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In the Matter of)
John and Ruth Stauffer) **MURs 4568, 4633, 4634 and 4736**
Sam Brownback for US Senate and)
Alan Groesbeck, as treasurer)

GENERAL COUNSEL'S REPORT

I. ACTIONS RECOMMENDED: Find probable cause to believe that John and Ruth Stauffer (“the Stauffers”) violated 2 U.S.C. § 441a(a)(1) by making excessive contributions . find probable cause to believe that Sam Brownback for US Senate Committee and Alan Groesbeck, as treasurer, (“the Brownback Committee”) violated 2 U.S.C. § 441a(a)(1), but take no further action and send an admonishment letter; take no further action and close the file as to Senator Sam Brownback; take no further action and close the file as to five PACs involved with the Stauffer contributions; take no action at this time and leave the file open as to four other PACs involved with the Stauffer contributions; and authorize contingent suit authority.

II. BACKGROUND

The available information based on this Office’s investigation and public disclosure records shows that, in June and July 1996, the Stauffers, acting through an organization called Triad Management Services (“Triad”), contributed \$42,500 to nine political action committees (“PACs”). Shortly thereafter (*i.e.*, within a few days to two weeks), all nine of these PACs made contributions to the Brownback Committee, the principal campaign committee of the Stauffers’ son-in-law, Sam Brownback. These

contributions, which were made in connection with Mr. Brownback's August 6, 1996 primary for the Republican nomination for the United States Senate seat from Kansas, which had been vacated by Bob Dole's resignation, occurred after the Stauffers already had made the maximum legal contributions to the Brownback Committee.

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The Commission's reason to believe findings in these matters were based on alternative theories; in the case of the Stauffers, violations of 2 U.S.C. § 441f, or in the alternative, § 441a(a)(1), 11 C.F.R. § 110.1(h), and for the Brownback Committee, violations of 2 U.S.C. § 441f, or in the alternative, § 441a(f). After reviewing the evidence obtained during the investigation, this Office concluded that the legal theory most appropriate to the Stauffers and the Brownback Committee was the § 441a(a)(1), 11 C.F.R. § 110.1(h) "excessive contribution" theory, rather than the 2 U.S.C. § 441f "contribution in the name of another" theory.¹ Therefore, the General Counsel's Briefs, dated March 23, 2001 ("GC Briefs"), stated that this Office was prepared to recommend that the Commission find that the Stauffers knowingly and willfully violated the Act by making excessive contributions to the Brownback Committee, because their contributions to the nine PACs were made with the knowledge that the PACs would use a substantial portion of those funds to make contributions to the Brownback Committee; and that the Brownback Committee violated the Act by knowingly accepting excessive contributions.

¹ The Commission also found reason to believe that Senator Sam Brownback had violated 2 U.S.C. § 441f, or in the alternative, § 441a(f), and that each of the nine PACs had violated 2 U.S.C. §§ 441f and 434. As noted below, however, this Office is not recommending any probable cause findings against Senator Brownback or the PACs under these theories in connection with the Stauffer contributions.

The GC Briefs set forth evidence that strongly supports these recommendations, and are incorporated by reference into this Report.

On April 26, 2001, the Stauffers responded to their GC Brief ("Stauffer Response"). The Stauffer Response does not take issue with most of the essential facts set forth in the GC Brief regarding the Stauffers' introduction to Triad and the making of subsequent contributions. Despite its length, the Stauffer Response repeatedly makes the same five points: 1) that the GC Brief presents "no" evidence or no "real" evidence; 2) that the Stauffers retained no control over their funds once they gave their checks to Triad; 3) that the Stauffers were unaware of Triad's relationships with the PACs, or its efforts to ensure that the PACs would use their funds to make contributions to the Brownback Committee; 4) that the Stauffers did not know that the PACs would make contributions to the Brownback Committee; and 5) that the Stauffers' version of events has been consistent. The Stauffer Response also contends that there is no basis for the conclusion that the Stauffers knowingly and willfully violated the Act.

