

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Robert Cone

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)
)

Matters Under Review

4568, 4633, 4634 and 4736

GENERAL COUNSEL'S BRIEF

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6 Robert Cone) **4568, 4633, 4634 and 4736**

7 **GENERAL COUNSEL'S BRIEF**

8 **I. STATEMENT OF THE CASE**

9 These MURs were generated by complaints filed during and after the 1996
10 election cycle.¹ Each of the MURs relate to activities of Carolyn Malenick d/b/a Triad
11 Management Services ("Triad/CSM"), Triad Management Services, Inc. ("Triad Inc."),
12 Carolyn Malenick, Citizens for the Republic Education Fund ("CREF") and Citizens for
13 Reform ("CR") in connection with the 1996 election cycle.² Respondent Robert Cone,
14 who provided nearly \$2 million (including \$650,000 in October 1996 alone) to fund the
15 activities of Triad/CSM, Triad Inc., CREF and CR, was internally generated in each of
16 the MURs based on the basis of information ascertained by the Commission in the normal
17 course of carrying out its supervisory responsibilities.

¹ The complaint in MUR 4568 was filed on November 4, 1996 by Charmaine Murphy of the Rick Hill for Congress Committee. The complaint in MUR 4633 was filed on April 30, 1997 by James Anderson. The complaint in MUR 4634 was filed on May 5, 1997 by Micheline Burger. The complaint in MUR 4736 was filed on April 6, 1998 by Bob Ream, Chairman of the Montana Democratic Party. MUR 4736 also includes some allegations that were severed from a complaint, designated as MUR 4783, that was filed on August 5, 1998 by Peter Cloeren.

² "Triad" is an acronym for Tactical Resources in American Democracy. Triad existed both as a sole proprietorship operated by Carolyn Malenick and as a corporation for which Ms. Malenick was the President and sole shareholder. Triad Inc. was incorporated on May 28, 1996, and, beginning on July 1, 1996, assumed responsibility and began paying for various activities previously initiated by Triad/CSM. Ms. Malenick also was the President of CREF, and Triad Inc. had contracts to manage the 1996 activities of CREF and CR.

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1 On June 2, 1998, in connection with MURs 4568, 4633 and 4634, the
2 Commission found reason to believe that Robert Cone violated 2 U.S.C. § 441a(a)(1) by
3 making excessive contributions to Triad/CSM, Triad Inc., CREF and CR during the 1996
4 election cycle. The Commission also found reason to believe that Robert Cone violated
5 2 U.S.C. § 441a(a)(3) by making more than \$25,000 in federal political contributions
6 during 1995 and 1996. On February 23 and July 20, 1999, the Commission made the
7 same reason to believe findings against Mr. Cone regarding violations of the Act in
8 connection with MUR 4736. Due to the related and overlapping nature of the allegations
9 in the complaints from each of these matters, the Commission decided that MURs 4568,
10 4633, 4634 and 4736 would be investigated together.

11 After receiving the production of documents and written discovery responses
12 various respondents, including Mr. Cone, during 1998-1999, this Office negotiated
13 Stipulations of Fact with Triad Inc. and Ms. Malenick (hereinafter "Triad Stips"), as well
14 as with CREF and CR (hereinafter "CREF Stips" and "CR Stips"). These Stipulations of
15 Fact, which were limited to undisputed matters, were finalized in December 1999, and
16 entered into by the Commission in February 2000. Thereafter, this Office took the
17 deposition of Mr. Cone, and deposed or interviewed, among others, several Triad/CSM,
18 Triad Inc., CREF and CR employees and representatives. Ms. Malenick, who was the
19 central figure in the activities of Triad/CSM, Triad Inc., CREF and CR, asserted her Fifth
20 Amendment privilege against self-incrimination, rather than testify in this matter.

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1 **II. INTRODUCTION AND SUMMARY**

2 Evidence uncovered during this investigation demonstrates that Triad/CSM, Triad
3 Inc., CREF and CR operated as political committees that sought to influence federal
4 elections during 1995-1996. Further, the investigation has shown that Robert Cone, who
5 was involved in the formation of some, and operation of all, of these entities, made
6 excessive federal political contributions to Triad/CSM, Triad Inc., CREF and CR during
7 the 1996 election cycle.

8 In its responses to the complaints, as well as to the Commission's findings and
9 order to answer written questions, Triad/CSM and Triad Inc. have claimed to be a for-
10 profit enterprise whose business was providing specialized information, advice and
11 services to conservative donors in connection with their political and charitable
12 contributions. Both CREF and CR have claimed to be non-profit social welfare
13 organizations which engaged in issue education advocacy during the latter half of 1996.
14 The facts uncovered during the investigation, however, show that there is probable cause
15 to believe that Triad/CSM, Triad Inc., CREF and CR acted, along with certain persons,
16 including Mr. Cone, as unregistered and nonreporting political committees, whose major
17 purpose was electoral activity in connection with the 1996 congressional elections.

18 As set forth in more detail below, the stated goals of Triad/CSM and Triad Inc.
19 were to expand and protect the Republican majority in Congress during the 1996 election
20 cycle. Starting as early as the late Summer and early Fall of 1995, Triad/CSM promoted
21 this goal by providing campaigns with consulting and fundraising services, by distributing
22 publications containing express advocacy, by soliciting, collecting and forwarding several
23 hundred thousand of dollars to federal congressional campaign committees and a

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1 coalition of political action committees ("PACs"), including two PACs controlled by
2 Triad and Ms. Malenick. Beginning shortly after its incorporation in May 1996, Triad
3 Inc. promoted these goals with these same types of activities. During the latter half of
4 1996, Triad Inc. also managed the activities of both CREF and CR, which promoted the
5 same electoral goals through \$3 million in targeted political advertising that was
6 broadcast and distributed immediately prior to the 1996 congressional elections. As
7 discussed below, the investigation has uncovered evidence that a substantial portion of
8 this advertising was coordinated with specific 1996 congressional campaigns.

9 Thus, based on its investigation, this Office is prepared to recommend that the
10 Commission find probable cause to believe that Robert Cone violated 2 U.S.C.
11 §§ 441a(a)(1) and 441a(a)(3).

12 **III. FACTUAL AND LEGAL ANALYSIS**

13 **A. THE APPLICABLE LAW**

14 **1. Political Committee Status and Reporting**

15 The Federal Election Campaign Act of 1971, as amended ("the Act"), requires any
16 organization which qualifies as a political committee to register with the Commission and
17 file periodic reports of all receipts and disbursements. 2 U.S.C. §§ 433 and 434. The Act
18 also requires that, when registering with the Commission, a political committee include in
19 its statement of organization "the name, address, relationship and type of any connected
20 organization or affiliated committee." 2 U.S.C. § 433(b)(2).

21 The Act defines a political committee as any committee, club, association, or
22 other group of persons which receives "contributions" or makes "expenditures"

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1 aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A).⁴ For the
2 purposes of the Act, the term "person" is defined as including "an individual, partnership,
3 committee, association, corporation, labor organization or any other organization or group
4 of persons" 2 U.S.C. § 431(11).

5 The Act defines "contribution" as "any gift, subscription, loan, advance, or
6 deposit of money or anything of value made by any person for the purpose of influencing
7 any election for federal office." 2 U.S.C. § 431(8)(a)(i). An "expenditure" is defined as
8 "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything
9 of value, made by any person for the purpose of influencing any election for federal
10 office." The Commission has defined "anything of value" to include, among other things,
11 all in-kind contributions, *i.e.*, the provision of any goods and services without charge or at
12 a charge which is less than the usual and normal charge for such goods and services"
13 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

14 In *Buckley v. Valeo*, 424 U.S. 1 (1976) ("*Buckley*"), the Supreme Court, in order to
15 avoid overbreadth, construed the Act's references to "political committee" so as to prevent
16 their "reach [to] groups engaged purely in issue discussion." The Court recognized that
17 "[t]o fulfill the purpose of the Act [the designation 'political committee'] should
18 encompass organizations that are under the control of a candidate or the major purpose of
19 which is the nomination or election of a candidate." 424 U.S. at 79.

⁴ The Commission has issued an Advance Notice of Proposed Rulemaking, which seeks comment on proposed revisions to the definition of "political committee" currently found in the Regulations. The proposed revisions focus on possible changes to the definition of "contribution" and "expenditure" which trigger political committee status as well as ways in which a "major purpose" test might be incorporated into the rules. See Definition of Political Committee, 66 Fed. Reg. 13681(2001) (to be codified at 11 C.F.R. Part 100) (March 7, 2001).

1 In *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (“*MCFL*”), the
2 Supreme Court analyzed whether a non-profit advocacy corporation that had made more
3 than \$1,000 in independent expenditures was a political committee. The Court noted that
4 the “central organizational purpose” of *MCFL*, which it found to be issue advocacy, did
5 not meet the *Buckley* definition of a political committee, *i.e.*, it was not controlled by a
6 candidate and did not have as a major purpose the nomination or election of a candidate.
7 479 U.S. at 252, n.6. The *MCFL* Court also noted, however, that should the
8 organization’s “independent spending become so extensive that the organization’s major
9 purpose may be regarded as campaign activity, the corporation would be classified as a
10 political committee.” 479 U.S. at 262.

11 The Commission has taken the position that, “when determining if an entity
12 should be treated as a political committee, the standard used is whether the organization’s
13 major purpose is campaign activity; that is, making payments or donations to influence
14 any election to public office.” Advisory Opinion 1996-3. *But see FEC v. GOPAC*, 917
15 F.Supp. 851, 859-862 (D.D.C. 1996)(the major purpose of a political committee must be
16 to support a particular candidate or candidates for federal office). The “major purpose” of
17 an organization may be shown by public statements of its purpose or by other means
18 “such as its expenditures in cash or in kind to or for the benefit of a particular candidate
19 or candidates for federal office.” *Id.* at 859-60.⁵

⁵ In *Akins v. FEC*, 101 F.3d 731 (D.C. Cir. 1996) (*en banc*), the court held that the Commission’s application of the “major purpose” test to find political committee status was inappropriate. The court held that the statutory language defining “political committee” is not ambiguous, 101 F.3d at 740, but further noted that the Supreme Court’s discussion of “major purpose” in *Buckley* and *MCFL* applied only to independent expenditures, not to coordinated expenditures and direct contributions. *Id.* at 741-42. The Supreme Court subsequently vacated

1 2. Limits on Contributions

2 Under the Act, no person, including a political committee, may contribute more
3 than \$1,000 per election to any candidate for federal office or his authorized committee.
4 2 U.S.C. § 441a(a)(1). In addition, no person may contribute more than \$5,000 per
5 calendar year to any other political committee that is not the authorized political
6 committee of any candidate. 2 U.S.C. § 441a(a)(1)(c). Finally, the Act places a \$25,000
7 cap on the total amount of political contributions that an individual can make in any
8 calendar year. This statutory provision also limits to \$5,000 the amount that a qualified
9 multicandidate committee may contribute to a candidate or their authorized committee.⁵

10 All contributions made or received by more than one affiliated committee,
11 regardless of whether they are “political committees” under 11 C.F.R. § 100.5, shall be
12 considered to have been made or received by a single political committee. 11 C.F.R.
13 § 110.3(a)(1). The term “affiliated committee” includes all committees “established,
14 financed, maintained or controlled by the same corporation, labor organization, person, or
15 groups of persons, including any parent, subsidiary, branch, division, department, or local
16 unit thereof . . . ” 11 C.F.R. § 100.5(g)(2). Affiliated committees sharing a single
17 contribution limitation include all of the committees established, maintained or controlled
18 by “a single corporation and/or its subsidiaries” or “the same person or group of persons.”
19 11 C.F.R. § 110.3(a)(2). If at least one member of a group of connected organizations or
20 affiliated committees meets the definition of a “political committee” under the Act, all

this decision for other reasons, *see FEC v. Akins, et al.*, 524 U.S. 11 (1998), without ruling on the criteria for an organization to be deemed a “political committee.”

1 contributions made or received by any of the connected organizations or affiliated
2 committees, regardless of whether they are "political committees" themselves, shall be
3 considered to have been made or received by a single political committee. 11 C.F.R.
4 § 110.3(a).

5 The Commission may examine the relationship between organizations that
6 sponsor committees, between the committees themselves, or between one sponsoring
7 organization and a committee sponsored by another organization to determine whether
8 committees are affiliated. 11 C.F.R. § 110.3(a)(3).

9 **3. Express Advocacy**

10 With respect to corporate expenditures for communications made independently
11 from any candidate or his or her agent, the Supreme Court has held that they are
12 prohibited only if the message conveyed by such expenditures "expressly advocates" the
13 election or defeat of a clearly identified candidate. *MCFL, supra*, 479 U.S. at 248-249
14 (citation omitted). In *Buckley*, the court provided an illustrative, but non-exclusive, list of
15 the words or phrases, including "support," that constitute express advocacy. *See* 424 U.S.
16 at 44 n. 52. Subsequently, in *MCFL*, the Court found that a newsletter which did not
17 contain any of the precise phrases set forth in *Buckley* nonetheless contained words which
18 were "in effect" express advocacy." *See* 479 U.S. at 249. Although the newsletter in
19 *MCFL* did list issues and contain issue advocacy, the Court found that it was not a "mere

⁵ 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).

1 discussion of public issues” but went “beyond issue advocacy to express electoral
2 advocacy.” *Id.*⁶

3 In 1995, the Commission promulgated 11 C.F.R. § 100.22 to provide guidance on
4 the concept of express advocacy in accordance with judicial interpretations, including
5 *Buckley* and *MCFL*. Under that provision, “Expressly advocating” means any
6 communication that:

7 (a) uses phrases such as “vote for the President,” “re-elect
8 your congressman,” “support the Republican challenger
9 for U.S. Senate in Georgia,” “Smith for Congress,”
10 “Bill McKay in ‘94,” “vote Pro-Life,” or “vote Pro-
11 Choice” accompanied by a listing of clearly identified
12 candidates described as Pro-Life or Pro-Choice, “vote
13 against Old Hickory,” “defeat” accompanied by a
14 picture of one or more candidate(s), “reject the
15 incumbent,” or communications of campaign slogan(s)
16 or individual word(s), which in context can have no
17 other reasonable meaning than to urge the election or
18 defeat of one or more clearly identified candidate(s),
19 such as posters or bumper stickers, advertisements, etc.
20 which say “Nixon’s the One,” “Carter ‘76”,
21 “Reagan/Bush,” or “Mondale!”; or

22 (b) When taken as a whole and with limited reference to
23 external events, such as the proximity to the election,
24 could only be interpreted by a reasonable person as
25 containing advocacy of the election or defeat of one or
26 more clearly identified candidate(s) because-

27 (1) The electoral portion of the communication is
28 unmistakable, unambiguous, and suggestive of
29 only one meaning; and

30 (2) Reasonable minds could not differ as to whether
31 it encourages actions to elect or defeat one or

⁶ See also *FEC v. Furgatch*, 807 F. 2d 857, 862-(9th Cir.), *cert. denied*, 484 U.S. 850 (1987) (“[E]xpress advocacy is not strictly limited to communications using certain key phrases.”)

1 more clearly identified candidate(s) or
2 encourages some other kind of action.⁷
3

4 In the Explanation and Justification for the new regulation, the Commission
5 stated: "Please note that exhortations to contribute time or money to a candidate would
6 also fall within the revised definition of 'express advocacy.' The expressions enumerated
7 in *Buckley* included 'support,' a term that encompassed a variety of activities beyond
8 voting." 60 Fed. Reg. 35292, 35294 (July 6, 1995). *See also FEC v. Christian Coalition*,
9 52 F. Supp. 2d 45, 62 (D.C.D.C. 1999) ("*Christian Coalition*") ("as the *Buckley* court
10 recognized when it included the verb "support" in its non-exclusive list. . . express
11 advocacy also includes verbs that exhort one to campaign for, or contribute to, a clearly
12 identified candidate").

13 **4. Coordination with Candidates and Campaigns**

14 An "independent expenditure" is defined in the Act as: an expenditure by a
15 person expressly advocating the election or defeat of a clearly identified candidate which
16 is made without cooperation or consultation with any candidate, or any authorized
17 committee or agent of such candidate, and which is not made in concert with, or at the
18 request or suggestion of, any candidate or agent of such candidate. 2 U.S.C. § 431(17).⁸
19 Conversely, expenditures made by any person in cooperation, consultation or concert,
20

⁷ Two appellate courts have determined that part (b) of this regulation is invalid. *Maine Right to Life v. FEC*, 98 F.3d 1 (1st Cir. 1996) and *FEC v. Christian Action Network*, 110 F.3d 1049 (4th Cir. 1997). The probable cause recommendations contemplated by this Brief are based entirely on part (a) of the regulation, and do not involve any legal conclusions under part (b).

⁸ On November 30, 2000, the Commission approved a final rule concerning Coordinated General Public Political Communications. 65 Fed. Reg. 76,138 (December 6, 2000). The new regulation, codified at 11 C.F.R. § 100.23, became effective on May 9, 2001. *See* 66 Fed. Reg. 23,537 (May 9, 2001)

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1 with, or at the request or suggestion of, a candidate, his authorized political committees,
2 or their agents, shall be considered to be a contribution to such candidate. 2 U.S.C. §
3 441a(7)(B).

4 In the context of expenditures by outside groups which are not political party
5 committees, the Commission has considered potential coordination that took place prior
6 to the effective date of 11 C.F.R. § 100.23 under the standards set forth in *FEC v.*
7 *Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999). In addressing the issue of what
8 constitutes “coordination” with a candidate, the *Christian Coalition* court discussed two
9 general ways in which coordination could occur: first, that “expressive coordinated
10 expenditures made at the request or the suggestion of the candidate or an authorized
11 agent” would be considered coordinated; and second, “absent a request or suggestion, an
12 expressive expenditure becomes ‘coordinated’ where the candidate or her agents can
13 exercise control over, or where there has been substantial discussion or negotiation
14 between the campaign and the spender over, a communication’s: (1) contents; (2) timing;
15 (3) location, mode or intended audience (e.g., choice between newspaper or radio
16 advertisement); or (4) ‘volume’ (e.g., number of copies of printed materials or frequency
17 of media spots.” *Id.* at 92.⁹

⁹ In the *Christian Coalition* decision, the court also rejected the assertion that “express advocacy” was required for expenditures to be considered coordinated. *Christian Coalition*, 52 F. Supp.2d at 87-89. The district court stated that “importing the ‘express advocacy’ standard into § 441b’s contribution prohibition would misread *Buckley* and collapse the distinction between contributions and independent expenditures in such a way as to give short shrift to the government’s compelling interest in preventing real and perceived corruption that can flow from large campaign contributions.” *Christian Coalition*, 52 F. Supp.2d at 88.

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1 In devising its legal standard for coordination, the court drew a distinction
2 between “‘expressive,’ ‘communicative’ or ‘speech-laden’ coordinated expenditures”
3 which are subject to the highest form of First Amendment protection and situations in
4 which the spender finances “non-communicative materials” for a candidate’s campaign.
5 *Christian Coalition*, 52 F. Supp.2d at 85, fn. 45. The court made explicit that its standard
6 only applied to expressive coordinated expenditures. *Id.* at 91.

7 **B. FACTS**

8 **1. Background**

9 **a. The Formation of Triad**

10 In early 1994, Carolyn Malenick met Robert Cone, a wealthy Pennsylvania
11 businessman, through an organization for political conservatives called the Council for
12 National Policy (“CNP”). *See* Dep. Tr. of Robert Cone (“Cone Dep. Tr.”) at 80.
13 Mr. Cone testified that during the following summer, Ms. Malenick, who reportedly was
14 working as a consultant for Eagle Forum, assisted him with a \$500,000 advertising
15 campaign sponsored by Eagle Forum, and financed by Mr. Cone, which advocated
16 against certain Clinton Administration health care proposals.¹¹ *Id.* at 84-85, 90-92 and
17 103-106. Mr. Cone further testified that Ms. Malenick was involved in an Eagle Forum
18 project for interviewing candidates in connection with the 1994 elections, and she
19 provided Mr. Cone with information obtained through this process. *Id.* at 92 and 99-101.

20

¹¹ Prior to 1995, in addition to working for Eagle Forum, Carolyn Malenick reportedly worked as a fundraiser for a variety of organizations, including: The Viguerie Company, The Oliver North Defense Trust, Freedom Alliance, and the North for Senate campaign.

1 Mr. Cone testified that, in late 1994, Ms. Malenick told him that she was
2 interested in starting a for-profit business that would represent the interests of donors in
3 connection with their political and charitable contributions. *Id.* at 92, 103 and 107.
4 Ms. Malenick told Mr. Cone that this enterprise (which would become Triad/CSM)
5 would provide potential donors with detailed information and focused research on
6 political groups and candidates. *Id.* at 120-121. Mr. Cone testified that "the original
7 concept, I think, of TRIAD and my understanding was that she [Malenick] wanted to
8 develop wealthy donors both for electing or working on getting elected conservative
9 Republican pro-life candidates." *Id.* at 115.¹²

10 In January 1995, Ms. Malenick began operating Triad/CSM as an unincorporated
11 entity. Triad Stips. at ¶ 1.1. In 1995 and 1996, Ms. Malenick filed tax returns for
12 Triad/CSM as a sole proprietorship of Carolyn Malenick d/b/a Triad Management
13 Services. Ms. Malenick caused Triad Inc. to be incorporated in May 1996. Triad Stips.
14 at ¶ 1.2-1.3.

