



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

May 5, 1999

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Vargas for Congress '96  
Deanna Liebergot, Treasurer  
3609 Fourth Avenue  
San Diego, CA 92103

RE: MUR 4742

Dear Ms. Liebergot:

On May 12, 1998, the Federal Election Commission notified Vargas for Congress '96 and you, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on April 27, 1999, found that there is reason to believe that the Vargas for Congress '96 and you, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(f), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Order to Answer Questions and Subpoena to Produce Documents must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the order and subpoena. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

You may consult with an attorney and have an attorney assist you in the preparation of your responses to this order and subpoena. If you intend to be represented by counsel, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notification or other communications from the Commission.

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

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

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

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

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

Sincerely,



Scott E. Thomas  
Chairman

Enclosures

Factual and Legal Analysis  
Subpoena and Order  
Designation of Counsel Form

21.04.403.1541

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

)  
) MUR 4742  
)

**SUBPOENA TO PRODUCE DOCUMENTS**  
**ORDER TO SUBMIT WRITTEN ANSWERS**

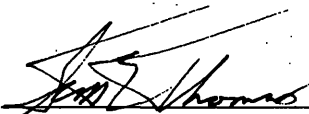
TO: Juan Vargas  
Vargas for Congress '96  
Deanna Liebergot, Treasurer  
3609 Fourth Ave.  
San Diego, CA 92103

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

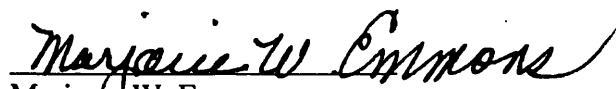
Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chairman of the Federal Election Commission has hereunto set his hand in Washington, D.C. on this 4th, day of May, 1999.

For the Commission,

  
\_\_\_\_\_  
Scott E. Thomas  
Chairman

ATTEST:

  
\_\_\_\_\_  
Marjorie W. Emmons  
Secretary to the Commission

21.04.403.1542

Subpoena and Order  
Vargas for Congress '96 and Deanna Liebergot, as treasurer  
MUR 4742  
Page 2

**Attachments**

Document Request (1 page)  
Questions (2 pages)

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### INSTRUCTIONS

In answering these interrogatories and request for production of documents, furnish all documents and other information, however obtained, including hearsay, that is in possession of, known by or otherwise available to you, including documents and information appearing in your records.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from October 13, 1995 to the present.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

### DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

"You" shall mean the named respondent in this action to whom these discovery requests are addressed, including all officers, employees, agents or attorneys thereof.

"Persons" shall be deemed to include both singular and plural, and shall mean any natural person, partnership, committee, association, corporation, or any other type of organization or entity.

"Document" shall mean the original and all non-identical copies, including drafts, of all papers and records of every type in your possession, custody, or control, or known by you to exist. The term document includes, but is not limited to books, letters, contracts, notes, diaries, log sheets, records of telephone communications, transcripts, vouchers, accounting statements, ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets, circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all other writings and other data compilations from which information can be obtained.

"Identify" with respect to a document shall mean state the nature or type of document (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document was prepared, the title of the document, the general subject matter of the document, the location of the document, the number of pages comprising the document.

"Identify" with respect to a person shall mean state the full name, the most recent business and residence addresses and the telephone numbers, the present occupation or position of such person, their dates of employment, the nature of the connection or association that person has to any party in this proceeding. If the person to be identified is not a natural person, provide the legal and trade names, the address and telephone number, and the full names of both the chief executive officer and the agent designated to receive service of process for such person.

"And" as well as "or" shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories and request for the production of documents any documents and materials which may otherwise be construed to be out of their scope.

"Volunteer" means to provide services to an entity without any monetary compensation.

A "Debt" is an obligation to make an expenditure arising out of an unpaid bill or unfulfilled contract or agreement. This definition of debt does not include obligations arising out of a loan. "Debt" in connection with an obligation to pay a vendor includes money owed to a

vendor by virtue of failing to pay the full amount of any invoice or other demand for payment within the time period specified by the vendor.