On April 9, 2001, the Brownback Committee responded to its GC Brief ("Committee Response"). The Committee Response did not take issue with any of the essential facts set forth in the GC Brief. Particularly, the Committee Response does not dispute the GC Brief's description of John and Ruth Stauffers' positions with, or involvement in, the Brownback Committee's 1996 campaign. Further, the Committee Response does not dispute the allegation that Committee representatives met with Triad to discuss the types of fundraising assistance that Triad might offer to the Brownback campaign, or that a Committee representative suggested that the Stauffers watch the videotape presentation, which discussed how Triad helped PACs work together to put

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money into targeted Congressional and Senatorial campaigns. The Committee Response contends only that because the Committee was unaware of the specific details of what the Stauffers did after viewing the Triad videotape at the Committee's headquarters, the Committee lacked the "knowledge" required to having knowingly accepted an excessive contribution from the Stauffers in violation of the Act.²

Below, this Office analyzes the Response's legal and factual arguments.

III. ANALYSIS

A. The Stauffers

1. The GC Briefs Set Forth Sufficient Evidence to Support a PCTB Finding

The Stauffer Response contends that the Respondents did not violate 11 C.F.R. § 110.1(h), because the GC Briefs present "no evidence" or no "real" evidence to dispute the Stauffers' testimony that they had no knowledge that a substantial portion of the funds they contributed to the PACs would be, in turn, contributed to the Brownback Committee. Stauffer Response at 1, 3, 11, 12, 14, 18, 19 and 22. However, the GC Brief is replete with testimonial and circumstantial evidence, which undercuts the Stauffers' direct testimony.

Contrary to the implication in the Stauffer Response, circumstantial evidence is "real" evidence. Circumstantial evidence can be quite compelling, and has been used to support countless criminal convictions, which are subject to a higher burden of proof than

² The Committee takes issue with a statement in the Brownback Committee GC Brief that the Stauffers "had a particular knowledge regarding the campaign's fundraising needs," but not to earlier statements that Mr. Stauffer served on an informal "kitchen cabinet" that advised Brownback or that he was involved in raising funds for the campaign. Brownback Committee GC Brief at 27 and 6.

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the probable cause standard that the Act establishes for the Commission's determination in this matter. This Office's reliance on circumstantial evidence is necessary, given that Triad President Carolyn Malenick asserted her Fifth Amendment privilege rather than provide testimony as to what knowledge she provided to the Stauffers regarding the PACs. In addition, there are serious questions regarding whether the Stauffers' testimony concerning their knowledge as to how the PACs would use the funds is credible, given contradictory testimony from the Stauffers themselves linking their PAC contributions to the Brownback campaign. *See* GC Briefs at 21-25 and discussion below.

Notwithstanding the GC Brief's failure to make any contrary allegation, the Stauffer Response repeatedly cites the Stauffers' testimony that they did not retain control over their contributions and that they did not instruct the PACs to use their funds in any particular way. Stauffer Response at 12, 13, 16, 17, 19, 20 and 23. The GC Brief did not "ignore" or fail to "refute" such testimony, but did not regard it as dispositive under the theory being pursued in this case. As set forth in the GC Brief, the Stauffers' knowledge that a substantial portion of the funds they contributed to the PACs would be contributed to, or expended on behalf of, the Brownback Committee is sufficient to establish a violation, and there is no need to establish that the Stauffers "earmarked" their funds by giving instructions to the PACs or otherwise retained any direction or control over the use of the funds after the checks were written. *See* 11 C.F.R. § 110.1(h)(2).

