

BEFORE THE FEDERAL ELECTION COMMISSION

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

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

MUR 4634 was generated by a complaint filed with the Federal Election Commission on May 5, 1997 by Micheline Burger, and contained specific allegations against the above-captioned respondents. The respondents were internally generated in MURs 4568, 4633 and 4736 on the basis of information ascertained by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities. Because each of these four MURs relate to different activities of Triad Management Services, Inc. ("Triad"), the Commission decided that MURs 4568, 4633, 4634 and 4736 would be investigated together.¹

On June 2, 1998, in connection with MURs 4568, 4633 and 4634, the Commission found reason to believe that, during the 1996 election cycle, Sam Brownback for US Senate Committee and Alan Groesbeck, as treasurer ("the Brownback Committee") had violated 2 U.S.C. § 441f and § 434, or in the alternative, § 441a(f) and § 434 by knowingly accepting and failing to accurately report the true source of

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

contributions that John and Ruth Stauffer made to seven different political action committees ("PACs") in late June and July 1996, which were shortly followed by each of the PACs making identical or nearly identical contributions to the Sam Brownback for US Senate Committee, the principal campaign committee of the Stauffers' son-in-law. On February 23 and July 20, 1999, the Commission internally generated, and made the same reason-to-believe findings against the respondents herein in connection with MUR 4736.

For the reasons set forth below, this Office is prepared to recommend that the Commission find probable cause to believe that the Sam Brownback for US Senate Committee and Alan Groesbeck, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting excessive contributions that the Stauffers made through nine PACs.

II. FACTUAL AND LEGAL ANALYSIS

A. THE APPLICABLE LAW

The Federal Election Campaign Act of 1971, as amended, provides that no person may contribute more than \$1,000 per election to any candidate for federal office or his authorized committee. 2 U.S.C. § 441a(a)(1).

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

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

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

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

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

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

“Knowing and willful” actions are those that are “taken with full knowledge of all the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established by “proof that the defendant acted deliberately and with knowledge that the representation was false.” *U.S. v. Hopkins*, 916 F.2d. 207, 214-15 (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 concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214, citing *Ingram v. United States*, 360 U.S. 672, 679 (1959).

B. FACTS

The essential facts in this matter revolve around two sets of political contributions; the first from John and Ruth Stauffer, by checks dated June 25 and July 16, 1996, to each of nine PACs, and the second from each of the nine PACs to the principal campaign committee of the Stauffer's son-in-law, Sam Brownback, for his 1996 Senate campaign in the state of Kansas. In tabular form, this is the pattern.

John and Ruth Stauffer Contributions to PACs and PAC Contributions to the Brownback Committee

Name of PAC	PAC Reports Receipt of Contribution	Amount of Stauffers' Contribution	Date of PAC Contribution to Campaign	Amount of PAC Contribution to Campaign
Citizens United Political Victory Fund	7/05/96	\$5000	7/18/96	\$5000
Conservative Campaign Fund	7/10/96	\$5000	7/12/96	\$4950
Eagle Forum PAC	7/10/96	\$5000	7/02/96 9/11/96 10/11/96 10/25/96	\$4000 \$1000 \$1000 \$1000
Conservative Victory Committee	7/12/96	\$5000	6/28/96 7/16/96 7/22/96 10/17/96	\$500 \$1000 \$2000 \$1000
Free Congress PAC	7/16/96	\$5000	7/16/96	\$4500
Citizens Allied for Free Enterprise	7/16/96	\$5000	7/19/96 7/31/96* *(never rec'd by campaign)	\$1000 \$3500* *(never rec'd by campaign)
American Free Enterprise PAC	7/19/96	\$5000	7/12/96 7/29/96	\$1000 \$3500

Faith, Family & Freedom	7/26/96	\$2500	6/26/96 7/29/96	\$1000 \$4000
The Madison Project	7/29/96	\$5000	7/31/96	\$5000

Although the Stauffers appear to have never communicated directly with any of the nine PACs, the evidence in this investigation strongly indicates that, through their knowledge of the purpose and practices of Triad, as well as their communications with Triad Director Carolyn Malenick, the Stauffers knew that a substantial portion of the funds they contributed to the nine PACs would be contributed by the PACs to the Brownback Committee for its 1996 Senate campaign.

1. Background on Sam Brownback for US Senate and the Stauffers

In 1996, then-Congressman Sam Brownback was a candidate for the U.S. Senate seat in Kansas which had been vacated by Bob Dole's unexpected May 1996 decision to resign in order to devote himself to his presidential campaign on a full-time basis. Dole's seat in the Senate was temporarily filled by Kansas Lt. Governor Sheila Frahm who was appointed by the governor. Brownback and Frahm then competed in an abbreviated campaign leading up to a special election primary held on August 6, 1996. Polls taken in late May and early June, after the Governor announced his intention to appoint Frahm, showed Frahm having a lead over Brownback. Polls taken in July showed Brownback pulling ahead. Brownback won the August 6th primary, and went on to win the general election. Brownback served the remainder of Dole's unexpired term, and was re-elected to a full six-year term in 1998.