15 Starting in early 1995, and continuing though at least the end of 1996, Mr. Cone
16 began to financially underwrite Triad's efforts to find and develop a network of

¹² Mr. Cone also testified that the original concept for Triad embraced developing donors to broaden or widen donations to charitable organizations. *Id.* However, Mr. Cone admitted that he was unaware of Triad making any efforts to develop donors to any charitable cause. *Id.* at 115-117. Triad did not produce any documentary evidence that it made efforts to audit the activities of, or encourage giving to, any charitable organization. Although Triad did maintain records which reflected the fact that certain individuals who made political contributions through Triad also had made charitable donations during the same year, Triad appears to have had no other involvement with any charitable organizations or causes.

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1 conservative donors who would give to the types of causes and candidates that he wished
2 to support himself.¹² Cone Dep. Tr. at 136, 417-418. Although Mr. Cone testified that he
3 made no advance commitment to finance Triad's activities, he also testified that, during
4 1995-1996, he financed both Triad entities on an "as [you] go basis" so as to meet Triad's
5 cash flow needs. *Id.* at 128, 135-136, 150, 185, 189-190, 470. Mr. Cone testified that he
6 made payments to Triad whenever Ms. Malenick advised him of pending cash flow
7 requirements. *Id.* at 185.

8 During the 1996 election cycle, Mr. Cone provided over \$1 million directly to
9 Triad (with Triad/CSM receiving payments of \$200,000 in 1995 and \$465,500 during the
10 first half of 1996; and Triad Inc. receiving payments of \$426,621 during the latter half of
11 1996). *See* Triad Stips. at ¶¶ 7.1(a), 7.2(a) and 7.3(a), Cone Dep. Tr. at 144. Cone Dep.
12 Tr. at 144. These direct payments from Mr. Cone represented more than 85% of Triad's
13 receipts during this period. Further, as discussed below, a substantial portion of Triad
14 Inc.'s other receipts came from payments made to it under management consulting
15 contracts by CR and CREF, which had no 1996 activities other than Triad-managed
16 advertising programs. A large portion of CR and CREF's funding was provided by
17 Mr. Cone, who contributed \$400,000 to CR and \$500,000 to CREF between July and
18 October 1996. *See* CR Stips. at ¶ 2.12 and CREF Stips. at ¶ 3.6).¹³

¹² At the same time that he was financing Triad's efforts, which were related to candidates for federal office, Mr. Cone also established a Pennsylvania state political action committee called the Paragon Project that supported selected conservative Republican candidates on a state and local level. Cone Dep. Tr. at 41-47.

¹³ A substantial portion of CR and CREF's other receipts came from the Economic Education Trust ("EET"), which was funded entirely by Wichita, Kansas-based Koch Industries Inc. ("KII"). EET contributed over \$1.8 million to the two Triad-managed groups (\$858,000 to CR and \$970,000 to CREF). *See* CR Stips. at ¶ 2.12 and CREF Stips. at ¶ 3.6.

1 **b. Triad's Statements of Purpose**

2 Throughout 1995 and 1996, Triad/CSM and Triad Inc. distributed promotional
3 materials that emphasized Triad's electoral mission and its ties to the Republican Party's
4 congressional leadership.¹⁵ In numerous publications and in a widely-distributed
5 videotape presentation, the Triad entities repeatedly stated that its primary "GOALS" for
6 1996 were to:

- 7 1) *Return Republican House Freshmen;*
8 2) *Increase by 30 the Republican House Majority; [and]*
9 3) *Increase Senate Republicans to a Filibuster-proof 60.*

10 See Triad Stips. at ¶ 2.1(b) (emphasis in original).¹⁶

11 In January 1995, Carolyn Malenick asked Congressman Edward Royce, who was
12 serving as the National Republican Congressional Committee's ("NRCC's") Vice
13 Chairman for candidate recruitment, to sign a letter, drafted for his signature, endorsing
14 Triad's role in helping to re-elect the newly elected Republican House Freshmen.

¹⁵ Further, starting in February 1996, Triad began using letterhead advertising a "Privatized Republican National Coalition" ("PRNC") which also included the elephant logo recognized as the symbol of the Republican Party, as "A Project" of Triad" or later as "A Project of Triad Inc." See Triad Stips. at ¶¶ 2.3 and 4.1.

¹⁶ Some of the Triad documents setting forth these Goals include: Triad/CSM Primary Audit Summary, FECTR 0000113A; Triad Inc. promotional materials, TR10 000403; Triad Inc. Summary of PRNC, FECTR 000136; Triad/CSM-Triad Inc. Videotape entitled "Due Diligence for a 1996 Majority"; Triad Inc. Internal Memorandum dated 1/14/97 (Revised 5/28/97)(which discussed Triad's goals for the preceding year). TR10 000534.

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17 See January 26, 1995 letter nominally from Edward Royce to Carolyn Malenick.
18 Congressman Royce informed the Commission staff, in response to an informal discovery
19 request, that he understood Ms. Malenick planned to distribute this letter to conservative
20 donors to generate interest in Triad and raise money for conservative candidates.

21 In a March 1995 mass mailing, Ms. Malenick informed potential donors that:

22 [a] major part of TRIAD's time in the next two years will
23 be working with the 104th Congress Freshmen and targeting
24 approximately 20 other Democrat held seats. Regardless of
25 the GOP Presidential nominee, the focus must be on
26 maintaining the House majority. Excitement with this
27 project is building daily on Capitol Hill.

28 TMS 000560.¹⁷

¹⁷ This same letter which indicates that Triad will be "targeting approximately 20 other Democratic held seats" also declares that "The overall purpose is to maintain integrity and accountability through financial planning that is driven by the contributor. Rest assured that TRIAD does not intend to proselyte or sway any contributors, but will assist in effectively placing their contributions to work for their ideals and to support their intent in giving." TMS 000560. Notwithstanding this statement, and as discussed below, Triad's later publications do expressly advocate that donors make political contributions to certain candidates.

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1 During the first half of 1995, Triad sent out a promotional brochure, which quoted
2 Congressman Royce and Curt Anderson, Political Director for the Republican National
3 Committee, as supporting Triad's efforts to keep the Republican majority in Congress.
4 See Triad Stips. at ¶ 2.1(d) and FECTR 000104-105. Triad also conveyed the impression
5 that it was working with the Republican Party leadership in various mailings that it sent
6 to potential donors during 1995.

7 For example, in a July 1995 letter to a potential donor, Carolyn Malenick stated
8 that Triad had given Congressman Royce an overview of her recent meetings with
9 potential donors and that she planned to meet again with Congressman Royce to discuss
10 candidate recruitment. See July 10, 1995 Letter from Carolyn Malenick to Tom Pernice.
11 TMS 001013. This letter also indicates that Congressman David McIntosh "has offered
12 to travel and speak on behalf of the TRIAD project discussing the freshmen or targeting
13 Democrats." *Id.* This same letter states that Carlos Rodriguez has agreed to become the
14 Political Director for TRIAD, and is "putting the final arrangements in place for a
15 comprehensive Congressional district analysis *to be done in coordination with the RNC's*
16 *field staff* during the month of August." *Id.* (emphasis added).¹⁸

17 In the Fall of 1995, Triad prepared a document entitled "Activities Report:
18 January - September 1995" which stated that

19 In January, as Speaker Gingrich and the House of
20 Representatives started work on fulfilling the 'Contract
21 with America', TRIAD began quietly working *with key*
22 *members of Congress* in laying the groundwork to re-elect

¹⁸ Although Mr. Rodriguez testified that he occasionally met with RNC officials to gather information and to discuss the 1996 elections, he did not recall having the type of close working relationship described by this document. Rodriguez Dep. Tr. at 72-78.

1 conservative freshmen and expand the House conservative
2 majority.

3 See Triad Activities Report, KI 00507 (emphasis added). According to this Activities
4 Report, a list of Triad's accomplishments during the first nine months of 1995 included:

5 * Working with key members of the Republican House
6 Leadership, the RNC and the NRCC, TRIAD initiated an
7 audit of every freshman Republican's Washington and
8 district office operations to gauge their strengths and
9 weaknesses and provide advice where needed. Thanks to
10 the early work, steps now are being taken to shore up those
11 who need help.

12 * Triad was the largest contributor to, and key advisor in, the
13 successful election of the new, conservative chairman of
14 the College Republican National Committee who is
15 committed to assist candidates in the 1996 elections.

16 * When asked by a key Congressional ally, TRIAD
17 coordinated a last minute "Get Out the Vote" phone
18 program (credited for winning) in a successful conservative
19 candidate's special election for a seat in the California
20 Legislature.

21 * In a few months, Triad has taken an advisory role among
22 key conservative political action committees. As a result,
23 we have built coalitions that will provide essential targeted
24 assistance to candidate's [sic] campaigns in winnable
25 districts.

26 *Id.* (separate paragraphs regarding donor recruitment omitted).¹⁹

27 In a February 5, 1996 newsletter, Triad informed potential donors about the AFL-
28 CIO's announced plans to target vulnerable Republican incumbent congressmen and to
29 spend approximately \$35 million in connection with the 1996 congressional elections.
30 See Triad Stips at ¶ 4.2, FA16-17. This Fax Alert stated that:

¹⁹ The investigation did not produce any documentary evidence regarding Triad's and Ms. Malenick's reported efforts to elect the chairman of the College Republicans or their involvement in coordinating a GOTV phone program for a California state election.

1 The work of TRIAD for Republicans has been comparable
 2 to that of the work of organized unions for the Democrats.
 3 The unions and other liberal interest groups have served as
 4 the “rapid fire” to the Democrats. There has been NO
 5 “rapid fire” for the Republicans – until now, and TRIAD is
 6 the vehicle.

- 7 • Every Senator, Congressman, Conservative Leader and
 8 Political Action Committee that saw **TRIAD** work on a
 9 small scale in 1995 became a believer and a supporter.
- 10 • **TRIAD** has been asked in the last week by GOP
 11 Freshmen to assist in the planning and execution of a
 12 media campaign to help offset union attacks.²⁰
- 13 • The NRCC has recently asked that **TRIAD** remain
 14 steadfast in working with its participants to raise \$\$\$
 15 because **Republicans** will need it.

16 *Id.* at FA17 (bolding in original).

17 Similarly, Triad’s 1996 promotional materials claimed that:

18 TRIAD has already put in place a team of political advisors
 19 and interested organizations, and is working on assembling
 20 a team of donors to work together in 1996 for the same
 21 goal: Retaining GOP control of Congress and the advance
 22 of a conservative agenda. TRIAD believes that its activities
 23 will ultimately complement the efforts by others to regain
 24 GOP control of the White House.

25 See Triad Stips. at ¶ 2.1(a) and FECTR 000131.

²⁰ None of the Triad employees and consultants that the Commission staff deposed or interviewed could offer any details as to the basis for this statement regarding a request from GOP Freshman for assistance in planning and execution of a media campaign to help offset union attacks. Carolyn Malenick, who was identified as the author of this Fax Alert, took the Fifth Amendment rather than provide deposition testimony. While Triad produced one document which indicates that it had discussions with a potential vendor about a “Freshman Ads/Video” project that would focus, and highlight the accomplishments of, the Republican Freshman Congressmen as a group, those discussions do not appear to have resulted in any advertisements actually being produced or broadcast. See 6/21/96 Scott Howell & Co. Memorandum to Carolyn Malenick re: Freshman Ads/Video, TR11 00002-04. As discussed below, however, Triad Inc. eventually did initiate various candidate-specific advertising campaigns through CREF which criticized prior union attacks on individual Republican Freshmen congressmen.

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1 **c. Triad Structure and Organization**

2 In February 1995, Triad's counsel sent Mr. Cone a letter thanking him for
3 agreeing to serve on Triad's "advisory board." CONE 000119. Although Mr. Cone
4 testified that he did not recall serving on an advisory board, he did acknowledge
5 providing Triad and Ms. Malenick with financing and business advice. Cone Dep. Tr. at
6 158, 488-498. Carolyn Malenick, who exercised control over all of Triad's activities
7 during 1995-1996, was in frequent contact with Mr. Cone. *Id.*²⁰ One internal Triad
8 document even made a reference to Triad having an "outside office" in "Pennsylvania"
9 which appears to have been a reference to Mr. Cone. FECTR 000437, Cone Dep. Tr. at
10 211-213.

11 Starting in approximately July 1995, Triad/CSM retained a California-based
12 political consultant named Carlos Rodriguez to serve as its nearly full time Political
13 Director. Triad Stips at ¶ 1.7 and CM 000461. Mr. Cone, who was providing the funds
14 to perform the political audits, interviewed Mr. Rodriguez prior to his retention by Triad.
15 Rodriguez Dep. Tr. at 39-41, Cone Dep. Tr. at 364-368. During the latter half of 1995,
16 Mr. Rodriguez received payments of \$32,727 from Triad/CSM. *See* CM 000461.
17 Starting in the late fall of 1995, Triad/CSM opened an office in Washington, D.C., and
18 hired Meredith O'Rourke, a former fundraiser with the State Republican parties of South
19 Carolina and Virginia, to serve as its Finance Director. Triad Stips at ¶ 1.2-1.4.

²⁰ Telephone records produced during the investigation show that between May and December of 1996, the period for which telephone records were available, 101 facsimiles were sent and an additional 144 telephone calls were made from Triad's offices or cell phone accounts to Mr. Cone's home and office. Cone Dep. Tr. at 488-498. These records do not reflect telephone calls that Mr. Cone may have initiated, or calls placed during earlier periods. In addition, Mr. Cone made regular visits to Triad's offices in Washington, D.C.

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1 During 1995, Triad/CSM made disbursements of \$221,496, of which substantial
2 portions went to paying Mr. Rodriguez, to finance travel to meet with prospective donors,
3 to paying salaries, and to cover various start-up and overhead costs. *See* Triad Operating
4 Budget February 95-December 95: Year End Report for December 31, 1995.
5 CM 000689.

6 At the beginning of 1996, Triad agreed to pay Mr. Rodriguez a retainer of \$20,625
7 per month over a two year period (for a total payment of \$495,000) in exchange for
8 devoting approximately 90% of his time to Triad projects. *See* Rodriguez Dep. Tr. at pp.
9 31-38. In addition to his own services, Mr. Rodriguez billed Triad for the salary his firm
10 paid to a research analyst named Jason Oliver, and a computer consultant/database
11 manager named Sabina Pellissier. During the first half of 1996, Triad/CSM paid
12 Mr. Rodriguez \$123,750 in consulting fees, \$11,929 for Mr. Oliver's salary and benefits,
13 and \$8,000 for political database services provided by Ms. Pellissier. CSM d/b/a TRIAD
14 General Ledger at pp. 10-12. During the latter half of 1996, Triad Inc. paid
15 Mr. Rodriguez \$103,125 in consulting fees, \$13,137 for Mr. Oliver's salary and benefits,
16 and \$10,000 for political database services provided by Ms. Pellissier. TRIAD Inc.
17 General Ledger at pp. 13 and 17.

18 Triad also employed two other consultants for specific election-related tasks
19 during 1996. Between April and June of 1996, Triad/CSM employed a consultant named
20 Cleta Mitchell to work on audits of Freshmen Republican congressmen's re-election
21 efforts, and to serve as a Project Manager in connection with a Triad-managed CREF

1 advertising campaign.²¹ Triad Stips at ¶ 1.9. During 1996, Triad/CSM paid Ms. Mitchell
2 fees and expenses totaling \$28,013. *See* TR5 000009 and CSM d/b/a TRIAD General
3 Ledger at p. 10. Between June and October 1996, Triad also employed a California-based
4 political consultant named William ("Bill") Saracino to conduct "political audits" on
5 1996 congressional races. Triad Stips at ¶ 1.8. For services performed in June 1996,
6 Triad/CSM paid Mr. Saracino \$4,290.68, plus expenses. CSM d/b/a TRIAD General
7 Ledger at p. 10. For services performed between July and October 1996, Triad Inc. paid
8 Mr. Saracino \$17,500, plus expenses. TRIAD Inc. General Ledger at pp. 13.

9 In early 1996, Triad hired Kathleen McCann to serve as its Director of
10 Administration. Triad Stips at ¶ 1.5. Beginning in mid-1996, Triad Inc. hired
11 Ms. Malenick's sister, Anna Malenick Evans, to serve as Triad's part-time bookkeeper.
12 Triad Stips at ¶ 1.6.

13 During 1996, Triad/CSM and Triad Inc., made combined disbursements of
14 \$1,425,089 (\$477,373.83 by Triad/CSM and \$947,715 by Triad Inc.), of which
15 substantial portions went to: fees charged by Mr. Rodriguez and other consultants, travel
16 expenses (some of which were designated "political" and some of which were designated
17 "client"), publication distribution expenses (including facsimile, postage and delivery
18 service fees), telephone expenses, managed advertising programs²², salaries for Triad
19 staff, and various overhead costs. *See* Triad Stips at ¶ 8.1, TR5 000008-10.; Triad
20 Operating Budget 2nd Quarter- June 1996, CM 000685-86 (for Triad/CSM), Triad 96

²¹ Although Ms. Mitchell is a licensed attorney, she confirmed that the work she did for Triad in 1996 did not involve providing any sort of legal advice.

²² Triad/CSM and Triad Inc. made expenditures of \$392,469 in support of CREF and \$14,271 in support of CR during 1996.

1 Operating Budget January 96-December 96: 4th Quarter- December 1996 (for Triad
2 Inc.).²³

3 d. The Non-Profit Corporations: CREF and CR

4 During the latter half of 1996, Triad Inc. managed all of the activities of CREF
5 and CR, two non-profit corporations with no offices or employees of their own. Acting
6 on CREF's and CR's behalf, Triad Inc. raised funds for, and managed the production and
7 distribution, of approximately \$3 million in television, radio, direct mail and telephone
8 bank advertising prior to the 1996 congressional elections.

9 In addition to contributing substantial sums to both CREF and CR, Robert Cone
10 accompanied Ms. Malenick to meetings with CREF Chairman Lyn Nofziger and various
11 vendors at which the advertising campaigns were planned. *See* Nofziger Interview
12 Memorandum, Cone Dep. Tr. at 450-455, Vendor Subpoena Responses.

13 i) CREF

14 On June 20, 1996, Carolyn Malenick arranged to incorporate CREF as a District
15 of Columbia corporation.²⁴ Triad Stips. at ¶1.12-1.13. From June 20, 1996 through the

²³ During 1995-1996, Triad had few activities that were not related to the 1996 elections. At some point in 1995, Triad/CSM was reimbursed \$250 for providing assistance to an individual who was preparing a collection of White House Christmas cards. *See* Triad Stips. at ¶ 2.1(d) and ¶ 7.1(b) (noting receipt of \$250 from Mary Seeley). In 1996, at Robert Cone's request, Triad Inc. began to manage an effort to research and test ways in which pro-life groups could best present their message to the public, which was called the "Choose Life Project." Triad Inc. records, as confirmed by the deposition testimony of Mr. Rodriguez, indicate that Triad's disbursements for this Project represented no more than 10% of Triad/CSM and Triad Inc.'s overall activities. *See* TR5 000009 (1996 Budget Document shows \$145,091.54, out of a total disbursements of \$1,425,089.71, being spent on Life Media Campaign, which appears to have been another term for the Choose Life Project), Cone Dep. Tr. at 136, Rodriguez Dep. Tr. at 375-376 (testifying that he spent less than 5% -10% of his Triad-related time on the Choose Life Project).

²⁴ CREF was initially incorporated under the name Citizens for the Republic Education Committee, but its name was changed from "Committee" to "Fund" on July 23, 1996.

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1 end of 1996, Carolyn Malenick, Meredith O'Rourke and Kathleen McCann, who were
2 employees of Triad, served, respectively, as President, Treasurer and Secretary of CREF,
3 and performed their duties from Triad's offices without receiving any additional pay. *Id.*
4 at 1.13-1.14. Triad Inc. opened an account in CREF's name at Crestar Bank, and Triad
5 personnel made deposits to, and withdrawals from, the CREF bank account. *Id.* at 1.17.

6 On or about September 26, 1996, Triad Inc. entered into a written consulting
7 agreement with CREF. Triad Stips. at ¶1.14-1.15. The agreement called for Triad to
8 receive a commission from CREF in connection with the placement and production of
9 advertisements and fundraising. The agreement gave Triad discretion in deciding "the
10 means by which it will provide the Services" for CREF with instruction from CREF
11 officers (all of whom were Triad employees). *Id.* Triad was responsible for managing all
12 of CREF's activities, which included soliciting and accepting funds for the placement and
13 production of advertising programs on behalf of CREF. *Id.* at ¶ 1.18. Triad Inc. also
14 controlled the selection of media markets, the approval of scripts and the authorizing of
15 expenditures for the production and placement of CREF advertisements. *Id.* at ¶ 1.19.