"Vargas for Congress '96" or "the Federal Committee" means the authorized campaign committee of Juan C. Vargas in connection with Mr. Vargas' campaign for the House of Representatives in 1996.

"The Primacy Group" or "Primacy" means the business enterprise or company owned by Larry Remer located at 3609 Fourth Ave., San Diego, California 92103 and any activities conducted at any other location by any person employed by or affiliated with the company in connection with the business of the company.

### QUESTIONS

1. Identify all persons now or at any time employed by Vargas for Congress '96 ("Federal Committee").
2.
  - a. State when The Primacy Group ("Primacy") began to provide services to the Federal Committee.
  - b. List and describe with as much specificity as possible what services Primacy provided to the Federal Committee from the date identified in response to 2.a. above to March 26, 1996. Such description should include, but not be limited to: the types of services provided; the beginning date and duration of each service; and how much the Federal Committee paid Primacy for each service.
  - c. List and describe with as much specificity as possible what services Primacy provided to the Federal Committee from March 26, 1996 to the present. Such description should include, but not be limited to: the types of services provided; the beginning date and duration of each service; and how much the Federal Committee paid Primacy for each service.
3.
  - a. List and describe each occasion, from the date identified in response to 2.a. to the present, on which the Federal Committee incurred a "debt" to Primacy, as it is defined on page 4 of this Order. Such description should include, but not be limited to: how and why the debt was incurred; how much of each debt was paid and when such payment was made.
  - b. For each occasion given in response to 3.a. above, state whether the Federal Committee asked Primacy to totally or partially forgive, or delay collection of, the debt, and state whether Primacy agreed to the Federal Committee's request. Describe any agreement arising out of such request. Such description should include, but not be limited to the terms of the agreement. List all date(s) and repayment amount(s) for each debt.
4. State whether the Federal Committee intends to pay the debt owed to Primacy as reported on Schedule D of the Federal Committee's January 22, 1999 filing with the Federal Election Commission. Describe what actions the Federal Committee has taken, if any, to raise funds to pay the debt. Describe what plans the Federal Committee has made, if any, to raise funds to pay the debt.
5. Describe how the debt to "Acme Graphix," as reported on Schedule D of the Federal Committee's January 22, 1999 filing with the Federal Election Commission, was incurred, what agreement the Federal Committee reached, if any, with the vendor in connection with paying this debt, and what actions the Federal Committee has taken or plans the Federal Committee has made to raise funds to pay this debt.

21-04-403-1547



6. State whether the Federal Committee and the Committee to Re-Elect Vargas ("State Committee") agreed at any point that the State Committee would assume responsibility for or pay down the Federal Committee's debt to Primacy.
7. a. List and describe what services Deanna Liebergot provided to the Federal Committee from the date identified in response to 2.a. above to March 26, 1996.
- b. State how much time, on average per week, Ms. Liebergot spent providing services to the Federal Committee during this period.
8. a. List and describe what services Ms. Liebergot provided to the Federal Committee from March 26, 1996 to the present.
- b. State how much time, on average per week, Ms. Liebergot spent providing services to the Federal Committee during this period.
9. Describe what compensation, if any, Ms. Liebergot received directly from the Federal Committee from the date identified in response to 2.a. above to the present. If Ms. Liebergot was not paid directly by the Federal Committee in this period, describe how Ms. Liebergot was paid for her services. Such description should include, but not be limited to: how much Ms. Liebergot was paid and by whom; the basis upon which she was paid (e.g. hourly, weekly); how the rate of pay was determined; and any agreement or understanding that the Federal Committee had with any entity or individual about compensating Ms. Liebergot for her services to the Federal Committee.
10. Describe how the Federal Committee's debt to Ms. Liebergot, as reported on Schedule D of the Federal Committee's January 22, 1999 filing with the Federal Election Commission, was incurred. State whether the Federal Committee intends to pay this debt, and describe what plans the Federal Committee has made, if any, to raise funds to pay the debt.
11. Describe your document retention and destruction policies and identify the person(s) responsible for ensuring that documents are properly retained and/or destroyed. If such policies are reflected in documents, identify and produce the documents. If any documents that would have been responsive to this subpoena were transferred to any third party, identify all such documents and the persons who currently are in possession, custody or control of the requested materials.