Additionally, the Stauffer Response argues that in some prior cases in which the Commission found violations of 11 C.F.R. 110.1(h), there were circumstances not present in these matters. As examples, Respondents cite MUR 3313 for a situation in which a

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conduit PAC was alleged to be the “alter ego” of a candidate’s campaign committee and MUR 2668 for a situation where a PAC was formed exclusively by members of a family whose contributions represented a disproportionate share of the PAC’s revenues, and which gave a disproportionate share of its contributions to one candidate. *Id.* at 5-6 and 13. Although the precise circumstances from these earlier MURs may not be present in this case, these types of arrangements are not exclusive ways to establish that the donors have knowledge as to how recipient PACs would use their funds.

In the present matter, the GC Brief establishes that Triad had formed a network of PACs with which it consulted on candidate targeting strategy. GC Brief at 7-9 and PAC Memorandum (Attachment 1). Triad stipulated that it was in regular contact with these PACs and was kept informed of their views toward particular candidates. GC Brief at 13 and Triad Stipulations at ¶ 6.7 (Attachment 2). Triad was a major source, and in two cases the sole source, of funds for the PACs to which the Stauffers contributed.³ The GC Brief also sets forth evidence that Triad had been in contact with all of the PACs to which the Stauffers had contributed, and in several instances had made specific inquiries as to the PACs willingness to contribute to Sam Brownback. *See* GC Brief at 13-16. Further, the GC Brief shows that Triad exercised control over at least two of the PACs, AFE and CAFE. *See* GC Brief at 16-17. Thus, the GC Brief laid the foundation for the conclusion that Triad was in a position to know the PACs’ plans with regard to making future contributions to support Brownback’s candidacy.

³ Indeed, Triad stipulated that during 1995-1996, it forwarded \$298,500 in individual contributions to the PACs that participated in its “targeting strategy” coalition (including eight of the nine PACs to which the Stauffers contributed). *See* Triad PAC Memorandum (Attachment 1) and Stipulations of Fact at Para. 6.1, 6.11-6.12. (Attachment 2).

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As set forth in the GC Briefs, Triad stipulated that it was its practice to share the PACs' views regarding particular candidates with interested prospective donors and that Triad also would confer with the PACs as to which candidates they would contribute to as additional funds became available. From this, the Commission can conclude that Triad followed its usual practice when dealing with the Stauffers, and that they therefore knew how the PACs would use their funds. That, combined with the evidence that most of the Stauffers' PAC contributions flowed through to the Brownback Committee; deposition testimony in which the Stauffers linked the PAC contributions to Brownback's candidacy; and the Stauffers' concealment of their dealings with Triad from both other representatives of the Brownback campaign in 1996, and from the Commission in their initial affidavits (*See* GC Briefs at 24-25), shows that the assertion that there is "no evidence" or no "real" evidence has no basis.

2. The Stauffers' Purported Lack of Knowledge as to Triad's
Contacts with the PACs Regarding the Brownback Campaign

The Stauffer Response does not dispute that Triad had knowledge of the various PACs' plans to support Brownback, or that Triad made inquiries to confirm its understanding of the PACs' plans to support Brownback, but instead argues that the Stauffers were unaware of these contacts. Stauffer Response at 14. This assertion is contradicted not only by Triad's stipulation of its usual practice of informing donors, but also by the written materials that Triad sent to the Stauffers, which stated that "[t]he following PACs agreed with Triad's targeting approach for the 1996 elections" (Attachment 1) and the Triad videotape presentation they viewed which discussed how, with Triad's help, PACs "working together can become a very powerful force for

change;” and how Republican candidates who might need “rapid fire” support “[i]f we need to move, or have a hundred thousand dollars put into a Congressional race tomorrow” could look to Triad’s “donor network.” See Transcript of Triad Videotape Presentation at 1-2 (Attachment 3).