16 From June through December 1996, Lyn Nofziger, Carlos Rodriguez and David
17 Gilliard served as the directors of CREF. *Id.* at 1.13(b). The Board did not meet on a
18 regular basis, and may have met, with at least one member attending by teleconference,
19 on only one or two occasions during 1996. Gilliard Dep. Tr. at 37-40. In an interview
20 with Commission staff, Mr. Nofziger, who was the nominal chairman of CREF, told
21 Commission staff that he was no more than a figurehead who loaned his name to Carolyn
22 Malenick's organization. While Mr. Nofziger had no control over CREF's activities, he

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1 was briefed on the group's public advertising campaigns so that he could serve as a
2 spokesman to respond to media inquiries.

3 When asked to describe CREF's purpose, Mr. Nofziger told Commission staff
4 that CREF's advertisements were designed so that Carolyn Malenick could educate the
5 public about what Mr. Nofziger termed the "evils of the Democrats." When asked if this
6 advertising was intended to portray certain candidates in a positive or negative light,
7 Mr. Nofziger said that the advertisements certainly attempted to put "a black hat" on
8 various Democratic candidates and either directly or indirectly put "a white hat" on
9 various Republican candidates. Mr. Nofziger stated his belief that the placement of the
10 advertisements, all of which mentioned candidates by name, was related to the
11 congressional election in the particular media markets where the ads ran prior to the 1996
12 election. Mr. Nofziger also told Commission staff that it was CREF's conscious intent to
13 avoid engaging in express advocacy in its public advertising, so as to avoid any
14 requirement that it report to the FEC. As discussed *infra*, however, there is evidence that
15 a substantial portion of CREF's advertisements were coordinated with Republican
16 congressional candidates in the districts where they were broadcast or distributed.

17 ii) CR

18 Citizens for Reform ("CR") is a Virginia corporation that was incorporated by
19 Peter Flaherty, who would become its President, on or about May 13, 1996. Triad Stips.
20 at ¶1.20. Between May 13, 1996 and September 1, 1996, CR received no funds,
21 sponsored no activities, and made no expenditures of any kind. *Id.* at ¶ 1.22. Beginning
22 no later than September 5, 1996, Triad Inc. began to solicit and accept funds for the
23 purpose of funding a series of advertisements by CR. *Id.* at ¶ 1.23, TMS 000399. On or

1 about September 26, 1996, Triad entered into a consulting agreement with CR, which
2 confirmed earlier understandings between Peter Flaherty and Ms. Malenick. *Id.* at ¶ 1.24.
3 The agreement called for Triad Inc. to provide services in connection with the placement
4 and production of advertisements, and gave Triad Inc. discretion in deciding “the means
5 by which it will provide the Services” for CR. CR was to pay Triad Inc. a commission on
6 all funds raised and all direct expenses incurred for advertising efforts. *Id.*

7 Triad was responsible for soliciting and accepting funds for the placement and
8 production of advertising programs on behalf of CR. *Id.* at ¶ 1.27 Agents of Triad,
9 particularly Ms. Malenick and Mr. Rodriguez, were responsible for selecting media
10 markets, approving the scripts, and authorizing expenditures for the production and
11 placement of advertising sponsored by CR during 1996. *Id.* Although Mr. Flaherty
12 testified that he was kept informed of Triad Inc.’s activities on behalf of CR so that he
13 could provide oversight, he did not recall providing Triad Inc. with any detailed
14 directions on how to carry out the advertising campaigns. Flaherty Dep. Tr. at 192-193.
15 Mr. Flaherty testified that it was CR’s conscious intent to avoid engaging in express
16 advocacy in its public advertising, so as to avoid any requirement that it report to the
17 FEC. As discussed *infra*, however, there is evidence that a substantial portion of CR’s
18 advertisements were coordinated with Republican congressional candidates in the
19 districts where they were broadcast or distributed.

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1 2. **Triad Funding**²⁵

2 Although Triad's promotional materials and its answers to Commission discovery
3 requests assert that it was a "for-profit business" during the 1996 election cycle, the
4 evidence shows that Robert Cone paid virtually all of Triad's expenses during 1995-1996.
5 Triad has stated that it initially did not have a set fee structure, and that Ms. Malenick
6 operated with the view that fees could be negotiated on an individual or project basis.
7 *See* 7/16/99 Triad Response to Questions at 5-6. The evidence shows that Triad solicited
8 support in the form of contributions rather than set fees for any service that it might
9 provide. *See* Factsheet on TRIAD Structure and TRIAD Funding, TMS 000809. Even
10 after creating a fee schedule in mid-1996, however, Triad Inc. did not, during the
11 remainder of 1996, send any bills or invoices to individuals who received its materials or
12 to those who made political contributions through Triad Inc.

13 a. **Triad/CSM**

14 During 1995, Triad/CSM had total financial receipts of \$237,250 from six
15 individuals, of which \$200,000 came from Robert Cone. Triad Stips. at ¶ 7.1;
16 TMS 000239.²⁶ Triad/CSM received funds from Mr. Cone in 1995 on the following
17 dates:

18	2/24/95	\$ 25,000
19	7/17/95	\$ 25,000
20	9/20/95	\$ 50,000

²⁵ The funding of CREF and CR advertising campaigns will be discussed below.

²⁶ The other five individuals who sent Triad/CSM funds in 1995 were: Mary Seeley - \$250,
Barbara Christian - \$2000, Anne Drexel - \$5,000, Robert Eichenberg - \$10,000 and Lorena Jacob -

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1	10/21/95	\$ 25,000
2	11/15/95	\$ 25,000
3	12/30/95	\$ 50,000

4 Mr. Cone testified that he regarded his payments as an investment in developing a
5 network of conservative donors, contingent only on Triad making some advancement in
6 developing major donors for the types of political and charitable causes in which he was
7 interested. Cone Dep. Tr. at 144. Mr. Cone recorded transfers to Triad in his personal
8 accounting records as "GI [Gift]: Political Indirect" rather than as a fee for services
9 rendered. *Id.* at 502, Robert Cone Accounting Records-Cone Dep. Ex. 31. There is no
10 documentary evidence of Triad ever sending Mr. Cone, or any other "client,"
11 a bill or an invoice during the 1996 election cycle.²⁷ Rather than offering services in
12 exchange for a definite fee, the evidence obtained during the investigation shows that
13 Triad/CSM and Triad Inc. relied on conservative donors to make voluntary
14 "contributions" to support their activities.²⁸
15

\$20,000. Triad Stips. at ¶ 7.1(b). Triad produced no records which would explain why these individuals sent Triad funds in these amounts.

²⁷ Although Mr. Cone produced a Triad Inc.-generated document entitled "Statement of Account" generated in 1998, which seemed to indicate that Triad/CSM and Triad Inc. charged him a set amount per month during 1995-1996, he testified that this document did not accurately reflect his arrangement with Triad/CSM or Triad Inc. Cone Dep. Tr. at 505-510, CONE 000046-58.

²⁸ In a March 30, 1995 mass mailing, Triad, whose only financial receipts prior to this date were from Mr. Cone, stated that its efforts had been "well received with \$50,000 contributed or pledged pending the completion of an Advisory Board." TMS 000560 (emphasis added). Triad/CSM also prepared a fact sheet regarding "Triad Funding" which stated that "Any ***contribution*** made directly to TRIAD will not count against your per year political contribution limit. See Factsheet on TRIAD Structure and TRIAD Funding, TMS 000809 (italicized bold emphasis added, underlined emphasis in original).

1 reimbursements).²⁹ Triad/CSM received these funds from Robert Cone in 1996 on the
2 following dates:

3	2/6/96	\$ 75,000
4	3/4/96	\$ 50,000
5	4/2/96	\$ 50,000
6	4/30/96	\$ 50,000
7	6/1/96	\$150,000
8	6/26/96	\$ 80,000
9	7/19/96	\$ 5,000
10	8/8/96	\$ 2,500
11	9/9/96	\$ 3,000

12 Again, rather than charging fees for services, the evidence shows that Triad/CSM
13 continued to rely on "contributions" or "donations" from Mr. Cone and a handful of other
14 individuals. For example, an individual named Foster Freiss provided Triad/CSM a
15 \$1,000 check with a cover letter that stated:

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17
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21

22 See January 22, 1996 letter from Foster Freiss to Carolyn Malenick (emphasis added),
23 TMS 000819. In response, Carolyn Malenick wrote a memorandum stating "Thank you

24

²⁹ The other three individuals who sent funds to Triad/CSM in 1996 were: Beverly Danielson - \$1,000, Foster Freiss - \$6,000 and Lorena Jaeb - \$10,000.

1 so very much for your \$1,000 contribution." See February 2, 1996 Malenick
 2 memorandum to Foster Freiss (emphasis added), TMS 000816. Later, Mr. Freiss sent
 3 Triad another \$5,000 check with a cover letter stating "Seeing you in action last Thursday
 4 was a shining endorsement of the value of Triad! Enclosed is a \$5,000 check toward your
 5 organization's overhead and expenses." See February 7, 1996 letter from Foster Freiss to
 6 Carolyn Malenick, TMS 000814. Similarly, Mr. Cone testified that he was never
 7 obligated to pay any particular amount, or to continue paying Triad's expenses. Cone
 8 Dep. Tr. at 144.

9 b. Triad Inc.

10 After its incorporation in May 1996, Triad received payments of \$606,571 from
 11 eleven individuals and four corporations, of which \$426,621 came from Robert Cone, and
 12 \$152,000 of which were commissions on Triad Inc.'s contracts to manage the activities of
 13 CREF and CR.³⁰ Triad Stips. at ¶ 7.3. Triad Inc. received funds from Mr. Cone in 1996
 14 on the following dates:

15	7/9/96	\$ 2,500
16	7/22/96	\$ 50,761
17	8/2/96	\$ 70,000
18	8/2/96	\$ 50,000
19	8/8/96	\$ 40,000

³⁰ The other individuals contributed to Triad in the following amounts: \$100, \$100, \$150, \$500, \$500, \$500, \$1,500, \$1,500, \$4,000, \$5,000 and \$5,000. The five individuals who sent Triad Inc. more than \$1,000 were: Merle Stoltzfus - \$1,500, Patsy Frizzell - \$1,500, Edward Cone - \$4,000, Robert Eichenberg - \$5,000 and LaDorna Eichenberg - \$5,000. The two corporations, other than CR and CREF, which sent funds to Triad were Koch Industries - \$2000 and Cracker Barrel - \$8000. Triad Stips. at ¶ 7.3(b)-(c).

1	8/8/96	\$ 7,500
2	8/26/96	\$ 50,000
3	9/9/96	\$100,000
4	10/3/96	\$ 50,000
5	10/30/96	\$ 5,500

6 Mr. Cone testified that his financial support of the corporate Triad entity was
7 made on the same "as you go" basis as his earlier financial support of the unincorporated
8 Triad/CSM. Cone Dep. Tr. at 144.

9 At about the same time that it incorporated, Triad began to distribute what appears
10 to be a schedule of fees to some, but not all, of the prospective donors that it contacted.
11 See Triad Stips. at ¶ 2.2, See FECTR000078-000103/TR10000521-10000540. See
12 7/16/99 Triad Response to Questions at 4 (stating that the fee structure was included in
13 June 1996 mass mailing of Triad videotape). Although Triad received funds from some
14 individuals and groups during 1996 that might possibly correspond to some aspects of the
15 fee schedule, Triad apparently did not send out any bills or invoices, or otherwise request
16 payment for specific services, during 1996. See Triad Stips. at ¶ 2.6.

17 Beginning in approximately June 1996, Triad also distributed a memorandum to
18 "Fellow Triad Clients and Prospective Clients" from Robert Cone, which stated:

19 During the primary cycle, as TRIAD has been building the
20 product and service, they have been providing you with
21 analyses and reports at no cost, to show you what kind of
22 service and product they were developing. But, sooner or
23 later, as with any 'for profit' business, bottom line must be
24 given consideration. For TRIAD, the time is now. The
25 reports and the recommendations for the General Election
26 are ready, but they can only be provided to those who are
27 willing to sign up as TRIAD clients. In my opinion, the

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1 service is the most effective way to get efficient use of my
2 political dollars. Not only does TRIAD know who to
3 support, but also how much they need and the most
4 effective way to deliver the help.

5 Undated Triad Inc. Memorandum from Robert Cone. JS000009 (emphasis added); Cone
6 Dep. Tr. at 418-422. Notwithstanding the statements in this memorandum, during the
7 remainder of 1996, Triad continued to send Fax Alerts and reports to numerous
8 individuals and groups, and to provide individualized counseling on political
9 contributions, without receiving any payment or commitment to make future payments.³¹

10 When asked about Triad client billing, Jason Oliver testified:

11 During 1996, the client billing was basically nonexistent.
12 There was no set structure for billing clients except the
13 issue education organizations which were some kind of
14 percentage basis of what was expended by each of the
15 education efforts.

16 There was a billing structure that was created in 1997 that
17 was set up, and there was an attempt to go back to 1996 and
18 issue statements to each of the TRIAD clients who put
19 federal dollars into campaigns. And so the billing structure,
20 while it was in place in 96, it was never formalized until 97.

21 Oliver Dep. Tr. at 96. Triad has stated that it sent invoices for 1995-1996 activity in July
22 1997. *See* Triad Inc. Supplemental Response to Commission's Order to Answer Written
23 Questions.³² Despite these belated efforts, which happened to coincide with a Senate

³¹ For example, although they received a copy of this memorandum, John and Ruth Stauffer, who contributed \$42,500 to nine PACs through Triad, testified that they never had any discussions about paying Triad a fee, and never received a bill or invoice requesting any sort of payment.

³² During the negotiation of stipulations, Triad produced a chart which purported to reflect the invoices it sent out in 1997. *See* Attachment A to April 30, 1999 submission. Despite a request from Commission staff, no backup materials (e.g, bank records, canceled checks, etc.) were provided for the chart. The chart reflects the fact that only a very few individuals (less than fifteen) made payments in response to the invoices, and some of those that did made payments that were considerably less than the amount invoiced. In fact the majority of the "payments"

1 Governmental Affairs Committee investigation, it does not appear that Triad ever
2 collected any fees from a majority of the individuals who received its publications or for
3 whom it forwarded political contributions in 1995-1996. Triad Stips. at ¶ 2.6(a)-(b).

4 In their depositions, both Ms. O'Rourke, the Triad Finance Director, and
5 Mr. Rodriguez, the Triad Political Director, claimed to know absolutely nothing about, or
6 to have had any responsibility for, any fee structure or for any client billing. O'Rourke
7 Dep. Tr. at 59-63, Rodriguez Dep. Tr. at 56-57. Both Ms. O'Rourke and Mr. Rodriguez
8 testified that such matters were handled by Ms. Malenick. *Id.*

9 **3. Triad's Coalition of PACs**

10 During 1995-1996, Triad contacted numerous conservative organizations,
11 membership groups and individual activists to encourage them to form a "coalition" or
12 "network" of political action committees ("PACs") that could work together for the
13 purpose of supporting conservative Republican congressional candidates in the upcoming
14 1996 elections. In a March 1996 letter sent to a number of individuals, Triad/CSM stated
15 that "the TRIAD concept has expanded to include coordination with conservative
16 political action committees and issue organizations that now seek our research analysis on
17 a regular basis." TMS 000583. Further, Triad/CSM claimed to have "taken an advisory
18 role among key conservative political action committees" and to have "built coalitions
19 that will provide essential targeted assistance to candidate's [sic] campaigns in winnable
20 districts." Triad/CSM Activities Report, January-September 1995, KI 00507.

recorded on the chart are credits for funds previously sent to Triad during 1995-1996. In sum,
the chart reinforces the conclusion that most of the individuals to whom Triad sent Fax Alerts,
and for whom it forwarded contributions, never made any payments.

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1 In a Triad promotional video distributed in the Spring of 1996, Carolyn Malenick
2 indicated that by working with PACs and other donors, Triad would be able to provide
3 "rapid fire" support to conservative Republican candidates in tightly contested races. *See*
4 Transcript of 1996 Triad Videotape. In its brochure, Triad stated that one of its activities
5 was "[w]orking with conservative political action committees and issue organizations for
6 efforts to maximize their separate funding sources to accomplish common objectives."
7 *See* Triad Brochure, TR10 000402-403. Triad also told donors that it could provide them
8 with a "[m]atrix of currently active, conservative, federally registered, like-minded
9 political action committees who have been identified and agreed to consult on targeted
10 candidates and campaigns." *See* TR10 000531.

11 Information obtained as part of the investigation indicates that, during 1995-1996,
12 Triad representatives met on a regular monthly, and later bi-weekly, basis with a number
13 of conservative organizations with PACs regarding their plans to support specific
14 candidates. Triad also wrote to PACs seeking such information. For example, Carolyn
15 Malenick sent one PAC an inquiry as to what candidates it would be "pre-disposed to
16 playing if the \$\$ [sic] were there. This will help us with our clients." *See* 7/16/96 Fax
17 Cover Sheet from Carolyn Malenick to Brent Bozell, Conservative Victory Committee.

18 Triad also informed certain conservative PACs that Triad would recommend that
19 members of its donor network contribute to their PAC. During the Summer and Fall of
20 1995, Triad asked these PACs to provide a one paragraph synopsis describing their
21 philosophy and activities. Triad compiled these descriptions into a "Political Action

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1 Committees" memorandum ("PAC Memorandum") that it began distributing to potential
2 donors. JS 000002-04.³³

3 The Triad PAC Memorandum, which described thirteen PACs, stated that:

4 The following PACs agree with TRIAD's targeting
5 approach for the 1996 elections. TRIAD provides advice
6 and consulting services to its' [sic] participants on their
7 political contributions. . . . While this is only a partial
8 listing of the PACs involved in TRIAD, these PACs give
9 direct contributions to candidates in addition to their other
10 political involvements. The PACs listed will participate in
11 contested primaries.

12
13 As discussed below, two PACs (AFE and CAFE) actually received all of their
14 funds through Triad, and made all of their federal political contributions to Triad-
15 recommended candidates.

16 During this investigation, Triad stipulated that:

17 6.7 Triad/CSM and Triad Inc. *informed individuals to*
18 *whom it made contribution recommendations that it had*
19 *discussions and conversations with representatives from*
20 *the PACs as to the candidates and type of candidates they*
21 *had targeted for their support.* Triad also asked if the
22 PACs' list of candidates for their support might be
23 expanded should the PAC receive additional funds.

24 Triad Stips at 6.7 (emphasis added).

25 During 1995-1996, Triad received and forwarded 199 political contribution
26 checks, totaling approximately \$298,500 to federal political action committees. Triad
27 Stips at 6.11-6.12. Of these PAC contributions, 36 political contribution checks, totaling

³³ Triad also maintained a database which kept track of the candidates to which each of the groups listed on its PAC Memorandum had contributed during the 1996 election cycle. See Triad Combined Candidate Status Report - Coalition Overview, KI 00572-590.

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1 approximately \$56,050, were collected and forwarded after Triad Inc. was incorporated in
2 May 1996. Triad Stips at ¶ 6.12.

3 Although Triad has consistently maintained that these PAC contributions, which
4 were forwarded with a standard cover letter asserting that the funds could be used for any
5 purpose, were not earmarked for any particular candidate or committee, public disclosure
6 records indicate that the PACs which received such funds through Triad often made
7 contributions to candidates featured in Triad Fax Alerts. See June 1997 Affidavit of
8 Carolyn Malenick submitted in MUR 4633, Triad Stips at ¶ 6.8, and 1996 FEC
9 Disclosure Reports of PACs listed on JS 000002-04.

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

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

23 "Triad's Stealth Campaigns Elect Lawmakers," The Hill, Oct. 8, 1997, at 43.

24 Even though forearmed with the knowledge as to which candidates the PACs had
25 targeted for support, Triad, at times, made additional efforts to ensure that its coalition of
26 PACs would deliver support for Triad-recommended candidates with the funds provided

1 through Triad. For example, in June and July 1996, Triad forwarded \$42,500 in
2 contributions from John and Ruth Stauffer, who are in-laws to Kansas Senate candidate
3 Sam Brownback, to nine PACs. The investigation revealed that, at the same time that it
4 was forwarding the Stauffers' checks, and thereafter, Triad contacted at least five of the
5 nine PACs to ask if they would agree to contribute any newly received funds to Sam
6 Brownback. In several instances, Triad made follow-up contacts with the PACs, after
7 forwarding the Stauffer contributions, to again urge that the PACs contribute funds to
8 Brownback. All nine of the PACs made subsequent contributions to the Brownback
9 Committee. In the case of Citizens United Political Victory Fund and Free Congress
10 PAC, the PACs actually transmitted their contributions to Brownback through Triad. A
11 Free Congress PAC representative informed Commission staff that she had the
12 impression that Carolyn Malenick actually was handling fundraising for the Brownback
13 campaign. Similarly, in May 1996, Triad forwarded five \$1,000 contributions from
14 Robert Riley, Jr. to five PACs that were part of the PAC coalition. Each of these PACs
15 subsequently made contributions to Bob Riley for Congress, the principal campaign
16 committee of Mr. Riley's father, who was a relative unknown running in a seven
17 candidate primary for the Republican nomination for the Alabama Third Congressional
18 District.