DOCUMENT REQUEST

1. Identify and produce all documents relating to any agreement between Primacy and the Federal Committee.
2. Identify and produce all documents relating to any payments to Primacy from the Federal Committee for any services provided by Primacy. Such documents should include, but not be limited to, any invoices submitted by Primacy to the Federal Committee or other demands for payment from Primacy to the Federal Committee, and checks indicating payment.
3. Identify and produce all documents relating to any debt owed or owing to Primacy.
4. Identify and produce all documents relating to any debt owed or owing to any other vendor, employee, or volunteer.
5. Identify and produce all documents relating to the services provided by Deanna Liebergot to the Federal Committee including, but not limited to, understandings regarding payments from the Federal Committee to Ms. Liebergot, and payments made or money owed to Ms. Liebergot.

21-04-403-1549

## FEDERAL ELECTION COMMISSION

### FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Vargas for Congress '96      MUR: 4742  
and Deanna Liebergot, as  
treasurer

This matter was generated based on a complaint filed with the Federal Election Commission ("The Commission") by Derrick Roach. See 2 U.S.C. § 437g(a)(2). This matter was also generated based on information ascertained by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

#### I. Facts

##### A. Complaint

The complaint contains two theories of alleged illegal acts in connection with a debt owed by the Federal Committee to Primacy which has been outstanding since March, 1996. The Complaint alleges that the State Committee paid excessive amounts to Primacy as a means of paying off the debt owed to Primacy by the Federal Committee as a result of which the State Committee made a contribution to the Federal Committee. In the alternative the Complaint alleges that Primacy made an excessive contribution to the Federal Committee by forgiving the debt.

In its filings with the Federal Election Commission ("the Commission") since March, 1996, the Federal Committee has reported a debt to Primacy of \$24,506.07 from Mr. Vargas' unsuccessful 1996 campaign for the House. Complainant first alleges that Mr. Vargas' 1998 City Council campaign organization, the State Committee, paid down the Federal Committee's debt to Primacy by over-paying Primacy for services to the 1998 City Council campaign. To

back up this assertion, the Complaint alleges that Primacy did "no visible campaigning or activity" for the State Committee to justify the fees paid to Primacy for the 1998 City Council race.

Complainant also argues, alternatively, that because no effort has been made to collect or pay the debt owed by the Federal Committee, Primacy has forgiven the debt and thus has made a corporate contribution to the Federal Committee.

### **B. Response**

Respondents submitted a joint response signed by Deanna Liebergot, the treasurer for both the Federal and State Committees, Juan Vargas, and Larry Remer, Primacy's owner.

Respondents admit that the Federal Committee owes Primacy \$24,506.07 for work performed as the Federal Committee's primary vendor in the 1996 Congressional campaign. Respondents deny, however, that the State Committee paid down the Federal Committee's debt. Specifically, Respondents deny Complainant's assertion that Primacy did no work to justify the \$13,298.88 paid to Primacy by the State Committee in the first part of 1998, and the inference that the State Committee over-paid Primacy. Respondents assert that the State Committee engaged Primacy on retainer, and assert that Primacy performed substantial work for Mr. Vargas in connection with the City Council primary on June 2, 1998 and would have performed work for Mr. Vargas in connection with the general election on November 3, 1998, including fundraising, policy research and the like.<sup>1</sup>

To back up their claim that Primacy indeed performed work for the State Committee

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<sup>1</sup> The Commission notes that, after Respondents filed their response, Mr. Vargas won the June 2, 1998 City Council primary by over 50%, out-polling Mr. Gomez 3-to-1, according to news reports. Ray Huard, Incumbents In a Sweep, SAN DIEGO UNION-TRIBUNE, June 3, 1998, at B1. Mr. Vargas' showing meant that there was no general election for this seat in November, 1998.