Although the Response attempts to portray the Stauffers as unsophisticated political neophytes who could not have been expected to understand Triad’s relationships with the PACs (See Stauffer Response at 1-2, 8-9,13-15), they are in fact, as the GC Brief points out, educated and politically experienced. In the case of Mr. Stauffer, the Response attempts to reduce a former owner of a media conglomerate and newspaper publisher to a mere volunteer who answered telephones, stuffed envelopes and ran errands. Stauffer Response at 8. While Mr. Stauffer may have done these things as well, the Response does not dispute Mr. Stauffer’s testimony that he served on an informal “kitchen cabinet” that advised Brownback on his campaign and also was involved in fundraising. GC Brief at 6. Nor does the Response dispute the GC Brief’s assertion that Mr. Stauffer represented the Brownback campaign in talking to the media. *Id.* Further, the Response also ignores testimony that Mrs. Stauffer was on the Board of several non-profit organizations. GC Brief at 6, Ruth Stauffer Dep. Tr. at 14. In short, there is little question that the Stauffers would have been able to understand what Triad told them via its videotape, written materials and telephone conversations.

The Stauffer Response also contends that the Stauffers did not know that Triad was planning to help the Brownback campaign. *Id.* at 14. This assertion is contradicted by Ruth Stauffer’s deposition testimony that Carolyn Malenick had told her that

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Brownback was on Triad's list of high priority candidates. GC Brief at p. 20 citing R. Stauffer Dep. Tr. at 88, 92-93.

3. The Stauffers' Version of Events Has Not Been Consistent

Although the GC Brief noted that the Stauffers consistently denied ever being given any promise or guarantee that the PACs would contribute to their son-in-law's campaign, it also noted that their credibility must be questioned as a result of inconsistent and incomplete testimony they have given. The Stauffers' Response simply notes that the Stauffers have given consistent testimony on some topics, and argues that this Office has taken the inconsistent testimony out of context. *Id.* at 22. That is not the case.

The affidavits the Stauffers filed in response to the initial complaint in MUR 4634 stated that the Stauffers had made their PAC contributions based on their own research. (Attachment 4) The Stauffers' affidavits omitted any mention of Triad, despite the fact that at their depositions, they testified that their only "research" was to contact Triad for its PAC recommendations, which they followed exactly.⁴ Triad also set the amounts for the Stauffers' contributions to each PAC.⁵ Further, the Stauffers actually sent their contribution checks to Triad for forwarding to the PACs.⁶ This Office believes that the only reasonable explanation for the Stauffers' failure to mention Triad's pivotal role in

⁴ The Complaint in MUR 4634 did not mention Triad. Consequently, Triad never responded to that complaint.

⁵ As noted in the GC Brief, the Stauffers sent \$2500 apiece, or \$5000 in total, to 8 of the 9 PACs, which was the same amount that the PACs could contribute to the Brownback Committee. GC Brief at 23-24. Further, the three PACs to which the Stauffers made their second round of contributions in July had yet to qualify for the multi-candidate status that would allow them to contribute \$5000 to the Brownback Committee, when the Stauffers made their first round of PAC contributions in June 1996. *Id.*

⁶ In at least two instances, Triad also transmitted PAC contribution checks to the Brownback Committee. GC Brief at 14-16.

their PAC contributions was a deliberate attempt to conceal their violation of the Act. The Response does not even try to provide an alternative explanation.

Further, while both John and Ruth Stauffer testified that they did not intend for there to be any connection between their PAC contributions and the Brownback candidacy, both gave testimony which linked the two activities. *See* GC Brief at 22-23. Although the Stauffer's response cited repeated testimony stating there was no such connection, these two instances in which the Stauffers spontaneously slipped away from their denials, and linked the PAC contributions to Brownback, are significant with regard to their overall credibility.

The Stauffer Response contends that Mrs. Stauffer did not understand the question when she stated that the reason she did not consider giving to PACs during the general election was "[b]ecause Sam [Brownback] was leading in the polls" and that this was a significant factor in foregoing additional PAC contributions because "[w]hy contribute to PACs ? We can give him [Brownback] more money at this time." GC Brief at 22, citing Ruth Stauffer Dep. Tr. at 118-119. This contention ignores the fact that, following an objection from counsel, the court reporter read back the testimony and Mrs. Stauffer specifically reaffirmed that she had understood the question and answered it correctly. *Id.* Again, the Stauffer Response fails to offer any explanation of how Mrs. Stauffer purportedly misunderstood the question in a way that would have produced the answer that she gave and then expressly reconfirmed.