19 Triad and Ms. Malenick not only worked with pre-existing PACs, but also took
20 steps to create, fund and manage the activities of two PACs, AFE and CAFE, which, as
21 discussed below, it was affiliated with for purposes of the Act.

1 a. AFE

2 Information gathered during this investigation establishes that Triad and
3 Ms. Malenick controlled the Sacramento, California-based American Free Enterprise
4 PAC ("AFE"). AFE was formed in the summer of 1995, but its treasurer resigned later
5 that year, before the PAC had received or made any contributions. At some point in late
6 1995, Carlos Rodriguez, Triad's political director, recruited David Bauer, an accountant
7 who acted as a professional treasurer for a number of political committees, to serve as
8 AFE's new treasurer. David Bauer Deposition Transcript ("Bauer Dep. Tr.") at 12. At
9 his deposition, Mr. Bauer testified that Mr. Rodriguez described AFE as Carolyn
10 Malenick's PAC. *Id.* Further, Mr. Bauer testified that all of the contributions received by
11 AFE came through Triad and that all AFE decisions about candidate contributions were
12 made by Ms. Malenick, whom he regarded as the PAC Director. *Id.* at 16, 20, 27, 32-33,
13 46-47, 85-87. Mr. Bauer also testified that he simply performed the ministerial or
14 administrative function of depositing donor checks from Triad in AFE's account and
15 writing AFE checks to the federal political campaigns selected by Ms. Malenick, and that
16 he had no discretion in terms of selecting candidates to support. Bauer Dep. Tr. at 48, 55,
17 85-87. Mr. Bauer said that the normal routine was for him to receive a Triad Fax Alert,
18 and within a day or so to receive a phone call from either Ms. Malenick or her assistant,
19 Triad Finance Director Meredith O'Rourke, instructing him to make a contribution to the
20 candidate or candidates discussed in the Fax Alert. *Id.* at 38-39.

21 During 1995-1996, Triad sent AFE individual contribution checks (ranging in
22 amount from \$10 to \$5,000) totaling \$42,660; and AFE made contributions (in amounts
23 ranging from \$1,000 to \$5,000) to twenty-six (26) Triad-recommended candidates

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1 totaling \$40,500. *See* 1995-1996 AFE Disclosure Reports. Robert Cone and his wife
2 each contributed \$2,500 to AFE in December 1995.

3 b. CAFE

4 Triad and Ms. Malenick also played a role in the formation and operation of
5 Citizens Allied for Free Enterprise PAC ("CAFE"). David Gilliard, who formerly was a
6 partner in a consulting firm with Carlos Rodriguez and later acted as a vendor for Triad
7 political advertising campaigns, testified that Carolyn Malenick contacted him with the
8 request that he form a new PAC to help support Republican candidates. Gilliard Dep. Tr.
9 at 17-22. Gilliard further testified that Ms. Malenick told him that Triad would do all of
10 the fundraising for his PAC from its donor network, and that Triad also would provide his
11 new PAC (CAFE) with research and recommendations as to the federal candidates that it
12 deemed worthy of contributions. *Id.* Mr. Gilliard testified that all of the contributions
13 received by CAFE came through Triad. *Id.* at 24. Mr. Gilliard testified that
14 Ms. Malenick had told him that he was not bound by her recommendations and that he
15 had autonomy in deciding which candidates CAFE would support.³⁴ *Id.* at 22-23.
16 Notwithstanding Mr. Gilliard's claim of autonomy, all of the federal candidates to which
17 CAFE contributed had been recommended by Triad.³⁵ *See* CAFE Subpoena Response

³⁴ CAFE also made a small number of contributions to non-federal candidates in state and local races. *See* CAFE Disclosure Reports, Gilliard Dep. Tr. at 121-122, 140. Some of these CAFE contributions were made to candidates and committees that were clients of Mr. Gilliard's consulting firm. Gilliard Dep. Tr. at 15, 121-122.

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

1 and Gilliard Dep. Tr. at 26 (purported exceptions were endorsed by Triad). During 1995-
2 1996, Triad sent CAFE individual contribution checks totaling \$38,575; and CAFE made
3 contributions to 23 federal candidates totaling \$34,996. *See* 1995-1996 CAFE Disclosure
4 Reports. Robert Cone and his wife each contributed \$2,500 to CAFÉ in December 1995.

5 **4. Triad's Political Audits**

6 During 1995-1996, Triad/CSM and Triad Inc. performed approximately two
7 hundred and fifty (250) "political audits" on the campaigns of Republican candidates for
8 federal office. The audits involved multiple contacts with the campaigns, and were
9 conducted through telephone contacts, the exchange of written materials, and in the case
10 of at least 50-60 campaigns, face-to-face meetings. Triad Stips. at ¶ 3.1 and 3.8. These
11 political audits were overseen and conducted by Carlos Rodriguez, with assistance from
12 Jason Oliver, Clela Mitchell and William Saracino.³⁶ Triad Stips. at ¶ 3.1.

13 The political audits were a key component of Triad's efforts to elect and re-elect
14 conservative candidates to maintain a Republican majority in Congress. Triad used the
15 political audits to develop the information needed to select the candidates that it would
16 target for support by its coalition of PACs, and for which it would expressly advocate
17 financial support in solicitations that were communicated to potential donors in "Fax
18 Alert" newsletters and other Triad publications. Triad Stips at ¶ 3.2. Further, Triad Inc.
19 used the political audits as a vehicle for providing targeted campaigns with consulting
20 advice on campaign strategy and fundraising. Later, Triad Inc. used the information

³⁶ One specific component of Triad's political audit program was an effort to contact and assess the re-election campaigns of Republican congressmen first elected in 1994 ("Republican Freshmen"). During the summer of 1996, Triad compiled a list of thirty-three (33) Republican Freshmen to be audited prior to the 1996 election. Triad Stips. at ¶ 3.7, TR10-000045-50.

1 gathered during the political audits in developing the candidate-specific advertising that
2 CR and CREF sponsored during the last weeks before the 1996 congressional elections.
3 Triad Stips. at ¶ 3.12.

4 Triad informed each of the audited campaigns that the information obtained
5 during the political audit would be used by Triad in making recommendations to
6 individuals regarding possible political or financial support for their campaigns. Triad
7 Stips at ¶ 3.3. Some of the candidates whose campaigns were audited informed the
8 Commission that they understood Triad to be an organization whose purpose was to raise
9 funds for targeted Republican candidates. *See, e.g.*, 1999 letters from audited campaigns.
10 During the audits, campaigns were asked for the names of their “maxed out” donors (who
11 already had given that campaign the maximum legal amount) that Triad could contact to
12 ascertain their interest in giving to other candidates. Rodriguez Dep. Tr. at 86-88.

13 As part of its political audits, Triad obtained detailed information regarding the
14 candidate’s and the campaign’s prospects in the upcoming election. The topics that Triad
15 discussed with each campaign staff typically included information regarding the
16 campaign’s fundraising goals and performance, the campaign’s operating budget and
17 staffing plans, the identity of the campaign’s professional consultants, the campaign’s
18 advertising plans, recent public polling results, key issues being advanced by the
19 candidate or his/her opponent, the campaign’s self-assessment of its specific needs, the
20 strengths and weaknesses of the campaign, the strengths and weaknesses of the opponent,
21 and the campaign’s prospects for victory. Triad Stips at ¶ 3.4.

22 In many cases, Triad representatives prepared written audit reports which were
23 based on discussions with the candidates and/or campaign staff. Triad Stips at ¶ 3.8.

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1 Many of the audit reports indicate that Triad intended to have additional contacts with the
2 campaign during the period between the date of the audit and the upcoming elections.
3 Triad stipulated that the audit reports accurately reflected some portions of the
4 discussions that Triad representatives had with representatives of the different 1996
5 congressional campaigns. Triad Stips. at ¶ 3.8. As discussed below, a number of the
6 audit reports reflect assistance being rendered to various campaigns by Triad.

7 a. Consulting Advice

8 Various audit reports, as well as subsequent Fax Alerts, indicate that Carlos
9 Rodriguez provided professional consulting assistance to the campaigns both during and
10 after his political audit visits. Mr. Rodriguez, who was being paid more than \$1,000 per
11 day, plus expenses, by Triad, for his work on the political audits, testified that neither he
12 nor Triad charged or billed any of the campaigns for his review of their operations during
13 a political audit visit.³⁷ Further, Mr. Rodriguez testified that he did not volunteer his time
14 to any campaign in 1996. Rodriguez Dep. Tr. at 21.

15 Although Mr. Rodriguez generally professed to have little or no recollection of his
16 conversations during audit visits to specific campaigns, he testified that his audit reports
17 were dictated immediately after his visits with the campaigns while the conversations
18 were fresh in his mind. Rodriguez Dep. Tr. at 164-165 and 320. Mr. Rodriguez's
19 contemporaneous observations and subsequent Fax Alerts based on these reports establish
20 that Triad/CSM and Triad Inc. provided assistance to various campaigns.

³⁷ Mr. Rodriguez explained the failure to bill the campaigns for his assistance by testifying that he did not regard the type of advice or opinions regarding political strategy that he provided to different campaigns as being the type of service for which he would seek payment. Rodriguez Dep. Tr. at 404-405.

1 i. Joe Pitts Campaign

2 In early April 1996, Mr. Rodriguez conducted an audit of the congressional
3 campaign of Joe Pitts in the Pennsylvania Sixteenth District Republican primary. In an
4 April 10, 1996 Fax Alert, Triad/CSM recommended that readers contribute to the Joe
5 Pitts campaign.³⁸ Following Mr. Pitts' primary victory, Triad/CSM described its
6 involvement in helping the campaign:

7 TRIAD Director, Carolyn Malenick and TRIAD's political
8 counsel, Carlos Rodriguez spoke with Joe Pitts and
9 campaign officials to identify the needs of the campaign –
10 not just in terms of dollars, but how those dollars would be
11 spent. The decision was made that a major phone bank
12 effort was imperative – but no funds were on hand to
13 implement the program. After discussion with TRIAD, a
14 phone bank program was developed by the campaign and
15 the cost determined. The information was provided to
16 TRIAD clients ... and that's when TRIAD's Finance
17 Director Meredith O'Rourke went to work.

18 The cost of the phone bank with additional radio to enhance
19 the message was estimated by the campaign to be \$20,000 –
20 and over the next 48 hours, TRIAD clients were contacted
21 about helping Joe Pitts. Within 48 hours, a combination of
22 TRIAD clients and PACs donated \$21,450 to the Pitts for
23 Congress campaign. Triad made sure the funds donated by
24 its' [sic] clients were used to pay for the phone bank
25 program for the primary election.

26 See Undated Triad Fax Alert, entitled "TRIAD Comes Through in Pennsylvania
27 Primary!!! With TRIAD's help, Joe Pitts Wins GOP Nomination by 19%" FA13. This
28 Fax Alert also quoted Joe Pitts as stating that:

29 TRIAD saved the day for my campaign! TRIAD's clients
30 came through and helped me when we needed help the

³⁸ Joe Pitts, one of the first candidates featured in a Triad Fax Alert, was running for a seat in Congress from the district in which Robert Cone lived. Further, Robert Cone testified that he attempted to raise funds for Mr. Pitts' candidacy in 1996. Cone Dep. Tr. at. 323-329.

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1 most. Our winning margin was stupendous. TRIAD
2 played a major role for its' [sic] clients in identifying what
3 our campaign needed, mobilizing the grassroots network
4 and coming through with the funds to help pay for our
5 phone bank program. Our victory is truly a TRIAD victory!
6 Thank You TRIAD!!!!.

7 ii) Bob Riley Campaign

8 In May 1996, Triad/CSM audited the congressional campaign of Bob Riley in
9 Alabama's 3rd Congressional District Republican primary. Following the audit, and the
10 incorporation of Triad Inc., Mr. Rodriguez had regular telephone contacts with both the
11 campaign manager, Billie Joe Johnson, and another campaign official, Robert Riley, Jr.
12 See Affidavits of Johnson and Riley, Jr. in MUR 4633, Riley Dep. Tr. at 113-119.
13 Although both Rodriguez and Riley, Jr. testified that they could not remember any of the
14 specific issues or problems they discussed in connection with the campaign, both
15 acknowledged that the Bob Riley for Congress campaign did not have an experienced
16 political consultant on retainer who could have provided similar advice in 1996. *Id.* In
17 an affidavit filed with the Commission, the campaign manager for Bob Riley for
18 Congress stated his belief that Triad may have played a role in getting the NRA to
19 endorse Mr. Riley's candidacy. After the campaign was over, Congressman Riley sent a
20 thank you note to Triad which stated: "[Triad's] political expertise in formulating a
21 winning strategy was instrumental [to our victory]."³⁹ See TR10 000087.

22

³⁹ Further, during the 1998 election cycle, the Bob Riley for Congress campaign hired Mr. Rodriguez as its general political consultant. See Rodriguez Dep. Tr. at 355-56.

1 iii. Vince Snowbarger Campaign

2 Triad/CSM and Triad Inc. also assisted the Vince Snowbarger campaign in
3 Kansas' 3rd Congressional District. A June 21, 1996 audit report stated:

4 The Vince Snowbarger campaign presents us with an
5 opportunity to elect a good conservative who would be
6 loyal to the cause for years to come. *As a leader within the*
7 *conservative movement*, it is incumbent upon Triad to
8 ensure victory in the primary is possible.

9 TR15001206-07 (emphasis added), Rodriguez Dep. Tr. at 169-170. Mr. Rodriguez's
10 audit report states that he attempted to address what he perceived as deficiencies in the
11 campaign organization by giving the campaign "a plan to work out with regards to
12 fundraising establishing specific financial goals and programs to achieve those
13 objectives." *Id.* at 159-160. While Mr. Rodriguez only remembered giving verbal
14 advice, the Snowbarger campaign reported receiving a document which set forth
15 Mr. Rodriguez's plan (no copy of which was retained after the 1996 election). Further,
16 Mr. Rodriguez's audit report states that Triad would identify "ten House members who
17 can each give [Snowbarger] \$1,000 outside of our regular scope of leadership PACs" and
18 that he intended to work with a consultant who had been hired by the Snowbarger
19 campaign to "find out how much money we need to generate for [Snowbarger] from some
20 of our clients and from some ideological PACs who may already be willing to help." *Id.*
21 at 168-169. The Snowbarger campaign, which had a subsequent contact with Triad
22 during a visit to Washington, DC, reported only receiving general advice from Rodriguez,
23 and while it recalled his pledge to raise funds for the campaign from sitting congressmen,
24 it claimed not to be aware of any funds that it received as a result of Mr. Rodriguez's
25 efforts.

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1 iv. Ed Merritt Campaign

2 Another example of Triad Inc. providing assistance to a campaign can be found in
3 the following audit report discussion of the campaign of Ed Merritt in the Texas
4 Congressional District, which detailed efforts to convince the campaign to use telephone
5 banks in the upcoming general election.⁴⁰ Mr. Rodriguez stated:

6 During my visit today they had planned to only do a
7 volunteer phone bank. I spent a considerable amount of
8 time educating Ed Merritt and [campaign manager] Dennis
9 Suiter on the essential need to seriously consider
10 augmenting their budget to include a paid phone bank
11 operation.

12 TR1500182-85, Rodriguez Dep. Tr. at 176.

13 Ed Merritt for Congress campaign manager Dennis Suiter described having
14 several contacts with Triad, both before and after Mr. Rodriguez's September 5, 1996
15 visit. Mr. Suiter stated that the campaign understood that if "found worthy" of
16 endorsement, Triad would "educate" donors as to Ed Merritt's candidacy, and that this
17 would result in the campaign receiving contributions. In discussing the Triad political
18 audit, Mr. Suiter reported being aware that Triad might sponsor public advertising about
19 the different candidates in the race, but he did not recall any mention of CR or CREF.

20 v. Bob Schaffer Campaign

21 Mr. Rodriguez's audit report on the Bob Schaffer campaign in Colorado's Fourth
22 Congressional District discusses how Triad Inc. could help that campaign in getting a

⁴⁰ The audit report on the Merritt campaign also noted that Mr. Rodriguez had discussions with the campaign about Triad helping to arrange for conservative celebrities to come to the district as a headliner for a campaign event. TR15 000182-83, Rodriguez Dep. Tr. at 181-182. Although similar discussions are reflected in other audit reports, there is no evidence that Triad was ever successful in arranging for any conservative celebrities to appear at any candidate's campaign event.

1 potential fundraiser to fulfill a commitment to the candidate to raise \$50,000. TR15
2 001201-03. Rodriguez Dep. Tr. at 194-201. Although Mr. Rodriguez acknowledged that
3 he may have met with the delinquent fundraiser, he could not recall the purpose of their
4 meeting. Mr. Rodriguez's audit report also suggests that Triad "help generate the money
5 for the cost of a survey so that we can find out where Schaeffer stands in relation to the
6 other candidates before the eyes of the voters who are likely to vote in the Republican
7 primary in August. That cost should be no more than \$6,000." *Id.*, Rodriguez Dep. Tr. at
8 197-198. Once again, Mr. Rodriguez could not recall this action item, and there is no
9 documentary evidence that Triad followed up on this task. Rodriguez Dep. Tr. at 197-
10 198.

11 While Triad's advice benefited certain candidates, the record indicates that Triad
12 did not receive any payments from any of the candidates or campaign committees that
13 were the subject of a political audit during 1996. *See* Triad Stips. at ¶ 3.6.

14 **b. Opposition Research**

15 As part of some political audits, Triad would arrange for an outside research
16 company called Trenton West to perform a "background check" for the purpose of vetting
17 a congressional candidate prior to issuing a contribution recommendation. Jason Oliver
18 Depo. Tr. at 78-80. This effort was designed to pre-empt any surprise disclosures that
19 might later be uncovered by Democratic Party opposition research. *Id.* Triad would
20 share the results of the background checks with the campaign whenever it uncovered
21 information which raised questions about its candidate. Rodriguez Dep. Tr. at 229-232.

22 Typically, Triad would pay Trenton West between \$2,000 and \$3,500 per
23 candidate for an "[a]nalysis of Electronic Background Records including civil and

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1 criminal files; Resume verification and additional Opposition Research activities as
2 specified under a contract for the vetting of "friendly" candidates preparatory to decision-
3 making." See Trenton West invoices, e.g., CM 001797. During 1996, Triad paid Trenton
4 West \$35,270 to perform this type of "Opposition Research" on different Republican
5 candidates. See TR5 000009. While Mr. Rodriguez does not recall ever withholding a
6 contribution recommendation because of an adverse finding from such background
7 checks, he does recall having to get clarification from some candidates regarding their
8 past activities. Rodriguez Dep. Tr. at pp. 229-232.

9 **5. Triad's Advocacy and Fundraising for Selected Candidates**

10 a) **Triad Fax Alerts**

11 During 1996, Triad sent approximately 60 separate dated editions of a newsletter
12 called the "Fax Alert", or sometimes referred to as the "Daily Fax Alert," to a list of
13 approximately one hundred and sixty (160) persons and entities.⁴¹ Triad Stips. at ¶ 4.1.
14 While some editions of the Fax Alert newsletter focused on overall themes in the 1996
15 federal congressional elections, a majority of the editions included research compiled on
16 individual races, as well as contribution solicitations and other exhortations of support for
17 specific candidates. Triad Stips. at ¶ 4.4.

18 (i) **Republican Primaries**

19 The first Triad/CSM Fax Alert which recommends support for a specific
20 candidate is an April 10, 1996 Fax Alert regarding the Joe Pitts for Congress campaign.

⁴¹ The distribution list for forty-two editions of the "Fax Alert" newsletters that were sent through an outside facsimile service between August 2, 1996 and December 31, 1996 ranges from between 156 and 167 intended recipients. See FECTR 000138-297. The vast majority of these individuals never paid, or were even asked to pay, Triad any amount of money during 1995-1996.

1 See Triad Fax Alert, entitled "96 Primary Election Alert – April 10, 1996" FA14. After
 2 discussing polling results showing the purportedly liberal Karen Martynick ahead of
 3 purportedly conservative Joe Pitts, Triad states

4 the Pitts camp has begun its homestretch tactical
 5 adjustments to win on election day. In its armory, the Pitts'
 6 campaign will be using TV, radio, direct mail, phone banks
 7 and an aggressive grassroots Get Out The Vote effort as the
 8 campaign jets to the finish line. There is however a
 9 shortage of funds to fulfill this activity. Any resources
 10 from the TRIAD network will be used wisely by the
 11 campaign.

12 Action Item

13 Upon review of the attached Congressional District
 14 Analysis, I **recommend you consider a contribution to**
 15 **this race. Immediately** contact the TRIAD office so we
 16 know when to expect your check and the amount you will
 17 contribute. . . . The *Joe Pitts for Congress* campaign is
 18 anxiously awaiting word from you and other TRIAD
 19 clients.