John and Ruth Stauffer, who live in Topeka, KS, are Sam Brownback's father-in-law and mother-in-law. Both Mr. and Mrs. Stauffer are college-educated and active in

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political and community endeavors. John Stauffer, who retired in 1995, was formerly the head of Stauffer Communications, a media conglomerate which owned seventeen small newspapers and five television stations in Kansas. John Stauffer Dep. Tr. at 12-13. Mr. Stauffer continues to serve on the editorial board of the Topeka Capital Journal, where he formerly served as Publisher. *Id.* Mrs. Stauffer serves on the boards of numerous organizations. Both Mr. and Mrs. Stauffer had made political contributions prior to 1996, and were aware of the limits on contributions to candidates. Ruth Stauffer Dep. Tr. at 28, John Stauffer Dep. Tr. at 35.

Both Mr. and Mrs. Stauffer did extensive volunteer work for the Brownback primary campaign during the summer of 1996. Mr. Stauffer served on an informal "kitchen cabinet" that advised Brownback, and also was involved in raising funds for the campaign. John Stauffer Dep. Tr. at 22-23. Mr. Stauffer also represented the Brownback campaign in talking to the media. *See* Memorandum of Interview with Brownback Campaign Manager Tim McGivern. Mrs. Stauffer testified that she worked at the campaign headquarters all day seven days a week, and was involved in raising funds for the campaign.² Ruth Stauffer Dep. Tr. at 13 and 20, 22-23. The Stauffers were concerned that Sam Brownback might not win the primary campaign against incumbent Sheila Frahm. John Stauffer Dep. Tr. at 29-30.

The Stauffers each made the maximum legal contribution to the Brownback Committee in connection with the 1996 primary prior to June 1996. At that time, the

² Mrs. Stauffer also testified that other family members -- including her daughter, her brother and his wife, her sister-in-law, and her nieces and nephews -- all worked on the Brownback campaign. Ruth Stauffer Dep. Tr. at 20-21.

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Stauffers, with encouragement from the Brownback campaign, contacted Triad to discuss making contributions to Triad-selected political action committees.

2. Background on Triad

Triad is a political consulting firm established and controlled by Carolyn Malenick. Triad describes itself as a for-profit company whose business is to charge fees for providing specialized information, advice and services to conservative Republican donors in connection with their political and charitable contributions.³

Triad claims to have contacted approximately 250 Republican congressional candidates during the 1996 election cycle in order to conduct a "political audit" of the viability of their campaigns. Triad's political audits were overseen by Carlos Rodruguez, an experienced political consultant.

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

³ A Triad promotional brochure and a videotape stated that Triad's "Goals" for 1996 included "[i]ncreas[ing] Senate Republicans to a Filibuster-proof 60." See Triad Brochure, TR10 000402-403; Transcript of 1996 Triad Videotape.

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In a Triad promotional video, Carolyn Malenick stated that by working with political action committees and other donors, Triad would be able to provide "rapid fire" support to conservative Republican candidates in tightly contested races where additional funds were needed in a short amount of time. *See* Transcript of 1996 Triad Videotape. In this same video, a representative from a conservative group with a PAC stated that Triad "is bringing us all [conservative organizations] together . . . [s]o that all of us together, working together, can become a powerful force for change." *Id.* In its brochure, Triad stated that one of its activities was "[w]orking with conservative political action committees and issue organizations for efforts to maximize their separate funding sources to accomplish common objectives." *See* Triad Brochure, TR10 000402-403.

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

Triad also informed selected conservative PACs that, given the ideology of candidates that they were willing to support, Triad would recommend that members of its donor network contribute to the PAC. During the Summer and Fall of 1995, Triad asked

certain PACs to provide a one paragraph synopsis describing their philosophy and activities. *See, e.g.,* PAC Subpoena Responses. Triad compiled these descriptions into a "Political Action Committees" memorandum ("PAC Memorandum") that it began distributing to potential donors. JS 000002-04.

The Triad PAC memorandum, which described eight of the nine PACs to which the Stauffers contributed, stated that

The following PACs agree with TRIAD's targeting approach for the 1996 elections. TRIAD provides advice and consulting services to its' participants on their political contributions.

While this is only a partial listing of the PACs involved in TRIAD, these PACs give direct contributions to candidates in addition to their other political involvements. The PACs listed will participate in contested primaries.

Triad PAC Memorandum (emphasis added).