Likewise, the Response misstates Mr. Stauffer's testimony to the effect that the apparent time pressure which required sending the July 16, 1996 PAC contribution checks to Triad by overnight mail was related to the timing of the August 6, 1996

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Brownback primary. The Response claims that Mr. Stauffer was “aware of” other primaries around the country taking place in the same time frame. Stauffer Response at 20. But Mr. Stauffer actually testified that he was not specifically aware of any other primaries, but “thought there were a number.” The Response, however, does not point to any additional evidence of what primaries Mr. Stauffer might have had in mind.

In sum, the GC Briefs correctly point out the evidence of inconsistencies and contradictions undermining the Stauffers’ protestations that they lacked knowledge. The Stauffer Response has not pointed out any alternative conclusions that should be drawn from that evidence.

4. The Knowing and Willful Nature of the Violations

The Stauffer Response argues that there is no basis for a knowing and willful finding, in large part because the Stauffers testified that they made inquiries to Triad, and Triad’s counsel, as to the legality of their contemplated PAC contributions. Stauffer Response at p. 24. This Office realizes that such inquiries are relevant to evaluating the *mens rea* for a knowing and willful violation. *See FEC v. Friends of Jane Harman*, 59 F.Supp. 2d 1046, 1058 (C.D. Cal. 1999)(finding that indirect reliance on the advice of counsel to a third party with substantially similar interests is relevant evidence of good faith belief that conduct was not illegal). Here, the determination of whether the Stauffers acted in a knowing and willful fashion presents a very close case.

As discussed above, the Stauffers were educated and sophisticated people who had been politically active prior to 1996. The concept of giving to PACs is not particularly difficult, and indeed, Mr. Stauffer had already given to one or more PACs prior to 1996. John Stauffer Dep. Tr. at 35-36. Nonetheless, both John and Ruth Stauffer

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testified that they had concerns about the legality of making PAC contributions through Triad; and that they were worried that their actions might reflect badly on Sam Brownback's campaign. GC Brief at 22; R. Stauffer Dep. Tr. at 40 and 44; J. Stauffer Dep. Tr. at 73. While neither could offer more than the most general explanation of why they thought the PAC contributions might be illegal, or the possible connection to Sam Brownback's campaign, the most reasonable explanation is that they were concerned that it might be illegal if, as the GC Brief contends, they acted with the knowledge that a substantial amount of their PAC contributions would be forwarded to the Brownback Committee.

Based on their deposition testimony, it appears that neither of the Stauffers specifically discussed with Triad or Triad's counsel any of their concerns relating to funds passing from the PACs to Sam Brownback's campaign, but instead discussed generally whether Triad was a legitimate organization, whether it was legal to give to PACs and/or legal to give to PACs through Triad, and perhaps what responsibility they might have for what the PACs did with their funds. R. Stauffer Dep. Tr. at 44-45, 86-87; J. Stauffer Dep. Tr. at 72-76. It also appears that the major comfort that they took away from these discussions was that legality was based on their giving up control of the funds once the checks left their hands. R. Stauffer Dep. Tr. at 44 87. But even after her discussion with Triad's counsel, Mrs. Stauffer testified that she was still concerned about the legality of the PAC contributions, and wanted more assurances. R. Stauffer Dep. Tr. at 100-101. Despite their continuing concerns, the Stauffers, who are people of means, did not retain

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and consult with a lawyer of their own.⁷ In fact, they made their first set of PAC contributions only two or three days after learning about the existence of Triad, without doing any outside research themselves, or through others, about Triad or the PACs to which they contemplated making contributions.⁸

