with MUR 4568 and MUR 4634, and the respondent was added to these MURs based on information ascertained by the Commission in the normal course of its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2).

II. FACTUAL AND LEGAL ANALYSIS

During the latter part of 1996 and throughout 1997, there were a number of press accounts concerning the activities of Triad in connection with the 1996 federal elections.

¹ Donna Suggs was the treasurer of Bob Riley for Congress Committee at the time the respondent was notified of the complaint in MUR 4633.

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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 twenty-five), including the Bob Riley for Congress Committee, after learning of their needs through a process it referred to as a "political audit."

The assistance that was reportedly provided by Triad came in several different forms. First, 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. Second, 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.

If true, the allegations summarized above suggest that there may have been a pattern of activity on the part of Triad 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"). In connection with this activity, it appears that the Bob Riley for Congress Committee may have received either excessive or prohibited contributions, and also may have failed to accurately report certain contributions.

A. THE APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended ("the Act"), provides that no person, including a political committee, may contribute more than \$1,000 per election to any candidate for federal office or his authorized committee. 2 U.S.C.

§ 441a(a)(1). The Act also limits to \$5,000 the amount that a qualified multicandidate committee may contribute to a candidate or their authorized committee.²

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.³ See Advisory Opinion 1988-22.

The Act also prohibits a contributor from attempting to hide a contribution to a candidate or committee by making the contribution in the name of another person.

2 U.S.C. § 441f. Specifically, the Act prohibits (1) making a contribution in the name of

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).

³ The Triad Fax Alerts 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).

another; (2) knowingly permitting one's name to be used to effect such a contribution; and (3) knowingly accepting such a contribution. *Id.* In addition, no person may knowingly help or assist any person in making a contribution in the name of another. 2 U.S.C. § 441f, 11 C.F.R. § 110.4(b)(1)(iii).

11 C.F.R. § 110.(h), entitled "*Contributions to committees supporting the same candidate*," provides that:

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

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

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

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

The Act further provides that a candidate or his authorized committee may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

The Act also requires any organization which qualifies as a political committee, including the authorized committee of a candidate, to file periodic reports of all receipts and disbursements with the Commission. 2 U.S.C. § 434.

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Notwithstanding certain narrow exceptions, the Act prohibits corporations from making contributions in connection with any election.⁴ 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).

Corporations also are prohibited from “facilitating the making of contributions” to candidates or political committees. 11 C.F.R. § 114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any federal election. *Id.* In this same context, a candidate, political action committee or other person is prohibited from knowingly accepting or receiving any prohibited contribution made or facilitated by a corporation. 11 C.F.R. § 114.2(d).

B. FACTS

1. Triad

Triad appears to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fundraiser 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

⁴ 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).

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the Chief Operating Officer of Triad. *See, e.g.,* 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News; Undated Triad Advertisement.

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

Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors, providing research and analysis of upcoming elections, and dispensing advice on how to maximize the impact of political contributions. *See* 9/28/96 National Journal article. In sum, Triad reportedly seeks to give wealthy contributors advice on how to get the “biggest bang for the buck” with their contributions by telling them which conservative candidates look like winners and which ones need help. *Id.*

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.*

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The political audit reports released as exhibits to the Final Report on Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns by the Senate Committee on Governmental Affairs ("Senate Report") 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 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.

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Indeed, it appears that as part of these audits, Triad met with representatives from each of the campaigns specifically addressed by the MURs, including the Bob Riley for Congress Committee, 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. Information obtained by the Commission suggests that in some instances, after completing an audit, Triad may have had ongoing contacts with some campaigns to assess their developing prospects and needs.

After completing its political audit on a campaign, including the Bob Riley for Congress Committee, 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 that may have resulted in excessive,

prohibited and/or unreported in-kind contributions to the Bob Riley for Congress Committee.

a. **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. See Triad Fax Alerts attached to Senate Report. The Bob Riley for Congress Committee is mentioned in several of the Triad Fax Alerts.

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).⁵

⁵ It has been reported that Ms. Malenick acknowledged that Triad would try and match donors referred to it by a candidate to PACs who were likely to support the same candidate, but denied that there was any coordination between the individual contribution to the PACs and the PAC contributions to the candidate. See October 8, 1997 Article in The Hill. Triad's advertisements seem to hint at this by stating that its "services to clients" include "[w]orking with conservative political action committees and issue organizations for efforts to maximize their separate funding sources to accomplish common objectives." See Triad Advertisement.