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during Mr. Vargas' campaign for re-election to the City Council, Respondents provide Primacy invoices for December 1997 and the first three months of 1998; these invoices each list a \$3,000 charge attributed to "Consulting," and various charges attributed to copies, telephone charges, and reimbursement for lunches and meetings.<sup>2</sup> Along with payments for Primacy's consulting services, Respondents also state that the State Committee's treasurer, Deanna Liebergot, "is an employee of The Primacy Group, and monies paid include her fees; and the campaign fundraiser, Mr. James Taylor, is utilizing office space, phones, etc. at The Primacy Group and fees paid are also intended to pay those costs." Respondents' Letter at 1.

In response to the allegation that Primacy has forgiven the Federal Committee's debt, Respondents admit that no effort has been made to collect the \$24,506.07 debt, but insist that the debt will be paid in accordance with applicable laws. Respondents point out that the Federal Committee has not reported any reduction in the debt in filings with the Commission since March, 1996.

## **II. Analysis**

### **A. The State Committee May Have Paid Down the Federal Committee's Debt Through Over-Payments to Primacy**

The Federal Election Campaign Act of 1971, as amended ("the Act") states that no person shall make a contribution to a candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceeds \$1,000. 2 U.S.C.

§ 441a(a)(1)(A). A candidate, political committee or other person is prohibited from knowingly

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<sup>2</sup> Respondents also provide invoices from two other businesses -- a printer and a computer service -- which are apparently owned by Mr. Remer and housed at the same address as Primacy. Although the State Committee used these vendors during the 1998 City Council campaign, and the Federal Committee used these vendors during the 1996 campaign, these businesses are not named as Respondents in this matter.

accepting or receiving any prohibited contribution made in violation of the Act or Commission regulations. 2 U.S.C. § 441a(f). The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office, as well as the payment by any person of compensation for personal services. 2 U.S.C. § 431(8)(A)(i),(ii). Also, under the Act contributions from corporations, labor organizations and national banks are prohibited and may not be accepted by candidates for Federal office.<sup>3</sup> 2 U.S.C. § 441b(a).

The available information raises questions about whether the State Committee may have made excessive contributions to the Federal Committee by overpaying Primacy, in violation of 2 U.S.C. § 441a, and may have contributed money which contained funds contributed by prohibited sources, in violation of 2 U.S.C. § 441b(a). More information is required to determine whether these alleged improper contributions actually occurred.

The State Committee paid Primacy more than \$3,000 a month for consulting services in connection with the 1998 City Council campaign, and appears to have made one large payment at the end of the campaign.<sup>4</sup> Primacy has submitted invoices for the City Council race for the first part of 1998, but these invoices do not provide details about what work was performed for the State Committee. The Commission notes that the State Committee paid Primacy over twice as much for the 1998 City Council re-election campaign as Mr. Vargas paid Primacy for Mr. Vargas' City Council re-election campaign in 1995. The Commission determined that in the

<sup>3</sup> Also, under 11 C.F.R. § 110.3(d), it is illegal to transfer funds or assets from a candidate's campaign committee or account for a non-Federal election to his or her principal campaign committee or other authorized committee for a Federal election.

<sup>4</sup> The State Committee paid Primacy, on average, \$3730.35 a month over the campaign period, January 1998 through June 1998, and made one \$15,000 payment at the close of the campaign; all of the payments were coded "P" for professional consulting services, according to the

1995 campaign, which was uncontested, Mr. Vargas' state committee paid Primacy a total of \$15,309 for the nine-month campaign. See MUR 4311. By contrast, the State Committee paid Primacy \$40,582 for a six-month campaign, including a \$3,000 payment at the time the State Committee terminated in January, 1999, a full eight months after the election.<sup>5</sup>