3. Triad Contacts with the Brownback Campaign and the Stauffers

On June 22, 1996, Triad consultant Carlos Rodriguez visited the Brownback campaign headquarters in Topeka, KS. Mr. Rodriguez met with various campaign staff members, including Brownback's former congressional chief-of-staff, Tim McGivern.⁴

The Triad audit report from Mr. Rodriguez's visit to the Brownback campaign states:

This is perhaps one of the most, if not the most important races in the nation in regards to the conservative coalition. As such we must do everything in our power to ensure a Brownback victory in the primary.

⁴ Although he served as the campaign manager for Brownback's 1996 Senate bid during the general election, Mr. McGivern informed Commission staff that, prior to the August 1996 primary, he was only helping the campaign in an advisory capacity.

See Triad Audit Report on Sam Brownback KS Senate B (Dole), TR15 001152-53.

Mr. Rodriguez's audit on the Brownback campaign also notes that "C.S.M. [Triad Director Carolyn Malenick] and M.M.O. [Triad Finance Director Meredith O'Rourke] [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." *Id.* The Triad audit report on the Brownback campaign concludes with the statement that "This is a must win for TRIAD clients, for conservatism and for the country." *Id.*

At some point prior to Mr. Rodriguez's June 22nd visit, Triad had sent the Brownback campaign a copy of its promotional videotape. During Mr. Rodriguez's visit, Tim McGivern watched the Triad videotape with a group of campaign workers which included Ruth Stauffer. Ruth Stauffer Dep. Tr. at 31-33. Shortly afterward, Mr. McGivern told John Stauffer, who was visiting Brownback headquarters, that "you ought to look at this [videotape], it might be something you want [to do]." John Stauffer Dep. Tr. at 38-39. Mrs. Stauffer watched the Triad videotape for a second time with Mr. Stauffer. Ruth Stauffer Dep. Tr. at 35. As noted above, at this time, the Stauffers' already had made the maximum legal contribution to the Brownback primary campaign.

After viewing the Triad videotape on or about June 22, 1996, the Stauffers decided to contact Triad. Following this decision, John and Ruth Stauffer each had separate telephone conversations with Carolyn Malenick. John Stauffer Dep Tr. at 60-61; Ruth Stauffer Dep. Tr. at 36-40. By facsimiles with time-stamped headers of June 26, 1996, Triad sent the Stauffers a list of six PACs along with recommended contribution amounts, and its PAC Memorandum describing various conservative groups. JS000002-04 and JS000005-07.

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The documentary evidence shows that by checks dated June 25, 1996, John and Ruth Stauffer together donated a total of \$27,500 to the six PACs recommended to them by Triad.⁵ These contributions included checks of \$2500 each from John and Ruth Stauffer to five PACs (Citizens United Political Victory Fund, Free Congress PAC, Eagle Forum PAC, Conservative Campaign Fund, and Conservative Victory Committee), and checks of \$1250 each to Faith Family and Freedom. *See* checks dated June 25, 1996.

In July 1996, John Stauffer had at least one additional telephone conversation with Carolyn Malenick. John Stauffer Dep. Tr. at 99. The documentary evidence shows that, by checks dated July 16, 1996, the Stauffers contributed an additional \$15,000 to three other PACs. These contributions included checks of \$2500 each from John and Ruth Stauffer to American Free Enterprise PAC, Citizens Allied for Free Enterprise and Madison Project. *See* checks dated July 16, 1996. All of the June 25th and July 16th checks were sent to Triad to be forwarded to the recipient PACs.

During July 1996, Triad communicated with a number of potential donors regarding the Brownback campaign.⁶ *See* O'Rourke-Rita Dep. Tr. at 291. On or about July 10, 1996, Triad sent out a Senate Analysis of the Brownback-Frahm Kansas Senate

⁵ John and Ruth Stauffer could not explain why their contribution checks were dated June 25, 1996, when it appears that the Stauffers did not receive the facsimile materials from Triad until June 26, 1996. John Stauffer Dep. Tr. at 78, Ruth Stauffer Dep. Tr. at 73-74.

⁶ During July 1996, the Brownback Committee provided Triad with a copy of its FEC Disclosure Report and authorized Triad to solicit its donors. At this same time, Carolyn Malenick arranged for Triad Finance Director Meredith O'Rourke (now O'Rourke-Rita) to assist Sam Brownback in making fundraising telephone calls. O'Rourke-Rita Dep. Tr. at 295-302. Although Triad has maintained that Ms. O'Rourke-Rita volunteered to help Brownback on her own time, Ms. O'Rourke-Rita testified that she did not volunteer to help any campaigns during 1996. *Id.* at 21.