If the Stauffers believed that their contributions through Triad had been legal, there is no reason for them to have filed incomplete and misleading affidavits with the Commission which omitted any mention of Triad. (Attachment 4). Recently, in an age discrimination case, the U.S. Supreme Court confirmed that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt" and in appropriate circumstances may reasonably infer that a party is dissembling to cover up an illegal purpose. *Reeves v. Sanderson Plumbing Products, Inc.*, 120 S.Ct. 2097, 2108 (2000), citing *Wright v. West*, 505 U.S. 277, 296 (1992) and *Wilson v. United States*, 162 U.S. 613, 620-621 (1896). Moreover, a knowing and willful violation may be established by "proof that the defendant acted deliberately and with knowledge that the representation was false." See *U.S. v. Hopkins*, 916 F.2d. 207, 214-15 (5th Cir. 1990). A knowing and willful violation may be inferred "from the defendants' elaborate scheme for disguising" their actions and their "deliberate convey[ance of] information they knew to be false to the Federal Election Commission." *Id.* "It has long been recognized that 'efforts at

⁷ The Stauffers also have a son who is an attorney, who participated in representing the Stauffers in this matter.

⁸ The Stauffers also did not discuss their concerns that their actions might reflect badly on Sam Brownback by asking him or his campaign staff about their contemplated PAC contributions. While Mrs. Stauffer testified that their PAC contributions were nobody's business, that concept is inconsistent with the Stauffers' recognition of the fact that the contributions would shortly be revealed in the PACs' public disclosure filings.

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).

Because the record indicates that the Stauffers may not have made inquiries that were sufficiently thorough to convince themselves of the legality of their activities, they consequently attempted to conceal the fact of Triad's participation in their PAC contributions in sworn affidavits submitted to the Commission. This certainly provides a basis for finding that the Stauffers acted in a knowing and willful manner. This Office believes that the Stauffers' continued concerns about the legality of their actions and the secrecy and concealment that followed them, are strong evidence that they knew that a substantial amount of the funds sent to the PACs would end up with their son-in-law's campaign. On balance, however, this Office has concluded that the Stauffers' attempts, incomplete as they might have been, to obtain assurances that their conduct was legal, justifies not finding that they acted in a knowing and willful fashion. The Stauffers were not lawyers themselves, and they may have assumed that since Ms. Malenick, and perhaps also Triad's counsel, were aware of their knowledge regarding how the PACs would use the funds, that the general assurances they received were sufficient to permit them to proceed without engaging in any illegal conduct.

For the reasons set forth above, this Office recommends that the Commission find probable cause to believe that John and Ruth Stauffer violated 2 U.S.C. § 441a(a)(1).

B. The Brownback Committee

The Brownback Committee Response argues that the GC Brief fails to present evidence that it could have known, or should have known, that the contributions nominally made by the nine PACs were, in fact, excessive contributions from the

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Stauffers. However, this Office did not allege that the Brownback Committee's receipt of the excessive contributions was "knowing and willful." A "knowing" standard, as opposed to a "knowing and willful" one, does not require knowledge that one is violating a law, but merely requires an intent to act. *FEC v. Dramesi for Congress Committee*, 640 F.Supp. 985, 987 (D.N.J. 1986); *see also FEC v. California Med. Ass'n*, 502 F.Supp. 196, 203-04 (N.D.Cal. 1980). In the present matter, it is clear that the Brownback Committee, through its treasurer, knowingly accepted and deposited the checks issued by the Triad-organized group of PACs after they received funds from the Stauffers.

The GC Brief discusses the circumstances under which Tim McGivern, an agent of the Brownback Committee, was the catalyst for the contributions. He met with Triad consultant Carlos Rodriguez on June 22, 1996, watched the Triad videotape with Ruth Stauffer, and later told John Stauffer that he should watch the Triad videotape, because "it might be something you want [to do]." GC Brief at 10.