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For example, an excerpt from the Triad audit report of the campaign of Pete Sessions, which is attached to the Senate Minority report, states: "Both Sessions and [the campaign manager] clearly understand the Triad concept and will have a list of their maxed out donors for our inspection as soon as there is a call from Washington." *See* excerpt from Pete Sessions audit report. Another audit report states that "Ed Merritt has a number of maxed out donors who might want to be introduced to Triad. Towards that end, I have recommended over the telephone to [a Triad employee] that we check out their receptance." *See* Ed Merritt audit report. In what appears to be reference to the same practice, the Triad audit report on the Sam Brownback for US Senate campaign, notes that Triad will "[n]eed to work with potential clients that may be recommended by the Brownback campaign and with the finance chairman to ensure that Triad is properly advertised." *See* Brownback audit report.

In this context, the complaint in MUR 4633 alleges that Robert Riley, Jr., the son of Congressman Bob Riley, who had made the maximum legal contribution to his father's campaign, used Triad's services to make \$5000 in contributions to five PACs, which within a few weeks, and in some cases a few days, made identical or nearly identical contributions to the Riley Committee.

Name of PAC	Date of Contribution by Riley, Jr.⁶	Amount of Contribution by Riley, Jr.	Date of PAC Contribution to Campaign	Amount of PAC Contribution to Campaign
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 ⁷	\$1000	6/16/96 7/29/96 9/11/96	\$1000 \$500 \$500

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

⁶ The reported date of the contribution is based on the date of receipt reported by the PACs. The Commission has other information which suggests that Robert Riley, Jr. wrote the checks for all five contributions on May 9, 1996 and that Triad forwarded the five checks to the different PACs with cover letters dated May 10, 1996.

⁷ The current record does not offer any explanation for why the Eagle Forum did not report receiving this contribution until more than two months after it reportedly was mailed.

uncompensated consulting services to various congressional campaigns as part of the Triad audit process.⁸

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)).⁹ This note raises particular questions, because the audit reports and other information available to the Commission suggest that Triad stayed in regular

⁸ One example 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.

⁹ 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.*

contact with campaigns it had recommended after their political audit and up to the date of the election.

3. Triad's Service as a Conduit for Contributions

A final component of Triad's service to various congressional campaigns appears to involve assisting an unspecified portion of the donors it solicited in physically forwarding their contribution checks to the recipient campaign or organization. Indeed, Triad often concluded its Fax Alerts with the recommendations that recipients "[i]mmediately contact the TRIAD office so we know when to expect your checks and the amounts you will contribute. Because each race has unique dynamics, please contact TRIAD before determining which races to support. . . . PLEASE MAIL ALL CHECKS TO THE TRIAD OFFICES." See Triad Fax Alert titled "96 Primary Election Alert - July 18, 1996."

The complaint in MUR 4633 alleges that Triad forwarded \$5000 in donor checks from Robert Riley, Jr. to five different PACs. Further, the Commission has information which suggests that Triad performed this same service with other contributions.

In addition to forwarding checks from contributors to PACs, Triad also appears to have forwarded checks from PACs to campaign committees. For example, the Commission has information indicating that at least one PAC made a contribution to a congressional campaign committee "c/o Triad Management Services, Inc." See 10/17/96 Disclosure Report of Free Congress PAC.

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C. ANALYSIS

Given the allegations and information in each complaint, response, and additional information from public sources, the Commission has made findings against Bob Riley for Congress and Anthony Humphries, as treasurer, under two alternative theories regarding the status of Triad; one as a political committee which may have made excessive contributions in violation of 2 U.S.C. § 441a(a)(1); and the other as a corporation which may have made prohibited expenditures and contributions in violation of 2 U.S.C. § 441b.

1. Theory One: Triad as a Political Committee

From the information the Commission has obtained to date, it appears that Triad made coordinated expenditures in connection with its fundraising and consulting efforts during the 1996 election cycle which constitute in-kind contributions to Bob Riley for Congress, and that these in-kind contributions may have exceeded the \$1000 per election limit imposed by the Act. 2 U.S.C. § 441a(a)(7) and § 441a(a)(1)(a).¹⁰

The information available to date appears to raise questions as to whether Bob Riley for Congress and Anthony Humphries, as treasurer, accepted excessive in-kind contributions in the form of consulting services and coordinated expenditures and based on information learned through Triad's "political audit" of the Bob Riley for Congress campaign. 2 U.S.C. § 441a(a)(7). Given what is known about the costs associated with

¹⁰ Because Triad and CREF never registered with the Commission as a political committee or 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).