Primary to potential donors, including the political action committees listed on the PAC Memorandum. This analysis stated that "Victory is within reach for the movement ! We can defeat liberal Shelia Frahm, but only with a unified approach in support of Sam Brownback." See July 10, 1996 Triad Senate Analysis of "Kansas B" primary. In a July 18, 1996 edition of its Fax Alert newsletter sent to potential donors, including the political action committees listed on the PAC Memorandum, Triad stated:

The campaign to replace Dole is our best opportunity to send a message to the liberals who would weaken the principles upon which the Republican Party is based. The election of Brownback will send shockwaves throughout the Republican National Convention scheduled one week later. Sheila Frahm must be defeated !

See Triad Fax Alert titled "96 Primary Election Alert - July 18, 1996."⁷

The Stauffers have consistently denied that they were promised or guaranteed by Carolyn Malenick or Triad that any of their PAC contributions would be contributed, in turn, to their son-in-law's campaign. As discussed below, however, the totality of the

⁷ After Brownback won his August 6th primary, a Triad Fax Alert noted:

In Kansas, America's heartland, we count a Senate victory in Representative Sam Brownback's defeat of recently appointed, liberal Sheila Frahm. The final totals 55% to 42%. Congressman Sam Brownback had this to say, *"I cannot even begin to thank TRIAD enough for its help in my Senate campaign. TRIAD played an essential role in my effort to educate voters about my conservative message and ideas for restoring the American dream."*

Triad Fax Alert titled "96 Primary Election Results - August 7, 1996" (emphasis added). Tim McGivern, from Congressman Brownback's staff, reserved a room at which Triad hosted a breakfast for donors at the Republican National Convention. Congressman Brownback appeared at the Triad donor breakfast and thanked the donors and Triad for their support in his primary campaign.

evidence, including their own testimony, indicates that both Mr. and Mrs. Stauffer knew that the PACs would use a substantial portion of their funds to support Sam Brownback.

4. The Nine PACs

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

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

Stipulations of Fact with Triad and Carolyn Malenick (Emphasis added). The investigation has revealed that not only did Triad have on-going relationships with all of the PACs to which the Stauffers contributed, but that Carolyn Malenick had specific discussions with several of these PACs regarding their plans and willingness to contribute newly received funds to the Sam Brownback campaign. Given Triad's and Ms. Malenick's stipulation as to how it kept donors informed, it is reasonable to infer that the Stauffers were advised of Triad's contacts with PACs, including information regarding "the candidates and type of candidates [the PACs] had targeted for their support." *Id.*

For example, in July 1996, Ms. Malenick made a specific inquiry about the Madison Project Fund's willingness to support Sam Brownback's candidacy. The Madison Project Fund, which is associated with a membership organization called the Madison Project, typically bundles small earmarked contributions from Madison Project

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members to different conservative candidates, rather than making direct contributions.⁸ The Madison Project Fund does not ordinarily receive contributions from persons who are not members of the connected organization.⁹ In an interview with this Office, Madison Project Fund staff members Doug Domenech and Tim Teepell reported that, in response to Ms. Malenick's July 1996 inquiry, they informed her that The Madison Project Fund planned to make a direct contribution to the Brownback campaign as soon as additional funds became available. Very shortly thereafter, on July 29, 1996, the Madison Project Fund received \$5000 in contribution checks from the Stauffers. Two days later, the Madison Project Fund made a \$5000 contribution to the Brownback Committee.

A similar example can be found in Triad communications with Citizens United Political Victory Fund ("CUPVF"). CUPVF Vice President Michael Boos remembers Carolyn Malenick calling him in July 1996 specifically to ask that CUPVF make a contribution to the Sam Brownback for US Senate Committee. Boos Dep. Tr. at 110-111. On July 5, 1996, CUPVF received the Stauffers' checks for \$5000. On July 18, 1996, CUPVF sent the Brownback campaign a \$5000 contribution check. Boos Dep. Tr. at 112-114. Acting upon a suggestion from Carolyn Malenick, CUPVF sent its

⁸ The two \$2500 checks from the Stauffers were the only non-earmarked itemized receipts that the Madison Project Fund reported receiving during the 3rd quarter of 1996. It also should be noted that the typical earmarked check received by the Madison Project Fund from its grass roots members was for between \$10 and \$25. Although the Madison Project Fund forwarded numerous earmarked contributions from its donors, the \$5000 contribution to the Brownback Committee was the only direct contribution made by the Madison Project Fund during that quarter. See Madison Project Fund October 1996 Quarterly Disclosure Report.

⁹ A PAC established as a Separate Segregated Fund may accept unsolicited "volunteer" contributions from outside the membership of its connected organization.

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contribution check for Brownback to Triad, which took responsibility for forwarding it to the Brownback campaign. Boos Dep. Tr. at 159.