20 *Id.* (emphasis in original).⁴²

21 The second Triad/CSM Fax Alert which contains statements urging support for
 22 specific candidates was an April 22, 1996 Fax Alert regarding Indiana and North Carolina
 23 Primaries and the congressional campaigns of Marvin Scott, Robert Wilkie and Leroy
 24 Pittman. After giving an overview of these races, the Fax Alert states that "Three of these
 25 races are in need of an extra push both in financial support and participation by coalition
 26 workers." *Id.* at FA8-FA12.⁴³

⁴² A subsequent Triad Fax Alert stated that \$21,450 was raised for the Pitts campaign by Triad during a 48 hour period. See Undated Fax Alert, FA 13.

⁴³ A subsequent Fax Alert, dated May 9, 1996, notes that "TRIAD clients and coalitions amassed over \$54,000 for these [three] primaries [Scott in IN 10, Wilkie in NC 07 and Pittman in NC 08]." FA7

1 The Congressional District Analysis for Indiana 10 attached to the April 22, 1996

2 Fax Alert states:

3 ***TRIAD Recommends Marvin Scott***

4 TRIAD recommends supporting Marvin Scott for the
5 Republican nomination. Scott's support for a balanced
6 budget and the fiscal reforms required to achieve this end
7 are needed in Washington D.C. as we continue to push for
8 conservative change. Indiana replaced 3 Democrat
9 Congressmen with Freshmen Republicans in 1994. Had
10 the resources been available, the state would have sent 2
11 more, Marvin Scott in the Tenth and senator Jean
12 Leising in the Ninth. Scott's rival for the GOP
13 nomination is Blankenbaker, a pro abortion liberal. Her
14 record in the State Senate is decidedly moderate on a slew
15 of issues important to mainstream Republicans.

16 Indiana's Tenth District is the front-line in the battle
17 for the soul of the Republican Party. Marvin Scott
18 cannot wage the battle alone. He needs your
19 involvement and financial support to carry the banner
20 into November.

21 FA10 (bolding and underlining in the original).

22 The Congressional District Analysis for North Carolina 07 attached to the April

23 22, 1996 Fax Alert state :

24 ***TRIAD Recommends Robert Wilkie***

25 In the May 7th Republican primary, TRIAD is leaning
26 towards conservative Robert Wilkie. Some candidates in
27 the Republican field are social liberals who lack the
28 conservative ideology embraced by Wilkie. Both social
29 and fiscal PAC's/Coalitions support Wilkie because they
30 know he will be a forceful advocate for the principles that
31 swept the Republicans into office in 1994. The primary is
32 the first battle in the contest to bring the Seventh
33 District into the conservative column. Strong support
34 for Wilkie is the best way to aid in this process.

35 It is likely that the victor of the Republican primary will
36 become the next Congressman from the 7th District. As the
37 first Republican to declare his candidacy on every major

1 media outlet in the district, Wilkie is on his way to victory.
2 Money is the best way to ensure a Republican pickup in this
3 district. . . . **With enough resources for Wilkie, North**
4 **Carolina 7 is a seat in the Republican column.**

5 FA11 (bolding and underlining in the original).

6 The Congressional District Analysis for North Carolina 08 attached to the April
7 22, 1996 Fax Alert states:

8 ***TRIAD Recommends Leroy Pittman***

9 **TRIAD recommends Leroy Pittman. Pittman holds an**
10 **ideology that emphasizes personal values and States**
11 **Rights over federal government intervention. Once in**
12 **Congress, Pittman will be a strong advocate for reduced**
13 **taxation and reform in education. The May 7th Primary**
14 **is tightly contested between Morgan and Pittman. The**
15 **Pittman team needs extra support to push them over the**
16 **top and on the road to Congress.**

17 . . . A Pittman victory on May 7th will help to increase the
18 chances of a Republican victory in November. The key in
19 North Carolina's Eighth District is the effective application
20 of grassroots assistance and financial support. **Your help**
21 **is needed.**

22 FA12 (bolding and underlining in the original).

23 The third Triad/CSM Fax Alert which urges support for specific candidates was a
24 May 22, 1996 Fax Alert regarding June 4th Primaries, which included recommendations
25 to support the primary campaigns of John Thune (SD at large), Bob Riley (AL 03) and
26 Mike Pappas (NJ 12). After giving an overview of the featured races, and referring to the
27 attached detailed analyses, the Fax Alert states "Upon review of the attached
28 Congressional District Analyses, I recommend you consider contributions to these races.
29 Immediately contact the TRIAD office so we know when to expect your checks and the
30 amounts you will contribute." *Id.* at FA1-FA6.

1 The Congressional District Analysis for South Dakota At Large attached to the
2 May 22, 1996 Fax Alert states:

3 ***TRIAD Recommends John Thune***

4 **TRIAD recommends John Thune. From day one,**
5 **Thune has run his campaign like a business. Thune**
6 **also offers combination of social and fiscal conservatism**
7 **and a broad depth of political experience.**

8 . . . When the General Election campaign begins, the
9 nominees of both parties will face a race that can go in
10 either direction. Neither party has a lock on this House
11 seat, making the need to support a solid candidate like John
12 Thune a necessity. **Thune's fiscally conservative message**
13 **is being carried across the state - evidenced by his**
14 **commanding fundraising lead and support within the**
15 **states. Regardless, the seat can only be won with a**
16 **major infusion of wisely used resources.**

17 FA4 (emphasis in the original).

18 The Congressional District Analysis for Alabama 03 attached to the May 22, 1996

19 Fax Alert states:

20 ***TRIAD Recommends Bob Riley***

21 In the June 4, 1996 Republican primary, TRIAD is leaning
22 towards **pro business candidate Bob Riley. Riley offers**
23 **conservatives a candidate they can wholeheartedly**
24 **support. His pro life and pro gun credentials are**
25 **unquestionable.**

26 . . . All the candidates on the Democrat side will be
27 formidable, promising a competitive general election. We
28 **must be certain that Bob Riley is the Republican**
29 **nominee.** A tight election increases the necessity of a
30 thorough and organized campaign coupled with a strong
31 grassroots effort.

32 FA5 (underlined bold emphasis in the original; bold emphasis added).

33 The Congressional District Analysis for New Jersey 12 attached to the May 22,

34 1996 Fax Alert states:

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1 **TRIAD Recommends Mike Pappas**

2 **TRIAD recommends Mike Pappas. As a county**
3 **Freeholder, Pappas has been a strong leader in**
4 **reducing the tax burden of his constituents, achieving**
5 **cuts 9 of the last 12 years.**

6 **The winner will be determined in the primary,**
7 **increasing the importance of getting involved now to**
8 **ensure the election of a solid social and fiscal**
9 **conservative candidate like Pappas. New Jersey's 12th**
10 **District is yet another battleground for the soul of the**
11 **Republican Revolution. We must act now to defeat the**
12 **left by supporting Pappas with all the resources we can**
13 **muster !**

14 **FA6 (emphasis in the original).**

15 **In July 1996, after its incorporation, Triad Inc. distributed a "Senate Analysis" of**
16 **the Brownback-Frahm Kansas Senate Primary. Triad's analysis of this race states:**

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

23 **. . . Victory is within reach for the movement ! We can**
24 **defeat liberal Shelia Frahm, but only with a unified**
25 **approach in support of Sam Brownback.**

26 **See July 10, 1996 Triad Senate Analysis of "Kansas B" primary (emphasis added).**

27 **A July 18, 1996 edition of Triad's Fax Alert newsletter featured the Brownback-**
28 **Frahm race, and also discussed two other congressional primaries in Kansas and one in**
29 **Tennessee. The Fax Alert reprinted the first paragraph of the Brownback-Frahm analysis**

1 quoted above, which closes with the exhortation that "Sheila Frahm must be defeated."⁴⁴

2 The July 18, 1996 Fax Alert also contained the following:

3 TN-01: Jim Holcomb for U.S. Congress

4 In an eleven-way primary race, Tennessee State Senator Jim
5 Holcomb is by far the best candidate for Congress . . .

6 Holcomb has been more than just a voice for the cause, he
7 has been an active leader! **To ensure that Holcomb**
8 **emerges the victor**, a forceful and efficient effort must be
9 organized to mobilize the grassroots and utilize all the
10 resources available. (emphasis added)

11 . . .

12 Kansas-02: Jim Ryan [sic] for Congress

13 The second district became an open Republican seat when
14 Representative Sam Brownback declared for the open Dole
15 seat. Prior to Brownback, the second district was
16 represented by a Democrat. The strongest candidate in the
17 primary and the one who is capable of keeping this seat in
18 the Republican column is Olympic star Jim Ryun. The
19 Democrat candidate is a wealthy individual who promises
20 to use personal money to make the race competitive. We
21 cannot afford to lose this seat. (emphasis added)

22 Kansas-03: Vince Snowbarger for Congress

23 This primary provides a clear contrast, liberal Eilert versus
24 conservative Snowbarger. While Eilert is expected to raise
25 and spend more money, Snowbarger's campaign is well
26 staffed and extremely capable of efficiently using whatever
27 resources can be put at their disposal.

⁴⁴ After Brownback won his August 6th primary, a Triad Fax Alert quoted Brownback as stating:

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."

ACTION ITEM:

Upon review of the attached Congressional District Analyses [Brownback, Ryun, Snowbarger and Holcomb], **I recommend you consider contributions to these races. Immediately 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. We want you to allocate your resources wisely. These campaigns are anxiously awaiting word from you and other TRIAD clients. (emphasis in original)**

Id.

In its August 2, 1996 Fax Alert, Triad included its recommendation of Bob Schaffer's candidacy in Colorado's Fourth Congressional District, which stated:

TRIAD Recommends Bob Schaffer

As a solid conservative, Bob Schaffer will provide support on social and fiscal matters important to us ! His strong commitment to the principles of the Republican Revolution will be welcomed in Congress. **With your support, Schaeffer will win**, adding another voice for reform in Washington. (emphasis added).

TR10 000216-217.

In its September 10, 1996 Fax Alert, Triad included its recommendation of support for Woody Jenkins' candidacy in Louisiana's U.S. Senate "open primary":

TRIAD's due diligence and value added intelligence has revealed that Jenkins is both the best candidate ideologically and the candidate who is most likely to defeat liberal Mary Landrieu in November. . . .

. . . For Jenkins to get into the run-off, he will need a last minute influx of dollars to mount an aggressive media campaign.

ACTION ITEM

Upon review of this Louisiana Senate update, we recommend you consider a contribution to this race.

1 Louisiana cannot afford two Democrats in the run-off
2 November 5th. Immediately contact the TRIAD office so
3 we know when to expect your check and the amount you
4 will contribute. The Jenkins for Senate campaign is
5 anxiously awaiting word from you and other TRIAD
6 clients.

7 TR10 000203-204.

8 The August 7, 1996 Fax Alert states that "TRIAD will now shift focus on
9 recommending liberal Democrats that can be defeated in the General Election. We have
10 narrowed our focus to the 45 most winnable House Senate [sic] seats as well as a handful
11 of Senate races." TR10 000215.

12 (ii) General Election

13 Numerous editions of the Triad Inc. Fax Alert newsletter sent out during the Fall
14 of 1996 solicit support for various Republican House Freshmen congressmen who Triad
15 identified as being engaged in close re-election campaign fights or races. Triad Stips. at ¶
16 4.5. Some examples are set forth below.

17 The October 8, 1996 Triad Fax Alert newsletter lists the names of thirteen
18 Republican Freshmen congressmen, who, based on Triad's research, "are engaged in close
19 campaigns and in need of help from TRIAD clients." TR10 000170.

20 Triad's October 14, 1996 Fax Alert included an attached memorandum "Re: Top
21 Tier Race in Need of Cash \$\$" which states: "[T]he election is only days away and these
22 campaigns are in dire need of money!! Thank you." The memorandum lists campaigns
23 by state, which, based on Triad's research, had not met their fundraising goals, and are
24 categorized as: "Open & Challenger" (fifteen named candidates), "Senate" (four named

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1 candidates), and "Freshmen" (seven named candidates).⁴⁵ The memorandum instructs the
2 readers to "Make all checks payable to the [campaign] committee listed below" and to
3 "forward all checks to the TRIAD office as soon as possible". TR10 000146-47.

4 The October 17, 1996 Fax Alert newsletter includes a two page "Triad Freshmen
5 Overview" listing thirty-three specific Republican Freshmen, and makes the following
6 plea to readers:

7 Do not sit back and hope for the best, take the initiative,
8 help protect these valiant Freshmen who have brought
9 something to Congress it has lacked for quite some time -
10 integrity. Do not let these honest men and women fall prey
11 to the dishonest attacks of the liberal Washington elitists.
12 Join the fight for economic and personal liberation; the
13 Freshmen need your help today.

14 See TR10 000133-36, at 134 (emphasis in original).

15 Numerous editions of the Triad Inc. Fax Alert newsletter also urged readers to
16 support specific Republican challengers for open congressional seats. Triad Stips at ¶
17 4.7. Some examples are set forth below.

18 The October 18, 1996 edition of the Fax Alert newsletter states:

19 **KS 03 Open Republican - Rep. Jan Meyers (retiring)**

20 Former Kansas State House Majority Leader Vince Snowbarger is
21 currently in fairly good position in his race to defeat liberal Democrat
22 Judy Hancock. [polling data omitted]

23 **Each of these races is vital in the Republican bid to hold on and**
24 **expand the majority in the United States Senate and House of**
25 **Representatives. TRIAD client support on behalf of each of**
26 **these races will help the Republicans continue leading America**

⁴⁵ The 1996 candidates named in this solicitation included: Warren Dupwe, Linda Wilde, Vince Snowbarger, Rick Hill, Sue Wittig, Bill Witt, Steve Gil, Brent Perry, Brian Babin, Ed Harrison, Larry Bigham, Mike Pappas, John Shimkus, Bob Kilbanks, John Thune, Woody Jenkins, Ray Clatworthy, Tim Hutchinson, Al Salvi, J.D. Hayworth, Andrea Streasand, Todd Tiahart, Fred Heineman, Phil English, Steve Stockman and Randy Tate. TR10 000146-47.

1 down the "yellow brick road" of opportunity and advancement.
2 (bold in original).

3 TR10 000132.

4 The October 23, 1996 edition of the Fax Alert newsletter states:

5 California Open Republican - Rep. Carlos Moorhead [retiring]

6 Republican Assemblyman Jim Rogan is battling Democrat
7 millionaire and perennial candidate Doug Kahn. The race is a tight
8 battle for Republicans and Democrats. . . . Kahn has also spent
9 \$700,000 to Rogan's \$300,000 (much of Kahn's is personal money).
10 Rogan will not be able to match Kahn's spending, and will need help
11 to send Kahn packing for the third straight election. (emphasis
12 added). . . .

13 The election of 1996 does not end until November 5th when the
14 polls close. The ability for you to make a difference with your
15 1996 election dollars expires on Friday when the last of the
16 media time must be purchased. Do not delay, unless you do not
17 mind seeing Ron Dellums or Teddy Kennedy controlling the
18 policy making committees of the United States Congress.
19 (bolding in original).

20 TR10 000125.

21 b) Expanding the Majority

22 In late September and early October 1996, Triad Inc. compiled information
23 gathered during its political audits and final candidate recommendations for the general
24 election into a one hundred and sixteen (116) page book entitled *Expanding the Majority*.
25 The first page of the book, which was on the letterhead of the "Privatized Republican
26 National Coalition," was titled "Triad's 1996 General Election Top-Tier Analysis." Triad
27 Stips. at ¶ 4.12, FECTR 000298-413. Triad sent the *Expanding the Majority* book to over
28 200 prospective donors. Oliver Dep. Tr. at p. 104-106.

29 The *Expanding the Majority* book provided detailed information and research
30 about twenty-six (26) named Republican candidates for the House of Representatives and

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1 seven (7) named Republican candidates for the U.S. Senate, as well as information
2 pertaining to the demographics of their districts or states. Triad selected these candidates
3 from all the districts or states researched as “top-tier” priorities.⁴⁶ At the beginning of
4 each section, the *Expanding the Majority* book reiterates Triad’s goal of retaining a
5 Republican majority in the next Congress. See FECTR 0003000 (“GOAL: Increase by 30
6 the Republican House Majority”) and FECTR 000381 (“GOAL: Increase Senate
7 Republicans to a Filibuster-proof 60”).

8 Each of the biographies and district analyses contain a picture of the candidate and
9 language which urges readers to support the recommended candidate. For example, the
10 *Expanding the Majority* book makes the following types of statements:

- 11 • “Alabama’s voters deserve better than the same old
12 politicians - they deserve Bob Riley.” FECTR 0000303
- 13 • “The future of the conservative movement includes
14 Aderholt. . . . Aderholt will bring his vision and energy to
15 Congress as an effective voice for the movement.” FECTR
16 000306
- 17 • “As a member of Congress, Rogan will continue to be a
18 strong advocate for victims of crime. He is a strong social
19 and fiscal conservative committed to restoring respect for
20 the Constitution and society. California and America need
21 James Rogan!” FECTR 000312.
- 22 • “Wilde’s integrity, eloquence and commitment to her
23 beliefs will serve her constituents well in the 105th
24 Congress. A victory for Wilde is essential.” FECTTR
25 000315.

⁴⁶ The *Expanding the Majority* book also includes a less detailed list of “2nd Tier” races which lists an additional twenty-one (21) named Republican candidates for the House of Representatives and an additional seventeen (17) named Republican candidates for the U.S. Senate. Triad provided this 2nd Tier information in order to illustrate that additional research had been done on other races for which Triad had not prepared a full written congressional district or state analysis. Triad Stips. at ¶ 4.14.

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- 1 • “[Shimkus] is a fiscal and social conservative who will
2 represent the 20th District with distinction in the 105th
3 Congress.” FECTR 000321.
 - 4 • “While a member of Congress, Young will be an integral
5 part of the continuing revolution in government.” FECTR
6 000336 . . . “To successfully defeat liberal Representative
7 John Baldacci, conservatives must maximize their
8 resources and provide as much financial support as
9 possible.” FECTR 000338.
 - 10 • “Should he be elected to the 105th Congress, Cramer’s skill
11 and association with members of the Republican leadership
12 will make him a strong voice for reduced government and
13 lower taxes from day one.” FECTR 000345 . . . “With a
14 strong grassroots effort, and effective use of resources,
15 Kevin Cramer will be elected to Congress in November!”
16 FECTR 000347.
 - 17 • “Oregon needs [Witt’s] voice in Congress.” FECTR
18 000351. . . . “If Witt can make the race financially
19 competitive and get a strong grassroots mobilization, he has
20 a shot of taking Furse out. The left is worried, as their
21 special interests have begun to focus on this race. They
22 must be met and their likely attacks neutralized if Witt is to
23 win.” FECTR000353.
 - 24 • “Leinbach’s commitment is a trait the people of
25 Pennsylvania’s 6th Congressional District will appreciate in
26 the United States Congress.” FECTR 000354. . . . “This
27 race can be won, but a lot of factors must fall into place for
28 victory to become a reality on November 5th, money being
29 the key.” FECTR 000356.
 - 30 • “Once in the 105th Congress, Bob Kilbanks will make the
31 people of his Lehigh Valley proud of their native son. He
32 will bring Pennsylvania values to Washington as a forceful
33 and articulate legislator.” FECTR 000357. “This is a
34 Republican District, that with the right campaign should be
35 a Republican win in November. . . . If they can pull the
36 money together and unify coalition and leadership support,
37 they can overcome McHale and send him to an early
38 retirement.” FECTR 000359.
 - 39 • “Gill is on the right path for victory. . . . With a forceful
40 mobilization of grassroots and a continued strong push for

1 campaign dollars, the Gill campaign will remain in a
2 position to defeat Gordon.” FECTR 000365.

3 • “Once in Congress, Sessions will be an advocate for
4 balancing the federal budget, reducing taxes, and fighting
5 for the Constitutional rights we all hold dear.” FECTR
6 000372. . . . The opportunity to take Texas’ Fifth
7 Congressional District out of the Democrat column and put
8 it into the Republican column is now! Pete Sessions is the
9 Republican nominee and can take this seat with an effective
10 coalition behind him and the continued mustering of the
11 resources to win!” FECTR 000374.

12 • “We need Jay Mathis in Congress as a defender of the Bill
13 of Rights.” FECTR 000375

14 The introduction to *Expanding the Majority* reminds readers that: “only a few
15 weeks remain until the General Election. The time for action is now! Please examine this
16 packet and take the time to plan one of your most important INVESTMENTS in 1996!”
17 FECTR 000299, Triad Stips. at ¶ 4.15. Mr. Rodriguez testified that the *Expanding the*
18 *Majority* book was intended to encourage prospective donors to help, support or make
19 contributions to the recommended candidates. Rodriguez Dep. Tr. at 248, 261-262.