The Committee Response includes an affidavit from Tim McGivern. In his affidavit, Mr. McGivern states: 1) that he never suggested or recommended that the Stauffers take any particular action with regard to making contributions to political action committees, and 2) that he had no knowledge of the Stauffers making PAC contributions until well after the Committee accepted checks from the PACs. Mr. McGivern's affidavit avoids any characterization of his earlier meeting with Triad consultant Carlos Rodriguez, at which they discussed ways in which Triad could raise funds for the Brownback campaign.⁹ Following this meeting, Mr. McGivern specifically requested that the

⁹ As noted in the GC Brief, the Brownback campaign later thanked Triad for its help in raising funds for its primary campaign. GC Brief at 12 and fn 7.

Stauffers watch the Triad videotape. This would be consistent with the note from Mr.

Rodriguez's audit report, which states that Triad would:

Need 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.

GC Brief at 10.

Given both his discussions with Mr. Rodriguez, and his viewing of the videotape's discussion of how Triad helped PACs to work together to support targeted campaigns, it is reasonable to conclude that Mr. McGivern had an expectation that the Triad-organized group of PACs would contribute to the Brownback Committee. Therefore, his suggestion that the Stauffers watch the Triad videotape because "it might be something you want [to do]," can be viewed as having been done with the hope or expectation that the Stauffers make contributions to the Triad-organized group of PACs, which would enable the PACs to then contribute to the Brownback Committee. The GC brief also mentioned the Stauffers' knowledge of the campaign's fundraising needs, because at the time the Stauffers approached Triad, they [as well as Mr. McGivern] were aware that Sam Brownback was behind in the polls.

Based on the above, this Office recommends that the Commission find probable cause to believe that the Sam Brownback for US Senate Committee and Alan Groesbeck, as treasurer, violated 2 U.S.C. § 441a(f). Due, however, to the steps that the Stauffers took to conceal their PAC contributions through Triad from their son-in-law's campaign, this Office also recommends that the Commission take no action at this time against the Sam Brownback for U.S. Senate Committee and Alan Groesbeck, as treasurer, and send

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them an admonishment letter informing these Respondents that the Commission found probable cause that they had received \$33,450 in excessive contributions (which was the amount the nine PACs sent to the Brownback Committee after the receipt of funds from the Stauffers), and reminding them of their obligation, under 11 C.F.R. § 103.3(b)(3).¹⁰ (Attachment 5) The admonishment letter also would inform the Brownback Committee that, once they refund the excessive contributions, this Office intends to recommend that the Commission take no further action and close the file as to them in these matters.

C. Senator Brownback

This Office has concluded that there is insufficient evidence to conclude that Senator Brownback personally violated the Act in connection with these matters. Although Sam Brownback had several meetings with Triad President Carolyn Malenick and was aware that Triad was helping raise funds for his campaign, since Ms. Malenick asserted her Fifth Amendment privilege, this Office has not been able to ascertain whether she advised Senator Brownback about the source of the contributions for which he subsequently thanked Triad. GC Brief at 9-12. Moreover, the investigation has not produced any other evidence which would show either that Senator Brownback was aware that the Stauffers were making PAC contributions through Triad, or that Senator Brownback was aware that a Brownback Committee representative had suggested that the Stauffers view the Triad videotape. As noted in the GC Briefs, the Stauffers testified that

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they did not discuss their PAC contributions with Brownback or their daughter (Mrs. Brownback), and Senator Brownback submitted an affidavit denying that he was aware of these contributions. Accordingly, this Office recommends that the Commission find take no further action as to Senator Brownback, and close the file as to him.