Similarly, Triad communicated with the Conservative Victory Committee ("CVC"), headed by Brent Bozell, regarding its willingness to contribute to Sam Brownback. CVC reports receiving the Stauffers' June 25, 1996 checks on July 12, 1996, and made a series of contributions to Brownback for Senate on June 28 (\$500), July 16 (\$1000) and July 22, 1996 (\$2000). CVC's files contained a July 10, 1996 facsimile from Triad which recommended support for Brownback, and also included on it a subsequent handwritten note from Mr. Bozell to CVC's treasurer stating "Let's send him \$1,000 (CVC). OK ?" CVC's files also contained a July 16, 1996 facsimile from Triad which contained a handwritten note from Ms. Malenick urging CVC "to max to Brownback for Senate" and a note attributed to Mr. Bozell's secretary which stated "she knows you sent the Brownback check." Six days after receiving Ms. Malenick's request, CVC made another \$2000 contribution to the Brownback campaign.

Another example of a PAC to which the Stauffers contributed having communications with Triad was the Free Congress PAC. In the summer of 1996, Ms. Malenick made a specific inquiry as to whether Free Congress PAC would be making a contribution to Sam Brownback's Senate campaign. Free Congress PAC Director Lisa Dean reportedly told Carolyn Malenick that Free Congress PAC, which is headed by conservative activist Paul Weyrich, favored Brownback's candidacy, but that a contribution decision would be based on whether it received additional funds before the primary. *See* Affidavit of Lisa Dean. Shortly thereafter, on July 16, 1996, Free Congress PAC received two \$2500 contribution checks from the Stauffers through Triad. *Id.* On

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that same day, Ms. Dean received several telephone calls from Ms. Malenick urging Free Congress PAC to contribute the full \$5000 to Sam Brownback. *Id.* When Free Congress PAC made a \$4500 contribution to the Brownback Committee, it sent the contribution check to Triad, because it understood that Ms. Malenick was handling fundraising for Brownback. *Id.*

In addition to the examples discussed above, there were two Sacramento, California-based PACs to which the Stauffers contributed, American Free Enterprise PAC ("AFE") and Citizens Allied for Free Enterprise ("CAFE") that were effectively controlled by Triad and Ms. Malenick.

AFE was formed in the summer of 1995, but its treasurer resigned later that year, before the PAC had received or made any contributions. In the Fall of 1995, Carlos Rodriguez, Triad's political director, recruited David Bauer, an accountant who acted as a professional treasurer for a number of political committees, to serve as AFE's new treasurer. David Bauer Deposition Transcript ("Bauer Dep. Tr.") at 12. At his deposition, Mr. Bauer testified that Mr. Rodriguez described AFE as Carolyn Malenick's PAC. *Id.* Further, Mr. Bauer testified that all of the contributions received by AFE came through Triad and that all AFE decisions about candidate contributions were made by Ms. Malenick, whom he regarded as the PAC Director. AFE Subpoena Response, Bauer Dep. Tr. at 16, 20, 27, 32-33, 46-47, 85-87. Prior to receiving contributions from enough donors to qualify for multi-candidate status, AFE made the maximum \$1000 contribution to the Brownback campaign. After receiving the Stauffers' checks for \$5000 on July 19, 1996, and qualifying for multi-candidate status, AFE contributed an additional \$3500 to the Brownback campaign on July 29, 1996.

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CAFE was formed in the Fall of 1995 by David Gilliard. Mr. Gilliard testified that Carolyn Malenick contacted him with the request that he form a new PAC to help support Republican candidates, that Ms. Malenick told him that Triad would do all of the fundraising for his PAC from its donor network and that Triad also would provide CAFE with candidate recommendations. Like AFE, Mr. Gilliard testified that all of the contributions received by CAFE came through Triad. Gilliard Dep. Tr. at 24. Notwithstanding Mr. Gilliard's claim of autonomy, all of the federal candidates to which CAFE contributed had been recommended by Triad. *See generally*, CAFE Subpoena Response and Gilliard Dep. Tr. at 22-26 (only purported exceptions were actually endorsed by Triad). Within three days of receiving the Stauffers' checks for \$5000 on July 16, 1996, CAFE, which had yet to qualify for multi-candidate status, sent a \$1000 contribution to the Brownback campaign. After qualifying for multi-candidate status on July 26, 1996, CAFE attempted to contribute an additional \$3500, which it sent to the Brownback campaign on July 31, 1996. This check apparently was never received by the Brownback campaign, and CAFE never issued a replacement.

6. Ms. Malenick's Fifth Amendment Assertion

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

likelihood that various PACs would contribute their funds to the Brownback campaign.¹⁰

C. Analysis

The evidence gathered in the investigation indicates that there is probable cause to believe that John and Ruth Stauffer knew that a substantial portion of their contributions to the nine PACs would find their way to their son-in-law's campaign. The evidence also indicates that the Stauffers, who were experienced political contributors, knew that this was improper, and acted to conceal their PAC contributions.