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these efforts, the available information suggests that if Triad is a political committee, Bob Riley for Congress and Anthony Humphries, as treasurer, may have accepted, and failed to report, in-kind contributions which exceeded the \$1000 limit established by the Act. 2 U.S.C. § 441a(f).

2. Theory Two: Corporate Contributions

If Triad ultimately is found not to be a political committee, the available information suggests that Triad and Carolyn Malenick, as the principal officer of Triad, either made or facilitated prohibited corporate contributions to various beneficiary candidates and committees, including Bob Riley for Congress, in violation of 2 U.S.C. § 441b.

The information currently available also raises questions as to whether Bob Riley for Congress and Anthony Humphries, as treasurer, accepted contributions that were facilitated by Triad using its corporate resources in violation of 2 U.S.C. § 441b and 11 C.F.R. 114.2(f). Corporations are prohibited from using their resources or facilities to engage in fundraising activities in connection with any federal election, other than specific exceptions made for separate segregated funds which do not apply in this case.¹¹ 11 C.F.R. § 114.2(f)(1).

¹¹ Examples of prohibited corporate facilitation include ordering or directing subordinates to plan, organize or carry out fundraising projects as part of their work responsibilities using corporate resources unless the corporation receives advance payment for the fair market value of such services. 11 C.F.R. 114.2(f)(2)(i)(A). Another example of prohibited facilitation is to use a corporate list of customers, clients or vendors to solicit contributions, unless the corporation receives advance payment for the fair market value of the list. 11 C.F.R. 114.2(f)(2)(i)(C). A third example of prohibited corporate facilitation is to collect and forward contributions earmarked for a candidate, unless such activity is conducted by a separate segregated fund. 11 C.F.R. 114.2(f); § 114.2(f)(3).

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The available information suggests that Bob Riley for Congress and Anthony Humphries, as treasurer, may have accepted in-kind contributions from Triad and other contributions that were facilitated by Triad. First, the Triad Fax Alerts appear to represent a fundraising effort designed to help different candidates for federal office that was planned, organized and carried out by Triad's employees, apparently at the direction of Triad management, and with corporate resources for which Triad apparently did not receive advance payment. Second, Triad sent fundraising solicitations for specific candidates named in the Triad Fax Alerts to a list of its clients without receiving advance payment for the use of that list. Finally, Triad may have acted as a corporate conduit by collecting and forwarding checks for different candidates mentioned in its Fax Alerts.¹²

The information available to date appears to raise questions as to whether Bob Riley for Congress and Anthony Humphries, as treasurer, accepted prohibited corporate contributions or facilitation in connection with the Triad fundraising efforts (including the Triad Fax Alerts) and consulting services, all of which appear to have been coordinated expenditures based on information learned through Triad's "political audit" of the Bob Riley for Congress campaign. 2 U.S.C. § 441a(a)(7).

¹² Triad generally claims that it was providing a service for which it was compensated, however, the current record does not contain evidence that Triad received compensation for the services it provided in connection with each campaign, much less compensation equivalent to the normal and usual charge for such services. Triad argues that it is exempt from the prohibition on acting as a conduit, because it was acting as an agent of the donor. The Commission believes that Triad's position is incorrect as a matter of law. The exemptions to the definition of the term "conduit or intermediary" provided for agents is limited to persons or entities that represent a recipient organization, and do not apply to groups purporting to represent a donor. See 11 C.F.R. § 110.6(b)(2)(i).

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**3. Indirect Contributions from Contributors Who Already
Had Made the Maximum Legal Contribution to a Committee**

The information currently available suggests that Triad may have been engaged in a pattern of activity through which it would encourage individual donors who had made the maximum contribution to a particular candidate to make contributions to political action committees ("PACs") which would then make identical or nearly identical contributions to the original donor's preferred candidate. The complaint in MUR 4633 appears to present an example of such a pattern of activity. This pattern of activity raises the possibility of violations of the Act by both Triad and other participants.

The available information raises questions as to whether some or all of these contributions, when funneled through a Triad-selected PAC, may constitute contributions made in the name of another person (the PACs) in violation of 2 U.S.C. § 441f. The available information also raises questions as to whether some or all of the contributions from the PACs were attributable to the original donor under 11 C.F.R. § 110.1(h), and thus constitute excessive contributions in violation of 2 U.S.C. § 441a(a)(1).