The available facts raise questions about whether the substantial sum that the State Committee paid to Primacy for the 1998 race was commensurate with the competitiveness of the race. According to press reports, at all times during his 1998 re-election campaign Mr. Vargas held a considerable lead over his opponent, Mr. Gomez, in polling and in fundraising; toward the end of the race Mr. Vargas had raised about \$55,000, while Mr. Gomez had only raised about \$3,900. Anthony Millican, Challenger Gomez Battling Uphill Against Vargas, SAN DIEGO UNION-TRIBUNE, May 22, 1998, at B1. Because Mr. Vargas had some opposition, Mr. Vargas' 1998 City Council campaign might have needed to spend slightly more than Mr. Vargas' 1995 campaign. However, the fact that Mr. Vargas appears to have paid Primacy over twice as much in 1998 raises questions as to whether Primacy was over-paid for the 1998 campaign. This possibility, coupled with the fact that the debt owed by the Federal Committee has been outstanding since March, 1996 but that the Federal Committee by its own admission has not made any effort to pay off the debt, raises questions as to whether the State Committee paid down the Federal Committee's debt, constituting a contribution from the State Committee to the

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California Fair Political Practices Commission coding system.

<sup>5</sup> Interestingly, the State Committee made this final payment to Primacy in January, 1999 even though it had not paid Primacy for consulting work from July, 1998 -- one month after the election -- to the end of 1998. Because the State Committee did not report owing a debt to Primacy from July to December, 1998, it does not appear that the final \$3,000 payment in January, 1999 was repayment of a debt owed to Primacy. More information is required to determine why the State Committee made this final payment to Primacy.

Federal Committee.<sup>6</sup> See 11 C.F.R. § 100.7(a)(1)(iii)(A).<sup>7</sup>

In addition, while Deanna Liebergot served as treasurer of both the Federal and State Committees during 1998, the State Committee was paying for her services and the Federal Committee was not. This fact raises questions as to whether the State Committee made an in-kind contribution to the Federal Committee by paying Primacy for Ms. Liebergot's services to both the Federal and State Committees. See 11 C.F.R. § 100.7(a)(1)(iii)(A). The invoices submitted by Primacy for work done by Primacy for the State Committee do not state how much money the State Committee paid for Ms. Liebergot's services.<sup>8</sup>

Although it is unclear how much money the State Committee may have contributed to the Federal Committee by paying down the Federal Committee's debt to Primacy or by paying for Ms. Liebergot's services to the Federal Committee, the State Committee will have made an excessive contribution if that amount is over \$1,000. See 2 U.S.C. § 441a. If the State

<sup>6</sup> Indeed, allegations from a previous complaint suggest that this pattern of activity may have commenced as early as 1995. In MUR 4311, Congressman Bob Filner, Mr. Vargas' opponent in the 1996 Democratic primary, alleged that Mr. Vargas used money from his 1995 City Council campaign to start his Congressional campaign in late 1995, and that Primacy was over-paid by the City Council campaign committee, and underpaid by the Federal Committee, to effect a transfer of money from the City Council campaign committee to the Federal Committee. The Commission concluded, however, that the information presented in that complaint was insufficient to warrant a recommendation of reason to believe. In that same MUR, the Federal Committee was admonished about adhering to the Act's limits on accepting contributions, see 2 U.S.C. § 441a(f), in connection with the Commission's finding of reason to believe that the Federal Committee had violated the Act when the candidate took out a large unsecured loan, co-signed by his wife, which he spent on the campaign.

<sup>7</sup> See also 11 C.F.R. § 110.3(d); AO 1996-33.