D. The PACs

Based on the totality of the evidence gathered in its investigation, including the description of the contacts between Triad and each of the PACs discussed in the GC Briefs, this Office does not intend to recommend that the Commission further pursue the §§ 441f and 434 findings previously made against any of the nine PACs that served as pass-throughs for contributions from the Stauffers to the Brownback Committee. This Office has recommended that the Commission view the transfers as being excessive contributions from the Stauffers to the Brownback Committee under 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1(h), rather than as contributions in the name of another under 2 U.S.C. § 441f. Under this theory, the PACs would have no liability under the Act.¹¹

For these reasons, this Office recommends that the Commission take no further action, and close the file, as to: (1) Conservative Campaign Fund and Peter Flaherty, as treasurer; (2) Conservative Victory Committee and Leif Noren, as treasurer; (3) Eagle Forum PAC and Margaret Gaul, as treasurer; (4) Free Congress PAC and Keri Pendleton, as treasurer; and (5) Faith Family and Freedom PAC and Devin Anderson, as treasurer.

¹¹ This same analysis also applies to the involvement of five of the PACs who received contributions from the Stauffers, which also received contributions from Robert Riley, Jr. and made contributions to the Bob Riley for Congress Committee. See General Counsel's Report, dated 3/20/01, in MURs 4568, 4633, 4634 and 4736.

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This Office also recommends that the Commission take no action at this time, but leave the file open, as to: (1) American Free Enterprise PAC and David Bauer, as treasurer; (2) Citizens Allied for Free Enterprise PAC and Diane Knight, as treasurer; (3) Citizens United Political Victory Fund and Kevin Allen, as treasurer; and (4) Madison Project, Inc. Fund and Timothy Teepell, as treasurer. Each of these PACs were involved in additional Triad-related activities that will be addressed in separate reports.¹²

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

V. CONTINGENT SUIT AUTHORITY

This Office also is requesting contingent suit authority due to the fact that the SOL for a portion of the findings against the Stauffers might be viewed as running on

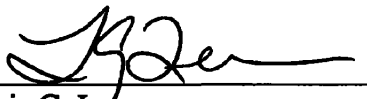
¹² As noted in the GC Briefs, there is evidence that AFE and CAFE were affiliated with Triad, and thus shared a single contribution limit. This issue will be dealt with in a future Report regarding PCTB findings against Triad. Citizens United Political Victory Fund was involved in forwarding contributions from Peter Cloeren to the Brian Babin for Congress Committee, an allegation that will be dealt with in a forthcoming Report. Madison Project Inc. Fund may have solicited donors outside its restricted class, an issue which is addressed in a separate Report being submitted to Commission at the same time as this Report.

July 12, 2001 (five years from the date on which they wrote the first set of PAC checks plus seventeen (17) days of tolling agreed to in exchange for extending the due date of the Stauffers' responsive brief).

VI. RECOMMENDATIONS

1. Find probable cause to believe that John and Ruth Stauffer violated 2 U.S.C. § 441a(a)(1).
2. Find probable cause to believe that Sam Brownback for US Senate Committee and Alan Groesbeck, as treasurer, violated 2 U.S.C. § 441a(f), but take no action at this time and send the attached admonishment letter.
3. Take no further action against Senator Sam Brownback, and close the file as to him.
4. Take no further action against, and close the file as to: (1) Conservative Campaign Fund and Peter Flaherty, as treasurer; (2) Conservative Victory Committee and Leif Noren, as treasurer; (3) Eagle Forum PAC and Margaret Gaul, as treasurer; (4) Free Congress PAC and Keri Pendleton, as treasurer; and (5) Faith Family and Freedom PAC and Devin Anderson, as treasurer.
5. Take no action at this time, but leave the file open, as to: (1) American Free Enterprise PAC and David Bauer, as treasurer; (2) Citizens Allied for Free Enterprise PAC and Diane Knight, as treasurer; (3) Citizens United Political Victory Fund and Kevin Allen, as treasurer; and (4) Madison Project, Inc. Fund and Timothy Teepell, as treasurer.
- 6.
7. Authorize contingent suit authority.
8. Approve the appropriate letters.

5/9/01
Date


Lois G. Lerner
Acting General Counsel

Attachments:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

Staff Assigned: Mark Shonkwiler

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