

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

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3
4 In the Matter of:)

5)
6)
7 Fox Media Consulting LLC and)
8 Tom Blakely)

MUR 5026

9)
10
11 **GENERAL COUNSEL'S BRIEF**

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14 **I. INTRODUCTION**

15 This matter originated with a complaint filed by David Plouffe, Executive Director,
16 Democratic Congressional Campaign Committee, alleging that Tom Blakely and Fox Media
17 Consulting LLC ("Fox Media") (collectively "respondents"), violated the Federal Election
18 Campaign Act of 1971, as amended ("the Act").¹ More specifically, the complaint alleged that
19 Blakely and Fox Media participated with others in a scheme to coordinate radio and direct mail
20 advertisements opposing Mike Pappas, Dick Zimmer's opponent for New Jersey's 12th
21 congressional seat. On February 14, 2004, the Commission found that there is reason to believe
22 that Blakely and Fox Media violated 2 U.S.C. § 441b.

¹ All of the facts relevant to this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act or statements of law regarding provisions of the Act contained in this report refer to the Act as it existed prior to the effective date of BCRA. Similarly, all citations to the Commission's regulations or statements of law regarding any specific regulation contained in this report refer to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

1 The Office of the General Counsel has investigated the allegations, examined documents,
2 and interviewed or deposed a number of witnesses in this matter. The evidence obtained during
3 this investigation reveals that respondents participated in a scheme to fund, produce and
4 distribute the anti-Pappas advertisements for the benefit of one of Jamestown Associate LLC's
5 ("Jamestown") clients, Zimmer 2000, Inc. ("Zimmer 2000" or "Zimmer committee"). Fox
6 Media permitted its name to be used by Jamestown in the production and distribution of the anti-
7 Pappas advertisements in conjunction with a third-party non-profit corporation, New Jersey
8 Citizens for Tax Reform ("NJCTR"), in order to distance the activity from Jamestown and
9 Zimmer 2000. As a result of this activity, the General Counsel is prepared to recommend that
10 the Commission find probable cause to believe that Blakely and Fox Media knowingly and
11 willfully violated 2 U.S.C. § 441b by receiving these coordinated in-kind corporate contributions
12 on behalf of the Zimmer committee.

13 This scheme flowed from Blakely's relationships and interactions with the following
14 group of individuals and entities, all of whom are discussed below in the Summary of Facts:

- 15 - Dick Zimmer: candidate for New Jersey's 12th congressional district in 2000. Zimmer
16 2000 was his authorized committee for that race. Zimmer was a longtime client of
17 Jamestown;
- 18 - Larry Weitzner: founded Jamestown on or about 1995 as a full service political and
19 public affairs consulting company. In 2000, Weitzner and Jamestown provided
20 consulting services to clients including congressional candidates Zimmer and Mike
21 Ferguson and senate candidate Jim Treffinger;
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- Megan Jencik: media buyer for Jamestown who also worked for Zimmer 2000 during the primary and later placed the subject advertisements at the direction of Blakely;
- New Jersey Citizens for Tax Reform ("NJCTR"): NJCTR served as the sponsor for the subject anti-Pappas advertisements under the name "Citizens for Tax Reform";
- John Sheridan: incorporated NJCTR and served as a member of its Board of Trustees. Sheridan met Blakely, Weitzner and Zimmer in the 1990s through a New Jersey based anti-tax movement. He deposited funds solicited for the anti-Pappas advertisements into NJCTR's bank account, which funds he then issued to Fox Media to pay for the production and distribution of these advertisements; and
- Jim Treffinger: Essex County Commissioner for whom Blakely served as campaign manager in 1994 and his campaign's strategic advisor in 1998. Treffinger was also a candidate in the June 2000 Republican primary election for the U.S. Senate and was a client of Jamestown's. He solicited some of the funds used to produce and distribute the anti-Pappas advertisements.