The following information from the complaint in MUR 4633 demonstrates how contributions from "maxed out" donors which appear to have been arranged by Triad may constitute violations of 2 U.S.C. § 441f and/or § 441a(a)(1). Some of the reasons for believing that the PAC contributions by Robert Riley, Jr. may have constituted contributions in the name of another person can be summarized as follows. As noted above, documents attached as exhibits to the Senate reports appear to indicate that Triad had a practice of asking campaigns that Triad decided to support for lists of their "maxed out" donors. At this time, there is no other explanation for the proximity in timing and

similarity in amounts between the Robert Riley, Jr. contributions to the PACs and the subsequent PAC contributions to the Riley Committee. In addition, Robert Riley, Jr. had no prior history of contributing to the PACs involved in this alleged scheme, and all of the PACs that received contributions from Robert Riley, Jr. subsequently contributed to the Riley Committee.

In MUR 4633, the original contributor (Robert Riley, Jr.), many of the conduit PACs, and the recipient campaigns (the Riley Committee) generally denied the allegation that original contributors funds had been funneled through the PACs to the recipient campaigns. Notwithstanding these conclusory denials, and for the reasons stated above, the Commission believes that there are substantial unanswered questions regarding these contributions.

Triad generally has asserted that the contributions its clients made to PACs were not earmarked for any particular campaign. Triad also generally claims that it does not submit earmarked contributions, and that it advises its clients that donations to multicandidate political committees cannot be directed for specific candidates or political committees.

It appears, however, that Triad may have had communications with both the original contributor (Robert Riley, Jr.) and with the PACs. Such communications would have created an opportunity for the PACs to have agreed to make a contribution to a Triad-recommended campaign (Bob Riley for Congress) in an amount identical to, or nearly identical to, the contributions that they received from a Triad client (Robert Riley,

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Jr).¹³ The available information suggests that this pattern of activity includes violations of the Act by Triad, the contributors, the conduit PACs, and the recipient campaign committees.

4. Conclusions

The available information suggests that Bob Riley for Congress and Anthony Humphries, as treasurer, may have violated the Act by accepting what can alternatively be characterized as excessive in-kind contributions or prohibited corporate contributions from Triad. The available information also suggests that Bob Riley for Congress and Anthony Humphries, as treasurer, may have violated the Act by accepting indirect contributions from Robert Riley, Jr., which alternatively can be characterized as contributions made in the name of another or as excessive indirect contributions.

A. In-Kind Assistance

The available information suggests that Bob Riley for Congress and Anthony Humphries, as treasurer, accepted fundraising assistance from Triad. Thus, Bob Riley for Congress and Anthony Humphries, as treasurer, appear to have violated the Act by accepting what can alternatively be characterized as excessive in-kind contributions or prohibited corporate contributions from Triad.

If Triad is found to be a political committee, the Riley Committee's failure to report the cost of the Triad fundraising assistance as an in-kind contribution may

¹³ The fact that all of the PACs involved in the communications subsequently did make identical, or nearly identical, contributions to the Triad-recommended political committees raises further questions about whether there was an agreement to make contributions in the name of another person.

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constitute a violation of 2 U.S.C. § 434. Further, based on the likelihood that Triad's fundraising and consulting assistance might be valued at more than \$1000, the Riley Committee may have violated 2 U.S.C. § 441a(f) by accepting excessive contributions might be valued at more than \$1000.

Under the alternative theory being put forth by this Office, Triad may have made prohibited corporate contributions to benefit the Riley Committee. By accepting such corporate contributions, Bob Riley for Congress and Anthony Humphries, as treasurer, may have violated 2 U.S.C. § 441b by accepting prohibited corporate contributions from Triad.

For the reasons set forth above, the Commission finds reason to believe that Bob Riley for Congress and Anthony Humphries, as treasurer, violated 2 U.S.C. § 434 by failing to report in-kind contributions from Triad. The Commission also finds reason to believe that Bob Riley for Congress and Anthony Humphries, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions; and under the alternative theory, that they violated 2 U.S.C. § 441b by accepting prohibited corporate contributions.

B. Indirect Contributions from Robert Riley, Jr.

For the reasons set forth above, the Commission finds reason to believe that Bob Riley for Congress and Anthony Humphries, as treasurer, violated 2 U.S.C. § 434 and § 441f by failing to accurately report and by accepting contributions from Robert Riley, Jr., that were made in the name of another person (the PACs).

Under the alternative theory that the PAC contributions to the Riley Committee were attributable to Robert Riley, Jr. under 11 C.F.R. 110.1(h), the Commission finds

reason to believe that Bob Riley for Congress and Anthony Humphries, as treasurer, violated 2 U.S.C. § 434 and § 441a(f) by failing to accurately report and by accepting excessive contributions from Robert Riley, Jr.

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