Any analysis must begin with the fact that all nine PACs to which the Stauffers contributed later contributed to Sam Brownback for US Senate Committee. In each case, the PACs made contributions within a matter of days after either the Stauffers wrote checks to the organization or the PACs reported receipt of the checks.¹¹ All nine PACs contributed at least \$4500 to the Brownback campaign. While some of the PACs had

¹⁰ Ms. Malenick's assertion of the Fifth Amendment also prevented obtaining her testimony whether she was quoted correctly in a press report on an October 1997 question and answer session regarding allegations raised in a 1997 Senate Governmental Affairs Committee Investigation. According to the article, Ms. Malenick reportedly:

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

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

¹¹ Meredith O'Rourke-Rita testified that Triad had a regular practice of calling the PACs to give them a heads-up that contributor checks were being sent. O'Rourke-Rita Dep. Tr. at 247-57. Thus, the PACs would have known that the Stauffers' contributions were coming, even before the actual physical receipt of the check by the PAC. *See also* Stipulations of Fact with Triad and Carolyn Malenick at Para. 6.8.

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made contributions to the Brownback campaign prior to the receipt of the Stauffers' checks, each of the PACs made additional contributions after the Stauffers wrote checks to the PAC. Under any circumstances, this would be a striking coincidence. Other factors, however, dispel that explanation.

As discussed above, Triad had ongoing relationships with all nine PACs to which the Stauffers contributed. Moreover, via its PAC Memorandum, Triad was regularly soliciting funds for at least eight of the PACs who purportedly agreed with its "targeting strategy." In the case of AFE and CAFE, Triad was the PACs' only source of funds. The treasurer of AFE has admitted that Carolyn Malenick actually directed all of the PAC's contributions, including the contribution to the Brownback Committee. Further, in the case of CVC, Madison Project Fund, Free Congress PAC and CUPVF, the PACs acknowledge having communications in which Triad urged them to contribute to the Brownback Committee and inquired as to their willingness to make such contributions. Given the stipulation set forth above, it is likely that Carolyn Malenick advised the Stauffers about all of these relationships and contacts, which would have provided assurances that a substantial portion of their funds would go to the Brownback campaign.

The evidence demonstrates that Triad advised the Stauffers to contribute to these particular PACs, and that the Stauffers precisely followed Triad's advice, which included giving the exact amounts recommended by Triad to each PAC. *See* Ruth Stauffer Dep. Tr. at 74. The Stauffers first learned of Triad through the promotional videotape shown to them at Brownback headquarters. The videotape made it clear that Triad was helping PACs work together to support selected conservative candidates.

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The Stauffers knew that Triad was recommending Sam Brownback to donors. *See* Ruth Stauffer Dep. Tr. at 88, 92-93. Further, Triad consultant Carlos Rodriguez informed the Brownback campaign that Triad was supporting its efforts. *See* Triad Audit Report on the Brownback campaign. Mr. McGivern, who would become the Brownback campaign manager, suggested that the Stauffers view the Triad videotape.

The Triad PAC Memorandum, which the Stauffers received via facsimile on June 26, 1996, indicated that at least eight of the nine PACs agreed with Triad's "targeting strategy" for the 1996 election, and that these PACs would participate in "contested primaries" such as the Brownback-Frahm race. This information, when combined with the knowledge that Triad was endorsing Sam Brownback, would have told the Stauffers that each of the listed PACs shared Triad's view of their son-in-law's candidacy and that each of the PACs were likely to work together to support Sam Brownback. The information from the PAC Memorandum would, of course, have been supplemented by the Stauffers' conversations with Carolyn Malenick regarding the PACs present intentions with regard to contributing to Sam Brownback. Both the Stauffers testified that Carolyn Malenick knew that Sam Brownback was their son-in-law. Ruth Stauffer Dep. Tr. at 95, John Stauffer Dep. Tr. at 69-70. Triad, which represented itself as having organized a coalition of PACs, would have had no reason not to follow its usual practice of revealing to donors -- in this case, the Stauffers -- its contacts and knowledge regarding the specific PACs' views of the Brownback candidacy.

In the absence of testimony from Carolyn Malenick, who asserted her Fifth Amendment privilege regarding her communications with both the Stauffers, the only persons who can describe the conversations with Ms. Malenick are John and Ruth

Stauffer themselves. Therefore, the consistency of their version of events is important in evaluating the likelihood that, when they made their contributions to the nine PACs in June and July 1996, they knew that a substantial portion of those contributions would, in turn, go to their son-in-law's campaign.