<sup>8</sup> The State Committee, in filings with the State of California, did not indicate how much of the money it paid to Primacy went to pay Ms. Liebergot's fees, instead reporting only the lump payment to Primacy. The Federal Committee listed a \$3,000 debt to Ms. Liebergot in its filings with the Commission for the first part of 1998, but did not denominate this as "salary," as it did for some other debts owed to employees. Interestingly, however, the debt which the Federal Committee owes to Primacy has not increased since March 1996, even though Ms. Liebergot has been serving as its treasurer since the Committee began filing with the Commission in October,

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Committee has contributed over \$1,000 to the Federal Committee, the State Committee may have become a political committee under the Act, see 2 U.S.C. § 431(4)(A), and may have violated the Act by failing to register as such and report its disbursements to the Federal Committee. See 2 U.S.C. §§ 433 and 434. In addition, because California imposes fewer restrictions on contributions to campaigns for state elective offices than the Act, see CAL. GOVT. CODE § 85305(c)(1) (West 1998), some of the funds which the State Committee may have contributed to the Federal Committee may have come from sources prohibited under the Act, in violation of 2 U.S.C. § 441b(a).

More information is required about what work Primacy performed for the State Committee, the basis for the amount of the fees paid by the State Committee, and what services rendered by Ms. Liebergot the State Committee was paying for.

Because the State Committee may have made illegal contributions to the Federal Committee, there is reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, may have violated 2 U.S.C. §§ 441a(f) and 441b(a) by knowingly accepting excessive contributions from the State Committee which also may have included funds from sources prohibited under the Act.

**B. Primacy and Larry Remer May Have Made a Contribution to the Federal Committee by Forgiving the Federal Committee's Debt**

**1. Law**

The Act states that no person shall make a contribution to a candidate and his authorized political committee with respect to any election for Federal office which, in the aggregate, exceeds \$1,000. 2 U.S.C. § 441a(a)(1)(A).

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Under the Act, an employer makes a contribution to a candidate when it compensates an employee who provides "volunteer" services to the candidate. See 11 C.F.R. § 100.7(a)(3).

However, if the employee works as a "volunteer" during regular working hours, but makes up the time spent not working for the employer, no contribution has taken place. 11 C.F.R.

§ 100.7(a)(3)(i). Similarly, if the employee volunteers services for the candidate during time for which they are not paid by the employer, then no contribution by the employer has resulted. See 11 C.F.R. §§ 100.7(a)(3)(iii) and 100.7(a)(3)(ii). In addition, legal and accounting services are not considered "contributions" to an authorized committee if the person paying for the services is the regular employer of the person performing the services and the services are solely to ensure compliance with the Act. 2 U.S.C. § 431(8)(B)(ix)(II).

The extension of credit by any person to a candidate's authorized political committee is also a contribution, unless the credit is extended in the ordinary course of business.

11 C.F.R. § 100.7(a)(4). The terms of any credit extended must be substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation.

11 C.F.R. § 116.3(a). In determining whether credit was extended by an unincorporated vendor<sup>9</sup> in the ordinary course of business, the Commission will examine the vendor's established procedures and past practice in approving credit, the usual and normal practice in the vendor's industry, and whether the vendor received prompt payments in the past from the candidate or the candidate's authorized committee. See 11 C.F.R. § 116.3(c).

In addition, a commercial vendor must pursue collection of a debt in a commercially reasonable manner; otherwise, a contribution will result. 11 C.F.R. § 100.7(a)(4). To settle or

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<sup>9</sup> As noted below, although Complainant implies that Primacy is a corporation, a check of public records by the Commission revealed that Primacy is not incorporated.

forgive a debt owed by an ongoing committee without making a contribution, the vendor must file with the Commission its intention to settle or forgive the debt. 11 C.F.R. § 116.8. The Commission will determine if forgiveness or settlement of a debt owed to an unincorporated vendor is "commercially reasonable" based on factors such as whether the debtor committee has made reasonable efforts to raise the funds to pay back the debt, 11 C.F.R. § 116.4(d)(2), and whether the vendor has made similar efforts to collect the debt as it would a nonpolitical debt, such as by withholding additional goods or services until payment on the debt is made, referring the debt to a debt collection agency, or commencing litigation. See 11 C.F.R. § 116.4(d)(3).