II. SUMMARY OF FACTS

A. Background

1. Jamestown and the Zimmer Primary Campaign

Jamestown served as the principal campaign consultant for Zimmer's 2000 bid for election to the 12th congressional district. *See* Weitzner Tr. at 107; Zimmer Tr. at 32. In 2000, Jamestown and the Zimmer committee were so closely aligned that they operated out of the same office, just as they had done during Zimmer's 1996 senatorial campaign. During the 2000 election, the two entities shared space, first in Princeton, New Jersey and, as of January 2000, in Lawrenceville, New Jersey. *See* Zimmer Tr. at 42-44; Blakely Tr. at 86, 120, 136; Weitzner Tr. at 82, 86, 87.

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1 By 2000, Jamestown had about a dozen clients, 95% of which were political. *See*
2 Weitzner Tr. at 34, 35. Zimmer 2000 was one of Jamestown's biggest clients during the 2000
3 election cycle, *see* Weitzner Tr. at 109, and Jamestown also provided Zimmer 2000 with
4 more professional services than any other vendor.² As a result of Zimmer 2000's primacy as a
5 Jamestown client, the committee received the full benefit of Jamestown's facilities, staff and
6 resources. *Id.* In addition to Weitzner, who served as the lead consultant on this account,
7 Jamestown vice president Blakely and media buyer Jencik worked on the Zimmer primary
8 campaign. Ex. 1, Response 2a; *see also* Zimmer Tr. at 80-82. Jamestown provided Zimmer
9 2000 with overall strategy and media production, including direct mail and television and radio
10 advertisements. *See* Weitzner Tr. at 109. According to Weitzner, providing Zimmer 2000 with
11 strategic advice meant developing the campaign's overall theme and determining "the best way
12 to win an election." *See* Weitzner Tr. at 116, 117.

13 Jamestown participated in the Zimmer committee's day-to-day operations through the
14 recruitment and hiring of staff for the 2000 campaign. Zimmer's reliance on Jamestown was
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² FEC disclosure reports indicate that about half of the total amount of money disbursed by Zimmer 2000 between February 9, 1999 and the date of the primary, June 6, 2000, was paid to Jamestown (\$441,113 19 out of \$866,019 73). *See* Zimmer 2000's: 1999 Mid-Year Report; 1999 Year-End Report; 2000 April Quarterly Report; and 2000 12-Day Pre-Primary Report. FEC disclosure reports indicate that Jamestown received \$905,994 61 as a result of consulting on the Zimmer campaign during the general election. *See* Zimmer 2000's 2000 July Quarterly Report, 2000 October Quarterly Report, 2000 Pre-General Report, 2000 Post General Report, and 2000 Year-End Report. In total, for both the 2000 primary and general elections, the Zimmer committee paid Jamestown \$1,347,107.80.

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1 such that a number of the Zimmer committee's staff transferred from or worked for Jamestown
2 prior to joining the campaign. *See* Zimmer Tr. at 72, 73. *See also*, Blakely Tr. at 98. For
3 example, Jamestown media buyer Jencik worked directly for the campaign as a consultant from
4 August 1999 through April 20, 2000 while continuing to function as Jamestown's media buyer.
5 *See* Zimmer 2000: 1999 Mid-Year Report; 1999 Year-End Report; 2000 April Quarterly Report;
6 and 2000 12-Day Pre-Primary Report; Ex. 2.³ According to Jencik, Weitzner recommended that
7 she work on the campaign. According to a former Jamestown consultant, Zimmer 2000 treasurer
8 and fundraiser Maria Chappa also received her entrée to the campaign through Jamestown.
9 Weitzner, who testified that Chappa has worked as a consultant for other Jamestown clients,
10 interviewed her for the position with the committee. *See* Weitzner Tr. at 126. Similarly, Zimmer
11 staffer Jeff Pinsky joined the campaign after working as a Jamestown intern. *See* Weitzner Tr. at
12 130, 131.⁴

13 The evidence suggests that Weitzner and Blakely helped Zimmer choose John Holub, a
14 field operative on Zimmer's senate campaign, over other candidates to serve as campaign

³ Jamestown's Quicken records, which are limited to reflect payments made to Jencik from January 2000 through June 15, 2000, indicate that she was paid her \$1,500 semi-monthly retainer as usual in February, March, May and June 2000 Ex. 2

⁴ According to Weitzner and a former Jamestown associate, Zimmer 2000 staffer Richard White also worked at Jamestown for a period of time. It is not known whether his tenure on the campaign was before or after he worked at Jamestown. *See* Weitzner Tr. at 132, 133 *See also* Zimmer Tr at 54