20 c. Contributions Forwarded to Candidates

21 During 1996, Triad gathered and forwarded approximately 230 political
22 contribution checks made out to federal candidates and/or campaign committees, totaling
23 \$185,500. Triad Stips. at ¶ 5.3-5.4. This total includes approximately 180 political
24 contribution checks, totaling approximately \$142,500 to federal candidates and their
25 campaign committees, that Triad gathered and forwarded after its incorporation in May
26 1996. Triad Stips at ¶ 5.4.

27

1 6. **The CREF and CR Public Advertising Campaigns**

2 In mid-1996, Triad Inc., which had declared that its goal for 1996 was to support
3 the election or re-election of conservative Republican congressional candidates, began to
4 direct the public advertising campaigns sponsored through CR and CREF. As discussed
5 below, CREF and CR ultimately raised and expended \$3.2 million (\$1.8 million by CREF
6 and \$1.4 million by CR) in election-related political advertising programs, all of which
7 featured clearly identified candidates for federal office. See CREF Stips. at ¶ 4.1 and CR
8 Stips. at ¶ 4.1.

9 CREF and CR only ran ads in congressional districts where Triad had audited and
10 recommended support for the Republican candidates. In many instances, there was a
11 striking similarity between the issues and themes that Triad discussed with a campaign
12 during a political audit and the issues and themes that were featured in the later Triad-
13 managed CREF or CR advertisements. Further, a Triad representative contacted the
14 Republican campaigns in the districts where CR and CREF advertisements were being
15 planned to ask the campaign to identify the topics they would like to see featured in any
16 issue education ads that might be sponsored by outside groups. Although they did not
17 contain express advocacy, the CREF and CR advertising campaigns were in many
18 respects indistinguishable from advertising that might have been run by the featured
19 Republican candidates or campaigns.

20 a. **Funding the Advertising Campaigns**

21 During 1996, Triad Inc. solicited contributions to fund the CREF and CR
22 advertising efforts in a variety of mailings, including various editions of its Fax Alert
23 newsletter, discussed *infra*. These solicitations stated that CREF and CR advertisements,

1 would respond to political advertisements sponsored by other groups (such as the AFL-
2 CIO), without expressly advocating the election or defeat of particular candidates. *See*
3 9/24/96 Triad Fax Alert, TR10 000194, 10/7/96 Triad Fax Alert, TR10 000174. The
4 solicitations also indicated that there were no limits on the amount that could be
5 contributed to CREF and CR, and that corporate contributions were welcome. *Id.*

6 Triad Inc.'s solicitations for CREF and CR, which were made in the same
7 publications that commented on specific congressional races, indicated that the ads would
8 help Republican candidates in close races. For example a 9/27/96 Fax Alert states:

9 Essentially the left has wasted their resources over the last
10 year by "buying Christmas Cards in July." There are
11 numerous Social Welfare Organizations with a wide range
12 of issues, prepared to act as harbingers of the truth if you
13 are ready to begin the "fall harvest." Already the ads have
14 been developed and aired in 4 regional markets nationwide.
15 The impact of these strategically placed ads by *Citizens for*
16 *the Republic* prove that it is unnecessary to match the left's
17 resources when the greatest weapons are proper planning
18 and the truth. People do not start focusing attention on the
19 General Elections until the political season begins
20 following Labor Day which has come and gone. Please
21 join TRIAD's Network: this one step could make the
22 difference between victory and defeat !

23 TR10 000191. Similarly, a 10/21/96 Triad Fax Alert stated.

24 The approach recommended by TRIAD and the coalitions
25 hoping to protect the Freshmen and win the Open and
26 Challenger races, has been to back-load resources, which
27 will not take effect until the last 10 days. All along,
28 Republicans have known that the unions could not be
29 matched dollar for dollar. **By holding resources until the**
30 **final weeks, Republicans should be able to blanket the**
31 **airwaves with the TRUTH. Friday October 25th is the**
32 **drop dead date for air time to be purchased. The**
33 **numerous 501(c)4 vehicles have messages developed and**
34 **are ready to go up on the air – your help is needed now!**

35 TR10 000128-29.

i. CREF

During 1996, CREF had financial receipts totaling \$2,248,313, including \$970,000 from the Economic Education Trust and \$500,000 from Robert Cone. CREF Stips at ¶ 3.5. Including a number of cash transfers from Triad and CR, which were later characterized as undocumented loans, CREF received funds in amounts greater than \$5,000 from the following individuals and groups:

<u>Date</u>	<u>Source of Funds</u>	<u>Amount</u>
7/10/96	Robert Cone	\$300,000
8/2/96	Triad Inc.	\$ 50,000
9/6/96	Triad Inc.	\$ 5,500
9/20/96	Triad Inc.	\$ 10,000
10/8/96	Robert Cummins	\$100,000
10/15/96	Fred Sacher	\$ 50,000
10/15/96	KCI Inc.	\$ 50,000
10/15/96	Economic Education Trust	\$545,000
10/16/96	Fire Check, Inc.	\$ 10,000
10/17/96	Robert Cone	\$200,000
10/17/96	Edward Cone	\$300,000
10/18/96	Economic Education Trust	\$345,000
10/22/96	Economic Education Trust	\$ 80,000
11/7/96	Citizens for Reform	\$155,000
11/25/96	Triad Inc.	\$ 36,746

CREF Stips at ¶ 3.12.

ii. CR

During October and November 1996, CR had financial receipts totaling \$1,587,431.50, including \$858,000 from the Economic Education Trust and \$400,000 from Robert Cone. CR Stips at ¶ 2.1. CR received funds in amounts greater than \$5,000 from the following individuals and groups:

<u>Date</u>	<u>Source of Funds</u>	<u>Amount</u>
10/4/96	Fred Sacher	\$ 50,000
10/13/96	Cracker Barrel Old Country Store	\$ 10,000
10/16/96	Edward Cone	\$100,000
10/16/96	Dan Gerawan	\$ 50,000
10/17/96	Robert Cone	\$300,000
10/22/96	Economic Education Trust	\$355,000
10/23/96	Economic Education Trust	\$503,000
10/24/96	Robert Cone	\$100,000
10/29/96	Bruce Benson	\$ 25,000
11/04/96	Foster Freiss	\$ 25,000
11/04/96	Peter and Patricia Cloeren	\$ 20,000

CR Stips at ¶ 2.1-2.12.

b) CREF Summer Union Media Campaign

During the summer of 1996, CREF disbursed \$386,583.41 to produce and broadcast a series of television advertisements, related polling, and a toll-free telephone response line that it referred to as the "Union Media Campaign." CREF Stips. at ¶ 5.1.⁴⁷

⁴⁷ Although Triad/CSM solicited at least twenty potential donors for contributions to this CREF effort (See FECTR 000424-30), the advertisements were financed entirely by Robert Cone, who contributed \$300,000 to CREF through an earmarked deposit with Triad Inc., as well as by transfers of funds that Mr. Cone had previously sent to Triad/CSM. Triad Stips. at ¶ 7.3(e) and CREF Stips. at ¶ 3.12.

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1 These summer advertisements, which were distinct from later CREF and CR
2 advertisements, were broadcast, and related polling was conducted, in congressional
3 districts where the AFL-CIO had previously broadcast advertisements that criticized the
4 incumbent Republican congressmen in those districts.⁴⁸ See CREF Stips. at ¶ 5.1-5.8 and
5 FECTR 00025-30. The Union Media Campaign ads each referenced the earlier union
6 attacks on the Republican incumbent, and included some statements which generally
7 attacked the AFL-CIO advertising and/or praised the incumbent congressmen. CREF
8 Stips. at ¶ 5.1-5.8.

9 c) The Pre-Election Advertising Campaigns

10 CR spent \$1,412,313.55 and CREF spent \$1,331,471.08 to pay for the planning,
11 production, broadcast or dissemination of television, radio, direct mail and telephone
12 bank advertising programs that were distributed between late September and early
13 November 1996. CR Stips. at ¶ 4.1 and CREF Stips. at ¶ 6.1.

14 Although the advertisements did not contain express advocacy, each
15 advertisement did clearly identify one or more candidates for the U.S. House of
16 Representatives or the U.S. Senate in the upcoming federal elections, and were only
17 distributed in media markets that included parts of the clearly identified candidate's
18 congressional district or state. CR Stips. at ¶ 4.2 and CREF Stips. at ¶ 4.7 and 6.1-6.14.
19 In total, CR and CREF ran pre-election ads that commented on one or more candidates in
20 thirty (30) House and Senate races (19 for CR, 13 for CREF, with two races in which

⁴⁸ Although CREF disbursed funds to produce advertisements for six congressional districts as part of its summer Union Media Campaign, advertisements were only broadcast in four of the districts.

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1 both groups produced advertising) during October and November 1996. CR Stips at ¶
2 5.1-18.7, CREF Stips. at ¶ 6.1-6.14.

3 The evidence indicates that Triad selected the media markets for the CREF and
4 CR ads based on the candidates in the upcoming congressional elections. In his interview
5 with Commission staff, Mr. Nofziger, who served as CREF's nominal Chairman,
6 acknowledged that his group's advertisements were designed either to portray the
7 Republican candidate in a favorable light, or to portray the Democrat in that district in an
8 unfavorable light. CR President Peter Flaherty testified that the media markets for CR's
9 advertisements were selected on the basis of the public officials and other persons (all of
10 whom were candidates) featured in the ads. Flaherty Dep. Tr. at 251.

11 Mr. Rodriguez's assistant, Jason Oliver, testified, however, that Triad selected the
12 congressional districts based on the results of its political audits. Oliver Depo Tr. at 40.
13 Mr. Oliver stated that Triad would look for a race where there was a clear contrast
14 between the candidates, and where the "seats were considered top-targeted for the
15 purpose of a takeover" or part of Triad's top tier as a result of a political audit.⁴⁹ *Id* at 40-
16 41 and 104. Mr. Rodriguez testified that while he generally could not remember how the
17 specific media markets for CR and CREF advertising were selected, he thought that
18 media markets were often chosen so as to respond to AFL-CIO advertising in states or

⁴⁹ In its response to written questions from the Commission, Triad Inc. stated that it selected media markets (which it referred to by congressional district designations) for the CR and CREF ads based on "a clear dichotomy between those individuals [congressional candidates] supporting traditional family values, conservative economic and social policies, and those [congressional candidates] arguing for the general expansion of governmental authority, increased taxes and positions contrary to traditional values. Those media markets where such advertisements would likely be overwhelmingly rejected by viewers as unpersuasive or wrong were not picked. Markets were chosen where the debate would be timely and significant, where the debate was 'hot'." See Triad Supplemental Response, dated September 3, 1999.

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1 districts that were “in play” with regard to the upcoming elections. Rodriguez Dep. Tr. at
2 289-293. In early October 1996, Triad sent potential donors to CR and CREF advertising
3 campaigns a list of “targeted races” along with the projected budgets and issues for
4 “Potential 501(c)(4)” education ads. *See* Oct. 2, 1996 Triad Facsimile to Fred Sacher,
5 TMS001078-90.

6 d) Contacts with Campaigns Featured in Advertising

7 Topics and issues that Triad discussed with a particular campaign during a
8 political audit, as memorialized in a written audit report, frequently appeared in
9 subsequent CR or CREF advertising in media markets within that congressional district.⁵⁰
10 *See* Triad Stips. at 3.12. In addition, Jason Oliver testified that, in the late summer or
11 early fall of 1996, Ms. Malenick and Mr. Rodriguez instructed him to contact the
12 Republican candidates’ campaigns in the congressional districts Triad was considering
13 for “education ads” to find out what issue the campaigns would like to see addressed.
14 Oliver Dep. Tr. at 116-117. Mr. Oliver testified that he called the Republican
15 congressional campaign in each of the districts for races in the House of Representatives
16 where advertising was being considered, which he previously had contacted in connection
17 with the political audits, to pose the question “[i]f an organization were going to do issue
18 education in your district, what would the top three or four issues be that you think need

⁵⁰ In various submissions, Triad Inc. has stated that the vendors hired to produce the advertisements for specific media markets (congressional districts) developed proposed scripts based on their own research into topics that would be relevant to public debate, and that Triad did not specify topics for any particular ad. While the subpoena responses from one of the vendors (Dresner Wickers & Associates/Richard Dresner) stated that Triad only provided general guidance with regard to topics prior to drafting scripts, the subpoena responses and deposition testimony from other vendors (including Stevens, Reed and Curcio; Gannon McCarthy; and Gilliard & Associates) indicated that Triad Inc. identified, discussed, or provided research materials regarding the issues to be addressed in the CR and CREF advertisements.

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1 to be brought up.” *Id.* at 116, 122-129.⁵¹ Mr. Oliver testified that he did not mention
2 either CR or CREF in any of these telephone inquiries, and when asked, told the
3 campaigns that he did not know what groups might be running ads. *Id.* at 119.

4 Mr. Oliver prepared a chart of the issues suggested by the campaigns that he
5 provided to Ms. Malenick and Mr. Rodriguez. *Id.* at 120-121 and 124-125. Although the
6 original chart prepared by Mr. Oliver was not produced, Mr. Oliver identified a document
7 with a 10/20/96 Rodriguez & Company facsimile header, that was produced by one of the
8 advertising vendors for the CR and CREF campaigns, as containing a portion of the chart
9 on which he recorded the different campaigns’ advertising preferences. M 0260-64. This
10 chart, which includes some districts in which CR and CREF ultimately did not run ads,
11 shows that in substantially more than 50% of the districts where CR and CREF ads were
12 sponsored, the topics used in the ads were identical to those suggested by the campaigns
13 in their conversations with Mr. Oliver. The advertising campaigns where the entry on
14 Mr. Oliver’s chart matches the subsequent topic of the CR or CREF campaign include:

⁵¹ Mr. Oliver testified that he contacted each campaign involved in races for seats in the House of Representatives, but was not certain as to the source of information on Senate campaigns listed in the chart. Oliver Dep. Tr. at 128. Notwithstanding this caveat, Mr. Oliver also testified that he personally contacted the Brownback campaign regarding the Kansas Senate race. Oliver Dep. Tr. at 122-123. Mr. Rodriguez testified that he did not recall ever asking Mr. Oliver to contact any campaigns to discuss the advertising efforts, and that he has no recollection of ever being aware of any such contacts. Rodriguez Dep. Tr. at 303-306.

District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
TX 02 Rep: Brian Babin Dem: Jim Turner	Brian Babin Audit Report states that Turner sponsored legislation that granting automatic probation to first time felony offenders, voted for homosexual rights, and voted to expand that corporate income tax to affect small business.	Entry for TX 02 states that: "Turner: State Jails, Homo rights, Taxes on small Bus., Auto probation to serious offenders." M0262	During Oct/Nov 1996, CR, acting under Triad's management, spent \$87,000 to broadcast a television advertisement in the Texas Second Congressional District ⁵² CR Stips. at ¶ 18.6. CR13 0015, CR13 0003. The themes in the ad focused on Turner's record in the state legislature with regard to automatic probation, homosexual rights and taxes.
NY 26 Rep: Sue Wittig Dem: Maurice Hinchey	Sue Wittig Audit Report states: Lists a number of issues in campaign, but not those covered in subsequent CR ad	Entry for NY 26 states: "Ethics (ie state Leg)" M 0263	During Oct/Nov 1996, CR, acting under Triad's management, spent \$55,397 to broadcast a radio advertisement in New York's 26 th Congressional District. CR Stips at ¶12.1-12.4, CR13-0293. The theme of the ad was that Hinchey had taken funds from special interests and had been accused of overcharging taxpayers while in legislature. Id. TR10 -000111.

⁵² Although all of the candidates and campaigns featured in the CR and CREF advertisements claimed to have had no prior knowledge of Triad's intent to sponsor such communications, one of the donors to CR (Peter Cloeren) provided the Commission with a sworn statement indicating that Brian Babin solicited him to make a contribution to CR to that it could sponsor advertising that would benefit the Babin campaign. See Complaint in MUR 4783 and Cloeren affidavit submitted to Congressional Investigators. In his deposition, Dr. Babin and his campaign consultant, Walter Whetsell, both denied having any prior knowledge of the CR ad campaign or of any such solicitation of funds from Mr. Cloeren.

<p>MT AL</p> <p>Rep: Rick Hill</p> <p>Dem: Bill Yellowtail</p>	<p>Rick Hill Audit Report; "Yellowtail vulnerable to key issues of "1) Wife beating; 2) Robbery of Camera Store; 3) Dead Beat Dad; 4) Vote against elderly and families." TR15 001143-45.</p> <p>One of the Hill campaign's purported top "Needs" was for a "3rd Party to 'expose' Yellowtail." <i>Id.</i>⁵³</p>	<p>Entry for MT AL states:</p> <p>Yellowtail: Felon, Wife Beater, Dead Beat Dad. Opp going after Dead-beat Dads" M 0264</p>	<p>During Oct/Nov 1996, CR, acting under Triad's management, spent \$141,416 to broadcast television advertisements and sponsor a phone bank program in Montana. CR Stips at ¶11.1-11.8.</p> <p>The two television ads and one telephone bank script focus on the issues relating to Yellowtail's prior criminal acts and allegations of spousal abuse. One television ad focused on Yellowtail's position on taxes.</p>
<p>IL 20</p> <p>Rep: John Shimkus</p> <p>Dem:</p>	<p>John Shimkus Audit Report states:</p> <p>"Good Issues for Shimkus: \$20,000 pay raise return, \$135,000 return to taxpayers, Fiscal Conservatism." and "Good Issues against Hoffmann: Big Tax and Spend, Liberal."</p>	<p>Entry for IL 20 states:</p> <p>"Taxes Bal. Budget Responsibility" M0264</p>	<p>During Oct/Nov 1996, CR, acting under Triad's management, spent at least \$34,750 to broadcast radio advertisements in the Illinois 20th Congressional District. CREF Stips at ¶9.1-9.4, CR13-202-03.</p> <p>The themes of these ads focus on Shimkus record on Taxes, Balanced Budget and his personal responsibility.</p>

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⁵³ In deposition testimony, Mr. Rodriguez indicated that he could not remember whether the reference to the Hill campaign needing a 3rd Party to expose Yellowtail referred to his own conclusions or to a request from the Hill Campaign. Rodriguez Dep. Tr. at 322-26. The Hill campaign has consistently maintained that it did not know that Triad was planning to run any ads. Although the Hill campaign acknowledges telling Triad that it would not attack Yellowtail on the basis of the issues featured in the ads, it maintains that it did so in response to an inquiry from Mr. Rodriguez and not as part of an attempt to request or suggest a topic for any ads.

District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
AR 01 Rep: Warren Dupwe Dem: Marion Berry	Warren Dupwe Audit Rpt states: Key Issue Section is blank	Entry for AR 01 states: Berry: Hires Cheap Mexican Labor Does not disagree with Clinton on any issues Lied about elective experience (city council) M0264	During Oct/Nov 1996, CR, acting under Triad's management, spent \$75,751 to broadcast a television advertisement in the Arkansas First Congressional District. CR Stips at ¶5.1-5.2, CR13 0205 The theme of the ad was that Berry had close ties to Bill Clinton, had lied about no prior elective office, and had hired foreign nationals to work on his farm. <i>Id.</i>
OR 01 Rep: Bill Witt Dem: Elizabeth Furse	Bill Witt Audit Rpt states: Key Issues: Big Spender . . . Balanced Budget TR15 001157	Entry for OR 01 states: Furse: Bal. Budget-opp. . . . Taxes . . . Taxed Medicare M0263	During Oct/Nov 1996, CR, acting under Triad's management, spent \$42,890 to broadcast a television advertisement in Oregon's First Congressional District. CR Stips at ¶14.1-14.5, CR13 0257, CR13 0004. The theme of the ad was that Furse had voted against the Balanced Budget Amendment and had voted to increase Social Security taxes. <i>Id.</i>

District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
WA 09 Rep: Randy Tate Dem: Adam Smith	Randy Tate Audit Report lists "Key Issues" as including "Opponent's [Smith's] votes on taxes and self-defense in the Legislature." "Also, if the 'coalition' is going to continue on with their currently running positive ads, there needs to be ads on Smith on the issues of taxes and self-defense at home." TR15 00048-50	Entry for WA 09: "Tate: Defend him <u>Smith</u> Taxes - pro 50% 1.2 billion Crime -opp bill to allow any means to repel intruder Term Limits - flip"	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$74,238 to distribute various direct mail pieces in the WA 09 area. CR Stips at ¶6.6, FECCREF 00220, FECCREF 00204 and FECCREF 00228. The topics of the ads were Smith's record on taxes and term limits.
SD AL Rep: John Thune Dem: Tim Weiland	John Thune Audit Report states that Key Issues are "Balanced Budget Amendment". .. "If there is anything we can do to help it would probably be in the area of 501(c)(4) education with regards to the liberal tendencies of his opponent." TR15 00011401-12	Entry for SD AL states: Weiland Outside Labor \$ Bal. Budget - opp Nat. Health - opp. M0263	During Oct/Nov 1996, CREF, acting under Triad's management, spent at least \$8,511.11 to broadcast a television advertisement entitled "Compare-SD" in South Dakota. CREF Stips at ¶6.11. The topics of this ad were the Balanced Budget Amendment and contributions from "outside labor." CREF14 0434.