In fact, the Stauffers' version of events has not been consistent. In their June 1997 affidavits filed in response to the complaint in MUR 4634, the Stauffers stated that they made their PAC contributions after conducting research into different conservative groups, suggesting that the choice of the PACs and the amount given emanated entirely from them. *See* June 19, 1997 Affidavits of John and Ruth Stauffer, as amended on June 24, 1997. Notably, the Stauffers never mentioned Triad at all, much less the pivotal role Triad played in making their PAC contributions. *Id.* In their depositions, however, Mr. and Mrs. Stauffer admitted that the PAC contributions had been made through Triad, that they performed no independent research on the PACs, and that all of their information about the PACs came from Triad. Ruth Stauffer Dep. Tr. at 72. Further, neither of the Stauffers could offer any explanation for why they chose these particular PACs, other than the fact they were recommended by Triad.

Moreover, the Stauffers' testimony shows that they had concerns from the start about their dealings with Triad, and understood that there would be a connection between their PAC contributions and the Sam Brownback campaign. Mrs. Stauffer testified that in her first call to Carolyn Malenick she was "questioning the legality of the donations to the PACs" and that she "didn't want to do anything that would harm Sam [Brownback]'s campaign, and I did not want Sam to know that we were interested in giving to PACs." Ruth Stauffer Dep.Tr. at 40. Mrs. Stauffer acknowledged that prior to making the PAC

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contributions, she “didn’t want anything to go on between the PACs and Sam’s campaign that would reflect badly.” *Id.* at 44.¹²

There is additional evidence that Ruth Stauffer understood that her PAC contributions would flow to Sam Brownback’s campaign. When asked at her deposition about why she and her husband didn’t contribute additional funds to the PACs during the general election, Mrs. Stauffer testified as follows:

Ruth Stauffer Dep. Tr. at 118-119 (emphasis added).¹³

Similarly, Mr. Stauffer, who had made PAC contributions before, also spoke to Triad’s counsel regarding his concerns as to whether Triad was a legitimate and legal

¹² In response to Mrs. Stauffer’s concerns, Carolyn Malenick arranged for Triad’s legal counsel, Mark Braden, to speak with Mrs. Stauffer. Ruth Stauffer Dep. Tr. at 45. Mr. Braden reportedly assured Mrs. Stauffer that donations to PACs were legal. *Id.*

¹³ Immediately after Mrs. Stauffer testified that she and her husband didn’t make additional contributions to the PACs during the general election because they could give more money to Brownback directly during the general election, her counsel asked that the question be repeated, and suggested that “Mrs. Stauffer answered something you didn’t ask.” Ruth Stauffer Dep. Tr. at 119. After the question and her prior answer were reread, Mrs. Stauffer confirmed that she had understood the question and answered it correctly. *Id.*

enterprise. John Stauffer Dep. Tr. at 73. Moreover, Mr. Stauffer, like his wife, gave testimony which linked the Stauffers' PAC contributions with the Brownback campaign. While the six June 25, 1996 PAC contribution checks were apparently sent to Triad via U.S. mail, Mr. Stauffer recalls sending the three additional July 16, 1996 PAC contributions checks via overnight delivery. John Stauffer Dep. Tr. at 109. When asked why Triad had requested that the checks be sent by overnight delivery rather than U.S. mail, Mr. Stauffer testified as follows:

John Stauffer Dep. Tr. at 110-111. Indeed, Triad forwarded the July 16, 1996 checks to three PACs (AFE, CAFE and Madison Project Fund) which made contributions to Brownback after the receipt of the Stauffer checks, but before the August 6, 1996 primary.

The amounts of the contributions to each PAC provide additional support for the proposition that the Stauffers knew the PACs would use their funds to support Sam Brownback. Although the Stauffers had made political contributions in prior years, they

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had never contributed funds in the large amounts that they gave to the Triad-recommended PACs. Prior to 1996, the Stauffers do not appear to have ever made any federal political contributions of more than \$1000 at a time. Further, while the Stauffers could have contributed \$5000 apiece, or a total of \$10,000, to each PAC, they chose to limit their contributions to \$2500 apiece, or a total of \$5000 to eight of the nine PACs. This amount is equal, in fact, to the \$5000 limit on what each PAC could, in turn, contribute to Sam Brownback.

It also is notable that the Stauffers did not contribute in June 1996, when they made their first round of PAC contributions, to the three PACs to which they later contributed in July 1996. In June 1996, AFE and CAFE had yet to qualify for, and the Madison Project Fund had yet to apply for multi-candidate status. Consequently, in June 1996, these PACs could only contribute \$1000 per candidate, rather than \$5000. Once all three PACs had qualified and/or applied for multi-candidate status in July, the Stauffers made a second round of contributions to these groups.¹⁴ These three PACs were then able to use their new multicandidate status to make additional contributions to the Brownback Committee.