**b. Analysis**

The available evidence raises questions as to whether, under an alternative theory, Larry Remer, the owner of Primacy, may have made an excessive contribution to the Federal Committee by failing to make a commercially reasonable attempt to collect the debt.<sup>10</sup> See 11 C.F.R. § 100.7(a)(4). However, there are significant questions which need to be answered before the Commission can determine whether the violations described by this alternative scenario in fact occurred.<sup>11</sup>

Although Respondents claim that the Federal Committee intends to pay the debt, the Commission does not have any information to indicate that Primacy has made any attempt to collect the debt. As noted above, the debt of \$24,506.07 has been outstanding since March,

<sup>10</sup> Although Complainant alleges that forgiveness of the debt owed to Primacy by the Federal Committee would constitute a corporate contribution to the Federal Committee, the Primacy Group is not incorporated in California. Nevertheless, the complaint does raise a valid allegation of an excessive personal contribution by Larry Remer, the owner and apparent sole proprietor of Primacy, in violation of 2 U.S.C. § 441a(a)(1)(A).

<sup>11</sup> There is also a possibility that Primacy may have extended credit to the Federal Committee in March 1996, the month that the debt was incurred, outside of the ordinary course of business. See 11 C.F.R. § 116.3(c). The Commission will examine this potential violation if further

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1996.<sup>12</sup>

Furthermore, the available information raises questions as to whether the Federal Committee is making reasonable efforts toward raising the money to pay off the debt to Primacy. The Federal Committee reported \$88.53 cash on hand as of December 31, 1998, and debts outstanding on that date of \$67,017.39. The Federal Committee raised \$500.00 in the last half of 1997 which all went to pay down a debt from the '96 campaign to Mr. Remer's printing business, raised \$2000.00 in the first half of 1998 from a PAC, which was disbursed immediately to pay off a debt to a campaign worker, and received a \$2,000 contribution in the last half of 1998 from Larry Remer, himself, and his wife, which went to pay down a loan from Mr. Vargas to the Federal Committee, and not the debt to Mr. Remer's company. In addition, the Federal Committee has paid down several debts outstanding to other vendors, without paying down the Primacy debt at all.<sup>13</sup> The fact that the Federal Committee has paid down debts to other creditors since the election, including the candidate, but not Primacy, raises questions about whether the Federal Committee is making reasonable efforts to repay the debt.

The Commission also notes that, despite the debt owed to Primacy, Mr. Vargas and Mr. Remer apparently continue to enjoy a close relationship. Both the Federal Committee and the State Committee are housed at Primacy's address and, as noted above, a Primacy employee is treasurer to both committees. As noted above, Mr. Remer and his wife also contributed \$2,000

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information indicates that such an illegal extension of credit may have occurred.

<sup>12</sup> In January and February, 1996, the Federal Committee paid Primacy a \$1,000 monthly retainer. In March, 1996, the month the debt to Primacy was incurred, the Federal Committee paid Primacy a total of \$112,650.00 for advertising leading up to the primary election. The debt may be the cost of advertising for which Primacy was not reimbursed in the last month of the campaign.

<sup>13</sup> The Federal Committee owes \$22,500 to its former employees, nearly \$3,000 to outside vendors, and \$2,990.13 to PG Printing and Graphics, a company owned by Mr. Remer and

to the Federal Committee in November, 1998, which was disbursed immediately to pay down a loan from Mr. Vargas to the Federal Committee.<sup>14</sup> Further, Mr. Remer's daughter, a high school student, was recently an intern in Mr. Vargas' city council office. Diane Bell, SAN DIEGO UNION-TRIBUNE, Aug. 12, 1997, at B1.

Because the available evidence raises questions as to whether, under an alternative theory, Mr. Remer made an excessive contribution to the Federal Committee by failing to make a commercially reasonable effort to collect the debt, there is reason to believe that Vargas for Congress '96 and Deanna Liebergot, as treasurer, violated 2 U.S.C. § 441a(f) by accepting contributions in excess of statutory limits.

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located within the Primacy building.

<sup>14</sup> The Federal Committee owes Mr. Vargas \$12,225.00 as of December 31, 1998.