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District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
KS Sen Rep: Sam Brownback Dem: Jill Docking	No written audit report for general election campaign.	Entry for KS Sen states: Docking: Bal Budget - opp Taxes - ref NTU Liberal . . . M0260	During Oct/Nov 1996, CREF, acting under Triad's management, spent at least \$434,279 to broadcast television and radio advertisements in Kansas. CREF Stips at ¶6.2. The topics of these ads were balanced budget amendment and taxes. Docking was labeled as a "Liberal."
KS 04 Rep: Todd Tiahart Dem: Randy Rathburn	Tiahart Audit Report notes: "Wichita is the only media market that matters." TR15 000076	Entry for KS 04 states: Rathburn: Taxes - opp. \$500/child No Bal. Bud. Ran Clinton's 92 KS campaign M0261	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$70,907 for television and radio ads, and an additional \$37,686 for direct mail and telephone banks, in the Kansas Fourth Congressional District. CREF Stips at ¶6.4. These ads focused on Rathburn's opposition to the Balanced Budget Amendment and spending cuts. <i>Id.</i>

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District	Triad Audit Report on Campaign	J. Oliver Chart On Calls to Campaign	Subsequent CR or CREF Ad Campaign in that Congressional District
NC 04 Rep: Fred Heineman Dem: David Price	No written audit report on Heineman campaign.	Entry for NC 04 states: Price: S&L vote-reward NTU rating Crime votes M0261	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$50,106 to broadcast a radio advertisement in the North Carolina Fourth Congressional District. CREF Stips at ¶6.9, CREF 14 0448. The theme of the ad was that Price took vacations and donations from S&L's; that the Nat'l Taxpayers Union gave Price a rating of "F" and that Price fought against the death penalty and for prisoners.
TN 04 Rep: Van Hilleary Dem: Mark Stewart	Van Hilleary Audit Report states: "The Democrat nominee is attorney Mark Stewart, who is running as a 'down home country lawyer' instead of the trial lawyer which he is." TR15 000059	Entry for TN 04 states: Welfare Crime Term Limits M0260	During Oct/Nov 1996, CREF, acting under Triad's management, spent \$15,046 to broadcast a radio advertisement in the Tennessee Fourth Congressional District. CREF Stips at ¶ 6.12, CREF 14 0444. The theme of the ad was that Mark Stewart, a trial lawyer, had represented drunk drivers and is soft on crime. <i>Id.</i>

2 Mr. Oliver also testified some of the vendors that Triad Inc. hired to produce the
3 ads would contacted him to obtain the information that Triad had gathered on each
4 congressional district during its political audits. Oliver Dep. Tr. at 135-137.⁵⁴

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⁵⁴ In some instances, vendors who were preparing an advertisement to be broadcast in a particular district, requested that Mr. Oliver obtain additional information or clarify the information previously obtained during the political audit of a campaign. *Id.* at 129-130 and 137-138.

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7. Robert Cone's Other Political Contributions

During both 1995 and 1996, without counting the funds he sent to Triad/CSM and Triad Inc., CR or CREF, Robert Cone made \$25,000 in federal political contributions.

During 1995, Mr. Cone contributed \$2500 apiece to ten PACs, including AFE and CAFE. Those contributions occurred as follows:

<u>Date</u>	<u>Name of PAC</u>	<u>Amount</u>
12/6/95	AFE PAC	\$ 2,500
12/6/95	CAFE PAC	\$ 2,500
12/6/95	Faith Family & Freedom	\$ 2,500
12/6/95	FIGHT PAC	\$ 2,500
12/6/95	Conservative Campaign Fund	\$ 2,500
12/6/95	Free Congress PAC	\$ 2,500
12/6/95	The Republican Majority Fund	\$ 2,500
12/6/95	The Right to Work PAC	\$ 2,500
12/27/95	Eagle Forum PAC	\$ 2,500
12/27/95	RNC Life PAC	\$ 2,500

CONE 000002-003.

During 1996, Mr. Cone contributed \$25,000 to federal congressional candidate campaign committees and political action committees. Specifically, Mr. Cone made the twenty-three \$1,000 contributions, and four \$500 contributions detailed below:

<u>Date</u>	<u>Name of Candidate</u>	<u>Amount</u>
12/26/95	Leinbach 96	\$ 1,000
4/4/96	Pitts for Congress	\$ 1,000
4/27/96	Scott for Congress	\$ 1,000
4/27/96	Wilkie for Congress	\$ 1,000
4/27/96	Pittman for Congress	\$ 1,000
5/24/96	Republican Majority Fund	\$ 1,000

1	5/24/96	Bob Riley for Congress	\$ 1,000
2	6/27/96	Leinbach 96	\$ 1,000
3	7/24/96	Brownback for US Senate	\$1,000
4	7/24/96	Ryun for Congress	\$ 500
5	7/24/96	Holcomb for Congress	\$ 1,000
6	9/9/96	Joe DioGuardi for Congress	\$ 1,000
7	8/6/96	Schaffer for Congress	\$ 1,000
8	8/19/96	Meier for Senate	\$ 1,000
9	10/8/96	J.C. Watts for Congress	\$ 1,000
10	10/8/96	Jenkins for Senate 96	\$ 1,000
11	10/8/96	Friends of Joe Pitts	\$ 1,000
12	10/8/96	Friends of Bob Kilbanks	\$ 1,000
13	10/8/96	Clatworthy for US Senate	\$ 1,000
14	10/8/96	People for English	\$ 1,000
15	10/16/96	Bigham for Congress	\$ 1,000
16	10/16/96	John Thune for Congress	\$ 1,000
17	10/16/96	Riley for Congress	\$ 500
18	10/16/96	Babin for Congress	\$ 500
19	10/16/96	Gill for Congress	\$ 500
20	10/16/96	Randy Tate for Congress	\$ 1,000

21 CONE 000001-002. The federal political committees and candidates to which Mr. Cone
 22 made political contributions in 1996 were all featured in, and recommended by, Triad
 23 publications.

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1 **C. ANALYSIS**

2 As discussed below, the evidence obtained during the investigation indicates that
3 Triad/CSM, Triad Inc., CREF and CR were affiliated political committees, and that the
4 funds Robert Cone provided to fund their various operations were contributions made for
5 the purpose of influencing federal elections.⁵⁵ Given the amount of money that Robert
6 Cone contributed to Triad/CSM, Triad Inc., CREF and CR during 1995 and 1996, this
7 Office is prepared to recommend that the Commission find probable cause to believe that
8 Robert Cone violated 2 U.S.C. §§ 441a(a)(1) and 441a(a)(3).

9 **1. Triad, CREF and CR are Political Committees**

10 Neither Triad/CSM, Triad Inc., CREF nor CR have ever registered with, or
11 reported to, the Commission as political committees. The information obtained during
12 the investigation into these matters, however, shows that all four entities made
13 expenditures and received contributions well in excess of \$1,000 for the purpose of
14 influencing federal elections. Further, the evidence shows that all four entities had a, if
15 not the, major purpose of influencing federal elections. Thus, Triad/CSM and Triad Inc.,
16 as well as CREF and CR, triggered the political committee reporting requirements of
17 2 U.S.C. §§ 433 and 434 during the 1996 election cycle.

18 **a. Triad**

19 The evidence gathered during the investigation, as set forth above, shows that
20 Triad was a political committee. First, based on both its own statements and actions, it is

⁵⁵ The evidence also shows that AFE and CAFÉ, which were established, financed and managed by Triad/CSM and Carolyn Malenick were part of this group of affiliated entities.

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1 clear that a, if not the, major purpose of Triad/CSM and Triad Inc. during the 1996
2 election cycle was to support particular candidates for federal office both in Republican
3 Party primaries and in the general election. Second, the evidence shows that both
4 Triad/CSM and Triad Inc. made expenditures and in-kind contributions, and accepted
5 contributions to fund such activities, for the purpose of influencing federal elections. For
6 each entity, these expenditures and contributions far exceeded the \$1,000 threshold
7 established by the Act for registration and reporting as a political committee.

8 For Triad/CSM, the \$1,000 threshold may have been exceeded by as early as July
9 1995, when it first began making payments to Mr. Rodriguez for political audits on the
10 re-election campaigns of Republican House Freshmen, and no later than December
11 1995, when it began to make political contributions to selected candidates through AFE
12 and CAFE. For Triad Inc., which was incorporated in May 1996, the \$1,000 threshold for
13 contributions and expenditures was exceeded no later than early July 1996, when it began
14 receiving funds from Robert Cone and using its corporate bank account to pay for
15 expenses associated with CREF advertising, as well as for the ongoing expenses
16 associated with the political audits and publications that expressly advocated financial
17 support for, or the election of, various candidates.

18 As noted above, Triad's brochures, promotional videotape and other publications
19 set forth the following election-related "goals":
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- 1 1) *Return Republican House Freshmen;*
 - 2 2) *Increase by 30 the Republican House Majority; [and]*
 - 3 3) *Increase Senate Republicans to a Filibuster-proof 60.*

4 Triad Stips. at ¶ 2.1(b). As discussed *supra*, Triad sought to present itself to the public as
5 an organization that was working with the Republican congressional leadership to help
6 re-elect Republican Freshmen congressmen and to help elect Republican candidates
7 contending for open or Democratic seats in 1996.

8 In sum, the evidence demonstrates that most of Triad's 1995-1996 activities and
9 disbursements were geared to garnering financial and other support for the election, and
10 reelection, of conservative Republicans in the 1996 congressional elections. As discussed
11 below, the support that Triad/CSM and Triad Inc. provided to selected campaigns began
12 with the expenditures to conduct the political audits, which were the vehicle through
13 which Triad developed information that was then used for the purpose of expressly
14 advocating support for specific conservative candidates in various 1996 Republican
15 primaries and later in the 1996 general election.

16 i. Triad/CSM Activities

17 By no later than July 1995, Triad was focused on providing support for the re-
18 election of specific Freshman Republican incumbent congressmen. In its 1995 Activities
19 Report, listing its key accomplishments for the first nine months of 1995, Triad noted its
20 success in "working with key members of Congress in laying the groundwork to re-elect
21 conservative freshmen and expand the House conservative majority." KI 00507
22 Specifically, Triad claimed that it had positioned itself to help the Republican leadership
23 by assisting in the election of the new conservative chairman of the College Republican

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1 Nation Committee “who is committed to assist candidates in the 1996 elections” and by
2 helping a “key Congressional ally” in coordinating a Get Out the Vote phone program in
3 a special election for a seat in the California legislature. *Id.* Finally, and most
4 significantly, Triad noted that it hired Carlos Rodriguez to conduct political audits on the
5 Freshman Republicans, so as “to gauge their strengths and weaknesses and provide
6 advice where needed” in connection with their re-election efforts. KI 00507.

7 During the latter half of 1995, Triad/CSM paid Mr. Rodriguez \$32,730.71 in
8 consulting fees and related expenses for his work to audit the Freshmen Republicans and
9 conduct an analysis of congressional districts for the 1996 elections. *See Rodriguez Dep.*
10 *Tr.* at 25-28 (establishing purpose of 1995 payments was for preliminary targeting of
11 House seats for the 1996 elections); CM000461 (for amounts paid). For work performed
12 in 1996, Triad/CSM and Triad Inc. paid Mr. Rodriguez a consulting fee of \$495,000,
13 divided into twenty-four monthly installments of \$20,625 to be paid during 1996 and
14 1997. In addition to the consulting fee, Triad/CSM and Triad Inc. also reimbursed
15 Mr. Rodriguez for various expenses associated with the audits, including the salary of a
16 political research assistant (Jason Oliver), fees for database management, telephone
17 expenses, and travel expenses. Mr. Rodriguez’s testified that his efforts were focused
18 almost exclusively on the political audits of 1996 congressional races, and that he had no
19 responsibility for recruiting or counseling prospective donors. *Rodriguez Dep. Tr.* at 42.

20 During the summer and fall of 1995, Triad/CSM also began to focus on
21 organizing its coalition of PACs (including AFE and CAFE) that would be able to send
22 contributions to targeted candidates, including Republican Freshmen congressmen. In
23 late 1995, Triad began to fund various PACs, including AFE and CAFE. By December

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1 31, 1995, Triad/CSM had forwarded more than \$200,000 to its network of PACs. Triad
2 Stips at ¶ 6.11. Triad/CSM also began to issue recommendations and instructions to the
3 PACs regarding subsequent political contributions. For example, in late December 1995,
4 Triad/CSM asked David Gilliard of CAFE PAC to send a memorandum instructing
5 David Bauer, treasurer of AFE PAC, to send Ms. Malenick contribution checks for
6 \$1,000 each made payable to the campaign committees of J.C. Watts, David Funderburk,
7 Randy Tate, Jim Coburn, Dave Weldon, Matt Salmon and J.D. Hayworth. See 12/29/95
8 Memorandum from Dave Gilliard to Dave Bauer; Gilliard Dep. Tr. at 75-77. AFE, for
9 which Ms. Malenick was the *de facto* PAC Director, responded to these instructions by
10 making the requested contributions. Bauer Dep. Tr. at 35-36.⁵⁶

11 By the Spring of 1996, Triad/CSM began to audit the campaigns of candidates in
12 upcoming Republican primaries who were not incumbent congressmen. As discussed
13 above, Triad/CSM provided many such candidates with strategic and fundraising advice
14 during its audits. Triad/CSM also commissioned pre-emptive opposition research on the
15 candidates it favored, and discussed adverse information uncovered by these efforts with
16 the candidates. Triad/CSM also began to send out Fax Alerts that expressly advocated

⁵⁶ Triad/CSM and Triad Inc. also provided targeted campaigns with access to the coalition of PACs it organized in 1995-1996. Triad expended funds to solicit money for these PACs by contacting prospective donors in face-to-face meetings, by telephone and through a written PAC Memorandum. The benefits to the campaigns ultimately recommended to the PACs by Triad included the receipt of a substantial portion of the \$298,500 in contributions that Triad forwarded to the PACs in 1995-1996 (of this amount \$203,500 was forwarded to PACs in 1995 and \$92,800 was forwarded to PACs in 1996). See Triad Stips. at ¶ 6.1, 6.11-6.12. This benefit to the campaigns was made possible by Triad expenditures which allowed Carlos Rodriguez to travel to Washington, D.C. and develop his relationships with the PACs at regular monthly, and later bi-weekly, meetings. Rodriguez Dep. Tr. at 42-45; Oliver Dep. Tr. at 46-48. Triad also expended funds to prepare and send its analyses of different candidates to the PACs along with its express advocacy that the PACs, including AFE and CAFE, support specific candidates with their political contributions.

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1 support for specific conservative candidates during Republican primaries.⁵⁷ Finally, in
2 addition to sending its publications to individual donors, Triad/CSM organized a network
3 of donors and PACs (including PACs it entirely financed and controlled) from which it
4 solicited contributions to targeted candidates.

5 For example, Mr. Rodriguez visited the Joe Pitts campaign to perform a political
6 audit in early April 1996, and was subsequently reimbursed for expenses.⁵⁸ While neither
7 Mr. Rodriguez nor Triad produced an audit report from this visit, Triad/CSM sent out two
8 Fax Alerts regarding the Pitts campaign which discussed Mr. Rodriguez's activities. The
9 first Fax Alert noted that Mr. Rodriguez had spoken with pollsters and campaign
10 advisors, and solicited contributions to the Pitts campaign. FA14. The second Fax Alert,
11 which was written after Pitts' primary victory, reported that Carolyn Malenick and Carlos
12 Rodriguez spoke to Joe Pitts and his campaign to identify the needs of that campaign, and
13 they determined that a phone bank was imperative. That Fax Alert noted that after
14 discussions with Triad, a phone bank program was developed by the campaign. The Fax
15 Alert also indicated that Triad's Finance Director worked to raise \$20,000 from Triad
16 donors and PACs to finance the program and that "Triad made sure the funds donated by

⁵⁷ During the Spring of 1996, Triad/CSM also forwarded substantial political contributions from individual contributors to each of the candidates for which it had expressly advocated support in its Fax Alerts. For example, Triad/CSM forwarded at least \$13,550 to the Joe Pitts campaign, \$1,100 to the Marvin Scott campaign, \$4,500 to the Robert Wilkie campaign, \$5,100 to the Leroy Pittman campaign, \$14,500 to the John Thune campaign, \$8,700 to the Bob Riley campaign, and \$250 to the Mike Pappas campaign. These fundraising subtotals do not include contributions that individuals or PACs who received the Triad Fax Alerts discussing the candidates sent directly to these Triad-endorsed campaigns.

⁵⁸ On April 27, 1996, Triad reimbursed Mr. Rodriguez for \$9,877.96 in expenses attributable to four invoices, of which three were produced. It would appear that travel for the Pitts audit would have been itemized on this missing invoice (No. 1065), which accounted for \$1700.81 of this April 1996 reimbursement.

1 its clients were used to pay for the phone bank program for the primary elections." See

2 FA13. The Fax Alert quoted Mr. Pitts as stating that

3 TRIAD saved the day for my campaign . . . TRIAD played
4 a major role for its' [sic] clients in identifying what our
5 campaign needed, mobilizing the grassroots network and
6 coming through with the funds to help pay for our phone
7 bank program. Our victory is truly a TRIAD victory.

8 The Fax Alerts establish that Triad representatives consulted with the Pitts campaign,

9 and, as a result of these consultations, provided the services that met the campaign's

10 needs in connection with the primary. The thank you note from the campaign

11 corroborates that the campaign was aware of the services being provided by Triad and

12 recognized them as being of value.

13 The direct expenditures by Triad/CSM which represent in-kind contributions to
14 the Joe Pitts campaign would include at least: 1) the cost of Mr. Rodriguez's time, given
15 his fee of more than \$1,000 per day, in performing the audit; 2) Mr. Rodriguez's travel
16 expenses; 3) the costs associated with Ms. O'Rourke's time and fundraising efforts,
17 including long-distance calls; and 4) the costs associated with forwarding contributor
18 checks to the campaigns. Given the component costs discussed above, it is clear that
19 Triad made expenditures and in-kind contributions in excess of \$1,000 for the Pitts
20 campaign.

21 As detailed in other audit reports described above, Mr. Rodriguez provided
22 similar strategic and fundraising advice to numerous campaigns that he visited on
23 Triad/CSM and Triad Inc.'s behalf in 1995-1996. While Mr. Rodriguez characterized his
24 advice as casual conversation, the evidence shows that, acting as a professional political
25 consultant, whose skills were valued by Triad/CSM and Triad Inc. at more than \$1,000

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1 per day, he identified deficiencies and suggested courses of action for campaigns, some of
2 which had not retained any similarly skilled professional consultants.

3 Another category of in-kind contributions were the pre-emptive Opposition
4 Research reports on various Republican candidates that were commissioned and paid for
5 by Triad/CSM and Triad Inc. As noted above, Triad/CSM and Triad Inc. paid a company
6 called Trenton West between \$2,000 and \$3,500 per candidate, for a total of \$35,270, to
7 perform this type of "Opposition Research." See TR5 000009. Given Mr. Rodriguez's
8 testimony that he discussed adverse findings with candidates, there is evidence that
9 specific Republican candidates received an in-kind contribution in terms of a pre-emptive
10 warning of what issues their opponents might raise during the upcoming campaign.

11 During the first half of 1996, Triad/CSM paid Mr. Rodriguez approximately
12 \$166,220 for political audit expenses (\$123,750 in consulting fees, \$11,929 for Mr.
13 Oliver's salary and benefits, \$8,000 for political database services, \$4,687 for California
14 telephone expenses, \$4,946 for lodging, and \$12,908 for travel expenses). CSM d/b/a
15 TRIAD General Ledger. Further, Triad/CSM entered into a contractual commitment to
16 make payments of \$495,000 to Mr. Rodriguez during 1996-1997 for the 1996 political
17 audits. Triad/CSM also paid Trenton West \$11,920 for opposition research reports. In
18 addition, Triad/CSM paid Mr. Saracino political audit consulting fees of \$2500 and paid
19 Ms. Mitchell consulting fees of \$28,534 during this period.⁵⁹

20 In addition, Triad/CSM made substantial expenditures in connections with
21 publications that included express advocacy. For example, during 1996, Triad paid its

⁵⁹ Ms. Mitchell's discovery responses indicates that her fees were for work done both on political audits and on the CREF Union Media Advertising campaign.

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1 facsimile transmission vendor, Xpedite Systems \$1,051.41 by Triad/CSM. There is
2 evidence that Triad/CSM also may have sent a substantial number of additional copies of
3 various Fax Alerts via long distance telephone lines from its own office facsimile
4 machine(s). Triad/CSM's records also reflect disbursements of \$4,060.37 for
5 postage/shipping, \$1,008.78 for publishing materials. As part of its efforts to recruit
6 donors to contribute to the candidates it endorsed, Triad/CSM also spent \$23,613.82 for a
7 promotional video presentation.