Finally, the apparent secrecy with which the Stauffers conducted their dealings with Triad raises an inference that they had something to hide. Despite their close personal relationship with, and their intensive volunteer efforts on behalf of, the Brownback campaign during June and July 1996, the Stauffers did not discuss their

¹⁴ The PACs to which the Stauffers contributed on June 25, 1996 included FFF, which had qualified for mutlicandidate status earlier that month, but did not include AFE and CAFE. The Stauffers did not contribute to those two PACs until after they had qualified for multicandidate status in July 1996.

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several contacts with, much less their PAC contributions made through, Triad with their daughter or their son-in-law.¹⁵ See Amended Affidavits of John and Ruth Stauffer in Response to Complaint in MUR 4634 dated June 24, 1997, Ruth Stauffer Dep. Tr. at 87-88 and 113, and May 23, 1997 Affidavit of Sam Brownback. If the Stauffers simply wanted to contribute to conservative candidates, it seems likely that their son-in-law, a sitting member of Congress, could have provided them with advice as to specific candidates and causes. Given the fact that they had been introduced to Triad through the Brownback campaign, and the fact that Senator Brownback would later express such gratitude to Triad for its efforts on his behalf, their failure to ever discuss their relationship Triad seems unusual. The Stauffers continued their silence even when they learned, from Mrs. Stauffer's review of a list of Brownback contributors prepared by the Kansas Secretary of State, that all of the PACs to which they had contributed had subsequently given to the Brownback campaign. Ruth Stauffer Dep. Tr. at 90-91, John Stauffer Dep. Tr. at 123. This too seems unusual, especially given their purported concerns about legality and the appearance of impropriety. *Id.*

Finally, the Stauffers acknowledge that the only relationship they had with Ms. Malenick was over the telephone. John and Ruth Stauffer Subpoena Responses, John Stauffer Dep. Tr. at 42. Within a few days of first speaking to Ms. Malenick, the

¹⁵ Mrs. Stauffer testified that she didn't tell her daughter or son-in-law about the PAC contributions because it wasn't any of their business, and also because "they might have said, you have given enough money." Ruth Stauffer Dep. Tr. at 88. The notion that the Stauffers had "given enough" seems odd given both that the Stauffers had recently sold their reported multi-million dollar interest in Stauffer Communications, and that the Stauffers had not made a significant number of large political contributions prior to the Triad-recommended PAC contributions.

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Stauffers contributed \$27,500 to six PACs about which they knew practically nothing. Further, within a few weeks, after several of the first six PACs had contributed to Sam Brownback, the Stauffers contributed an additional \$15,000 to three additional PACs about which they knew practically nothing. It strains credibility to believe that the Stauffers would follow a relative stranger's advice as to how to contribute \$42,500 to PACs with which they had little or no familiarity, without strong assurances as to how and where the PACs would distribute their funds.

In sum, the evidence strongly indicates that John and Ruth Stauffer knew that a substantial portion of their funds would, as they did, end up with their son-in-law's campaign. Since these funds, when viewed along with the Stauffers' direct contributions, exceed the \$1000 per election maximum, *see* 2 U.S.C. § 441a(a) and 11 C.F.R. § 110.1(h), John and Ruth Stauffer made excessive contributions to Sam Brownback for US Senate Committee in 1996.

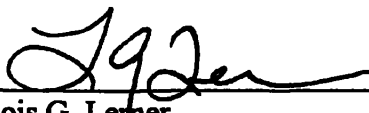
As discussed above, it appears that the Brownback Committee cooperated with Triad's efforts to assist in its fundraising and also participated in encouraging the Stauffers, who had already made the maximum legal direct contributions to Brownback, to work with Triad in making PAC contributions. After meeting with Mr. Rodriguez for the Triad audit, Mr. McGivern suggested that the Stauffers view the Triad videotape, which represented that Triad would help the conservative PAC community work together to provide "rapid fire" financial support to targeted conservative candidates, such as Brownback. Thus, while the Brownback Committee may not have been aware of the details of the communications between the Stauffers and Triad, the evidence establishes that the Committee encouraged the Stauffers to work with Triad in making PAC

contributions. It should also be noted that both John and Ruth Stauffer worked as volunteers for the Brownback campaign and thus had particular knowledge regarding the campaign's fundraising needs. For these reasons, this Office is prepared to recommend that Sam Brownback for US Senate Committee and Alan Groesbeck, as treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting these excessive contributions.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that Sam Brownback for US Senate Committee and Alan Groesbeck, as treasurer, violated 2 U.S.C. § 441a(f).

3/23/01
Date


Lois G. Lerner
Acting General Counsel