8 During the first six months of 1996, Triad/CSM had total disbursements of
9 approximately \$477,373. See Triad 96 Operating Budget 2nd Quarter – June 1996. In
10 addition to the more than \$200,000 in expenditures for the political audits and
11 communications - including expenditures for express advocacy - detailed above,
12 Triad/CSM made expenditures of approximately \$200,000 in connection with
13 administrative and promotional expenses, which supported Triad's efforts to recruit
14 donors to direct their political contributions to specific federal candidates. Thus, the
15 evidence indicates that overwhelming majority of Triad's disbursements were for the
16 purpose of influencing federal elections.

17 ii. Triad Inc. Activities

18 The electoral nature of Triad's activities continued unabated after the
19 incorporation of Triad Inc. in late May 1996. During the summer of 1996, using
20 information gathered during political audits, Triad Inc. sent out Fax Alerts that expressly

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1 advocated support for particular candidates in Republican primaries.⁶⁰ Further, once the
2 primaries had concluded, Triad Inc. used the information gathered during its political
3 audits to expressly advocate support for numerous Republican candidates in the general
4 election both through its Fax Alerts and the widely-distributed *Expanding the Majority*
5 book, which pictured featured candidates and solicited contributions for their campaigns.

6 Triad Inc. also continued its efforts to encourage PACs (including PACs it entirely
7 financed and controlled) to contribute to specific candidates. For example, Triad Inc.
8 contacted at least five, and probably up to nine, PACs to determine their willingness to
9 contribute to the Sam Brownback for US Senate Committee immediately prior to
10 advising Brownback's in-laws, John and Ruth Stauffer (who already had made the
11 maximum legal contribution to the Brownback campaign) which PACs they should
12 contribute to in June and July 1996. The Stauffers made \$42,500 in contributions
13 through Triad Inc. to nine PACs, which, within the few weeks remaining before an
14 upcoming August primary, made subsequent contributions to the Brownback campaign.
15 Two of the PACs sent their contributions to the Brownback campaign back through Triad
16 Inc., which at least one of the PACs believed to be "handling Brownback fundraising."

17 During the latter half of 1996, Triad Inc. paid Mr. Rodriguez approximately
18 \$149,265 for political audit expenses (\$103,125 in consulting fees, \$13,137 for Mr.
19 Oliver's salary and benefits, \$10,000 for political database services, \$4,993 for California
20 telephone expenses, \$2,087 for lodging and \$15,923 for travel expenses). TRIAD Inc.

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⁶⁰ As detailed above, during the Summer of 1996, the list of candidates in Republican primaries for which Triad Inc. expressly advocated support included: Sam Brownback, Jim Holcomb, Jim Ryun, Vince Snowbarger, Bob Schaffer and Woody Jenkins.

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1 General Ledger. During 1996, Triad Inc. also paid Mr. Saracino \$23,967 in political
2 audit expenses (\$17,500 in consulting fees and \$6,467 for travel expenses). *Id.* Further,
3 Triad Inc. assumed Triad/CSM's prior contractual commitment to make payments of
4 \$495,000 to Mr. Rodriguez during 1996-1997 for the 1996 political audits. Triad Inc.
5 also paid Trenton West \$23,350 for opposition research reports during this period.

6 In addition, Triad Inc. made substantial expenditures in connection with
7 publications that included express advocacy. For example, during 1996, Triad Inc. paid
8 its facsimile transmission vendor, Xpedite Systems \$6,216.68. There is evidence that
9 Triad Inc. also may have sent a substantial number of additional copies of various Fax
10 Alerts via long distance telephone lines from its own office facsimile machine(s). Triad's
11 records also reflect disbursements of \$13,186.63 for postage and shipping of materials,
12 and \$2,968.12 for publishing materials, which may have included costs associated with
13 its *Expanding the Majority* book. Triad Budget Document at TR5 000009. According to
14 its General Ledger, Triad had postage and delivery disbursements of more than \$5,000
15 between September 23 and November 2, 1996, which was the time period in which it was
16 sending out the *Expanding the Majority* book. *See* Triad Inc. General Ledger.

17 During the last six months of 1996, Triad Inc. had total disbursements of
18 approximately \$950,000. *See* Triad 96 Operating Budget 4th Quarter – December 1996.
19 In addition to the more than \$200,000 in expenditures for political audits and
20 communications detailed above (as well as the obligation to make deferred payments of
21 \$247,000), this total includes over \$300,000 in expenditures to support CREF advertising
22 campaigns, \$145,000 spent on a non-electoral Choose Life/Life Media campaign, and
23 approximately \$200,000 in other administrative and promotional expenses, which

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1 supported Triad's efforts to recruit donors to direct their political contributions to specific
2 federal candidates. Thus, the evidence indicates that the overwhelming majority of
3 Triad's disbursements were for the purpose of influencing federal elections.

4 iii. Lack of Commercial Purpose

5 Triad's claim that it was a commercial entity which collected fees for services
6 rendered does not withstand close scrutiny. As discussed above, during the 1996 election
7 cycle, Triad sent no bills or invoices for its services, and did not receive fees from most or
8 any donors, and none from the PACs and campaigns it assisted. The conclusion that the
9 funds provided to Triad in 1995-1996 were contributions, rather than fees, is supported by
10 a range of factors. Mr. Cone voluntarily funded Triad on an "as you go" basis to meet its
11 cash flow needs, not in exchange for particular services rendered. In fact, Mr. Cone made
12 substantial financial transfers to Triad while receiving the same purported services and
13 research information that others received for free. Cone Dep. Tr. at 210. In his own
14 records, Mr. Cone characterized the transfers to Triad as "GI[Gift]: Political Indirect"
15 rather than as fees for service. Finally, in its own mailings and memoranda, Triad
16 referred to its prior receipts from Mr. Cone as having been "contributed or pledged."⁶¹

⁶¹ The evidence points to the conclusion that other monies Triad received were also contributions for influencing elections, rather than fees. As discussed above, Foster Freiss characterized his January 1996 check to Triad for \$1,000 as a "donation" or a "symbolic expression of support to let you know that we believe in your goals and we want to help you achieve them." See TMS 000819. Triad's oft-stated goals were to protect and expand the Republican majority. Ms. Malenick's reply thanked Mr. Freiss for his "contribution" and noted that she would provide him with information regarding Triad's budget, a courtesy she provided to those that "contribute" to overhead. TMS 000816. In response to this information, Mr. Freiss sent another check, this time for \$5,000, which was to be put "toward your organization's overhead and expenses." TMS 000814. Thus, the evidence shows that Mr. Friess' payment of \$6,000 to Triad amounted to contributions, and not fees for service.

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1 Based on the evidence shown above, Triad received far more than \$1,000 in
2 contributions and made far more than \$1,000 in expenditures for the purpose of
3 influencing federal elections, and much of it was expended for express advocacy and in-
4 kind contributions to specific campaigns. Even without accounting for the CR and CREF
5 advertising expenditures that were coordinated with beneficiary campaigns, Triad/CSM
6 and Triad Inc. made expenditures of more than \$600,000 to fund the political audit
7 process and related publications which expressly advocated support of specific
8 candidates.⁶² When viewed in conjunction with its stated purpose of supporting the re-
9 election of conservative Republican candidates, the available evidence demonstrates that
10 Triad/CSM and Triad Inc. had a, if not the, major purpose of influencing the election of
11 candidates to federal office.⁶³

12 Therefore, Carolyn Malenick d/b/a Triad Management Services; and Triad
13 Management Services Inc. were political committees that should have registered and
14 reported to the Commission as such during the 1995-1996 election cycle.⁶⁴
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⁶² This figure includes \$247,500 in additional payments for Mr. Rodriguez's 1996 services that Triad Inc. made in 1997.

⁶³ As noted above, Triad's only non-electoral activities, the Choose Life Project/Life Media Campaign and the White House Christmas Card Book Project appear to have constituted no more than 10% of Triad's 1995-1996 activities.

⁶⁴ Because Carolyn Malenick and Robert Cone established, financed, maintained or controlled Triad/CSM, Triad Inc., AFE, CAFÉ, CREF and CR, each of these entities was "affiliated" with Triad, and each other, for the purposes of the Act. 11 C.F.R. § 110.3(a)(2)(i) and (a)(2)(v). Accordingly, each of these entities would have been obligated to report their affiliation with each other in their filings with the Commission. Further, each of these entities share a single limit under the Act for receiving and making political contributions.

1 **b. CREF and CR**

2 The evidence gathered during the investigation, as set forth above, shows that
3 CREF and CR were political committees. The record demonstrates that CREF and CR
4 existed for the sole purpose of running public advertisements which commented on
5 specific candidates in 1996 congressional elections. Based on statements made by Mr.
6 Nofziger (regarding CREF) and Mr. Flaherty (regarding CR), as well as by Triad Inc. in
7 soliciting contributions for CREF and CR, it is clear that a, if not the, major purpose of
8 CREF and CR during the 1996 election cycle was to support particular candidates for
9 federal office. This conclusion is supported by the process by which Triad Inc. selected
10 the districts in which CREF and CR advertisements were broadcast or distributed, the
11 candidate-specific content of the advertisements, the timing of the advertisements to
12 coincide with the 1996 elections, and the fact that Triad Inc. coordinated the content of
13 the CREF and CR advertisements with specific congressional campaigns through both its
14 political audits and the Jason Oliver telephone contacts.

15 The evidence shows that CREF and CR accepted contributions and made
16 coordinated advertising expenditures (which constituted in-kind contributions) for the
17 purpose of influencing federal elections. For each entity, these expenditures and
18 contributions far exceeded the \$1,000 threshold established by the Act for registration and
19 reporting as a political committee. Both CREF and CR met the \$1,000 threshold for the
20 receipt of political contributions in early October 1996, when they began to accept
21 contributions for, and to make payments in connection with, their various pre-election

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1 advertising campaigns.⁶⁵ For CREF, this occurred no later than when it accepted a
2 \$100,000 contribution from Robert Cummins on October 8, 1996. For CR, this occurred
3 no later than when it accepted a \$50,000 contribution from Fred Sacher on October 4,
4 1996. The threshold also was exceeded when CREF and CR made large disbursements to
5 their advertising vendors, and when the broadcasting and distribution of the
6 advertisements began in October 1996. CREF Stips at ¶ 4.15 and CR Stips at ¶ 3.2

7 The election-related purpose of the contributions received by CREF and CR in
8 October 1996 can be derived from both the statements of Mr. Nofziger and Mr. Flaherty
9 and the context in which Triad Inc. solicited the funds. While many of the contributors to
10 CREF and CR did not cooperate with the Commission's investigation, there is
11 documentary evidence as to the purpose for the funds that Koch Industries Inc. ("KII")
12 sent to CREF and CR through EET. According to corporate documents included in its
13 production, KII intended to have an "impact" on the 1996 congressional elections by
14 "making a difference in some really pivotal elections" and to "help the best candidate[s]
15 win in whatever way we can." In addition to funding a political action committee
16 (KOCHPAC) and encouraging its executives to be active in giving support to selected
17 candidates, KII developed a strategy to fund "[o]ther" efforts by which it could
18 "participate" in some 1996 congressional elections by providing support to candidates
19 whose economic and regulatory philosophy would advance KII's interests. *Id.* at KI
20 00444-45; *See also* KII Briefing Materials on "The Strategy" KI 00477-80. To further
21 these goals, KII transferred \$4.5 million to EET, of which \$1.8 million was subsequently

⁶⁵ This Office is not contending that the CREF Summer Union Media Campaign, which took place prior to the Jason Oliver telephone calls to the different campaigns, was coordinated with any of the beneficiary Republican congressmen.

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1 transferred to CREF and CR.⁶⁶ The investigation has revealed that KII/EET
2 representative Kenneth “Buddy” Barfield played a role in suggesting that CREF and CR
3 select additional congressional districts for their advertising campaigns, and also played a
4 role in selecting the vendors that CREF and CR used to produce advertisements in these
5 additional districts. *See Rodriguez Dep. Tr.* at 274-280. Thus, the record establishes that
6 CREF and CR accepted funds from KII, through EET, that were intended to influence
7 federal elections.

8 Although CREF and CR avoided using express advocacy, the efforts of Triad Inc.
9 to coordinate the CREF and CR messages with the Republican congressional campaigns
10 demonstrate that the purpose of the advertising programs was to influence federal
11 elections. Jason Oliver’s telephone contacts with the Republican congressional
12 campaigns in the districts where CREF and CR activity was being contemplated gave
13 those campaigns the opportunity to request or suggest the topics to be featured in the
14 advertisements. This interaction and coordination with the campaigns insured that the
15 advertisements have the maximum effectiveness in garnering support for or against the
16 named candidates. As noted above, “[t]he fact that the candidate has requested or
17 suggested that a spender engage in certain speech indicates that the speech is valuable to
18 the candidate, giving [expressive] expenditures sufficient contribution-like qualities to
19 fall within the Act” *Christian Coalition* at 92. Based on the court’s reasoning, Triad
20 Inc.’s use of the campaigns’ requested or suggested advertising topics in the subsequent

⁶⁶ As discussed below, CREF’s and CR’s acceptance of these funds also constitutes a basis for finding a violation of 2 U.S.C. § 441b.

1 CR or CREF ads resulted in coordinated expenditures, and represent in-kind
2 contributions to those campaigns.

3 As noted above, Mr. Oliver testified that he contacted the Republican campaigns
4 in each of the districts where CREF and CR advertising was contemplated in order to
5 obtain their preferences as to the topics of any forthcoming education ads. Further, in
6 most instances, as demonstrated by the Jason Oliver chart, the topics suggested or
7 requested by the campaigns were used by CREF and CR. Given the amounts that CREF
8 and CR spent on each campaign, the \$1,000 threshold for political committee status
9 would be met if the Commission finds that each group coordinated just one advertisement
10 apiece with a campaign audited by Triad and later contacted by Jason Oliver.

11 i. CREF

12 Based only on the expenditures for which the Jason Oliver chart reveals the use of
13 the campaigns' stated preference with regard to advertising topics, CREF made the
14 following coordinated expenditures, each of which constitutes an in-kind contribution to
15 a 1996 congressional campaigns.

16	<u>Recipient Campaign</u>	<u>Amount of Advertising Expenditure</u>
17	Randy Tate	\$ 74,238 for Direct Mail Programs
18	John Thune	\$ 8,511 for Television Advertisements
19	Sam Brownback	\$434,279 for Television Advertisements
20	Todd Tiahart	\$ 70,907 for Television/Radio Ads and
21		\$ 37,686 for Direct Mail Programs
22	Fred Heineman	\$ 50,106 for Radio Advertisements
23	Van Hilleary	\$ 15, 046 for Radio Advertisements

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ii. CR

Based only on the expenditures for which the Jason Oliver chart reveals the use of the campaigns' stated preference with regard to advertising topics, CR made the following coordinated expenditures, each of which constitutes an excessive in-kind contribution to a 1996 congressional campaign.

<u>Recipient Campaign</u>	<u>Amount of Advertising Expenditure</u>
Brian Babin (TX 02)	\$ 87,000 for Television Advertisements
Ray Clatworthy (DE Senate)	\$ 32,183 for Radio Advertisements
Rick Hill (MT at large)	\$141,416 for Television Advertisements and Telephone Banks
John Shimkus (IL 20)	\$ 34,750 for Radio Advertisements
Sue Wittig (NY 26)	\$ 42,890 for Radio Advertisements
Warren Dupwe (AR 01)	\$ 75,751 for Television Advertisements
Bill Witt (OR 01)	\$ 42,980 for Radio Advertisements

Based on the evidence set forth above, Citizens for the Republic Education Fund and Citizens for Reform were political committees that should have registered and reported to the Commission as such during the 1995-1996 election cycle.

1 2. **Robert Cone Made Excessive Contributions**

2 As detailed above, Robert Cone was the principal source of funding for
3 Triad/CSM and Triad Inc., and a major source of funding for the Triad-managed
4 advertising campaigns sponsored by CREF and CR during the 1996 election cycle. As
5 set forth above, each of these entities were political committees whose major purpose
6 was to influence federal elections. The evidence gathered during the investigation
7 establishes that Mr. Cone's payments to Triad/CSM and Triad Inc. were contributions to
8 support activities designed to influence federal elections, and not fees for services. The
9 evidence also establishes that Mr. Cone's payments to fund the CREF and CR advertising
10 efforts that were coordinated with congressional campaigns also were intended to
11 influence federal elections.

12 Mr. Cone was in nearly constant communication with Ms. Malenick. As detailed
13 above, this included more than one hundred and forty-four (144) telephone calls and one
14 hundred and one (101) facsimiles from Triad Inc.'s offices to Mr. Cone between May and
15 December 1996. Although the Commission did not obtain his telephone records from
16 1996, the record indicates that Mr. Cone also placed frequent telephone calls to Triad's
17 offices and had regular face-to-face meetings with Triad personnel. Further, Mr. Cone
18 received all the Triad Fax Alerts and the *Expanding the Majority* book containing express
19 advocacy. Mr. Cone also attended meetings with Lyn Nofziger regarding CREF, and
20 vendors regarding the CREF and CR advertising campaigns. Cone Dep. Tr. at 447-455.
21 In sum, Mr. Cone knew that Triad/CSM, Triad Inc., CREF and CR were supporting
22 particular candidates in connection with the 1996 federal elections.

1 In describing the formation of Triad/CSM, Mr. Cone acknowledged that its
2 purpose was "to develop wealthy donors both for electing or working on getting elected
3 conservative Republican pro-life candidates." Cone Dep. Tr. at 115. Mr. Cone also
4 signed a letter from Triad to prospective donors which stated that "Not only does Triad
5 know who to support, but also how much they need and the most effective way to deliver
6 help." Cone Dep. Tr. at 410-424, JS00009. Further, Mr. Cone acknowledged that the
7 CREF and CR ads were related to the 1996 congressional elections. Cone Dep. Tr. at
8 431. Mr. Cone also testified that the ads were intended to influence voters by bringing
9 issues to their attention so that "they can make informed decisions about what they were
10 going to do in the fall" and acknowledged that this included influencing how people
11 would vote. Cone Dep. Tr. at 431. Mr. Cone also agreed that one of the intended
12 outcomes of the CREF and CR ads was to improve the public perception of, and benefit,
13 conservative Republican candidates. Cone Dep. Tr. at 433-434. Accordingly, the funds
14 that Mr. Cone provided to Triad/CSM, Triad Inc., CREF and CR must be regarded as
15 contributions made for the purpose of influencing federal elections.

16 For the reasons set forth above, this Office is recommending that the Commission
17 find that all but the first \$5,000 of the \$175,000 that Mr. Cone sent to Triad/CSM
18 between July 1 and December 31, 1995 were excessive contributions.⁶⁷ Further,
19 Mr. Cone also made political contributions of \$2,500 apiece, or a total of \$5,000, to
20 Triad's affiliated PACs, AFE and CAFE in December 1995, which, due to the single

⁶⁷ Out of an abundance of caution, this Office is not recommending that the first \$25,000 that Mr. Cone provided to Triad/CSM in February 1995 be regarded as a political contribution. While these funds were intended to support Triad's efforts to elect conservative candidates, it is not clear that Triad selected specific candidates to support until Carlos Rodriguez began to audit the incumbent Republican Freshmen Congressmen in July 1995.

1 contribution limit shared by affiliated committees, also constituted excessive
2 contributions. Thus, during 1995, Robert Cone made excessive contributions of
3 \$175,000 to the group of affiliated political committees that included Triad/CSM, AFE
4 and CAFE in violation of 2 U.S.C. §§ 441a(a)(1) and 441a(a)(3).

5 Additionally, all but the first \$5,000 of the \$465,500 that Mr. Cone sent to
6 Triad/CSM in 1996 and the \$426,621 that Mr. Cone sent to Triad Inc. in 1996 were
7 excessive contributions. Further, the \$500,000 that Mr. Cone sent to CREF between July
8 and October 1996 and the \$400,000 that Mr. Cone sent to CR in October 1996 also
9 constituted excessive contributions to the same group of affiliated entities which shared a
10 single contribution limit. Thus, during 1996, Robert Cone made excessive contributions
11 of approximately \$1,785,000 to the group of affiliated political committees that included
12 Triad/CSM, Triad Inc., CR and CREF.

13 Because the total amount that Mr. Cone contributed to Triad/CSM, Triad Inc.,
14 CREF and CR in 1995 and 1996 exceed the \$5,000 limit imposed by the Act, this Office
15 is prepared to recommend that the Commission find probable cause to believe that Robert
16 Cone violated 2 U.S.C. § 441a(a)(1). Further, because Mr. Cone's contributions during
17 1995 and 1996 exceeded \$25,000, this Office is prepared to recommend that the
18 Commission find probable cause to believe that Robert Cone violated 2 U.S.C.
19 § 441a(a)(3).

20


1 **IV. GENERAL COUNSEL'S RECOMMENDATIONS**

2 1. Find probable cause to believe Robert Cone violated 2 U.S.C.
3 § 441a(a)(1).

4 2. Find probable cause to believe Robert Cone violated 2 U.S.C.
5 § 441a(a)(3).
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9
10
11 Date

7/18/01


Lois G. Lerner
Acting General Counsel