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1 manager. *See* Zimmer Tr. at 58, 59. Weitzner stated that he was sure he interviewed Holub,
2 whom he knew from "New Jersey political circles," for the position.⁵ *See* Weitzner Tr. at 125,
3 126; *see also* Zimmer Tr. at 59. Zimmer testified that he relied on Blakely for advice on hiring
4 when Blakely had a personal familiarity with the individual; so it is likely that Blakely, who had
5 known Holub for seven years, worked with him on a number of prior political campaigns and
6 considered him a friend, assisted Zimmer in choosing Holub as the Zimmer committee's
7 campaign manager.⁶ *See* Blakely Tr. at 95-97; Zimmer Tr. at 72, 73.

8 Similarly, Blakely interviewed and hired Matthew Cherney, Zimmer's driver and
9 scheduler for the 2000 campaign. According to Cherney, he found out about the job through
10 Jamestown independent consultant Adam Geller and was interviewed by Blakely who explained
11 his duties and salary. Cherney said that he never interviewed with campaign manager Holub and
12 that he did not meet Zimmer until after he was hired.

13 2. Blakely Has Had Longstanding Relationships with Zimmer and Weitzner

14 Blakely has known Weitzner and Zimmer for about fifteen years, and during that time
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⁵ In 2002, Holub joined Jamestown as an independent consultant. *See* Weitzner Tr. at 135; Blakely Tr. at 99.

⁶ Blakely testified that it was possible he referred Holub for the job as Zimmer's campaign manager or had some involvement in Holub obtaining the position. *See* Blakely Tr. at 98. Blakely admitted that he had recommended Holub for work over the years, although he was unable to recall to which campaigns he had provided those recommendations. *Id.* at 98, 99.

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1 has worked with both of them in various capacities. Blakely first met Weitzner in 1989 while he
2 was working for the Republican State Committee. *See* Blakely Tr. at 34, 35; Weitzner Tr. at 61,
3 62. He met Zimmer in 1990 while working as a field operative on Zimmer's first congressional
4 campaign, which Weitzner managed. *See* Weitzner Tr. at 25; Zimmer Tr. at 31-32. Zimmer
5 won that election and Blakely became his district director, a position he held during Zimmer's
6 six years in Congress (1991-1997). *See* Blakely Tr. at 27-29; Zimmer Tr. at 35. Blakely took a
7 leave of absence from his position in Zimmer's congressional office in 1992 to manage
8 Zimmer's re-election campaign and in 1996 he managed Zimmer's senatorial campaign.⁷ *See*
9 Blakely Tr. at 26, 27-29; Zimmer Tr. at 35-37; *see also* Jamestown Website,
10 <http://web.archive.org/web/20000920075508/www.jamestownassociates.com> (last accessed May
11 5, 2005). Weitzner, as an independent political consultant, served as the Zimmer committee's
12 principal campaign consultant during the 1992 and 1994 congressional campaigns. *See* Weitzner
13 Tr. at 107. In 1996, Weitzner again served as Zimmer's principal consultant, this time through
14 Jamestown, a political and public affairs consulting firm he had established the previous year.
15 *Id.* 26, 107.

16 In 1998, Blakely became an independent media consultant. *See* Blakely Tr. at 26. That
17 same year, Weitzner, who testified that he had been impressed with Blakely's performance on

⁷ Zimmer and Blakely were close personally as well as professionally. Zimmer testified that he attended Blakely's recent wedding and considers him a friend. *See* Zimmer Tr. at 40.

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1 the Zimmer senate campaign, offered Blakely a job as an independent consultant at Jamestown.
2 *See* Weitzner Tr. at 63. Blakely accepted the position with Jamestown, and while he appears to
3 have spent most of his time working on Jamestown client accounts, may have maintained a few
4 of his own clients.⁸ *See* Blakely Tr. at 36-39, 41; Weitzner Tr. at W 61, 62.

5 At Jamestown, Blakely reported to Weitzner and interacted with him on a daily basis.
6 *See* Blakely Tr. at 41, 81. Blakely was paid a monthly "retainer" as were two other in-house
7 consultants, Adam Geller and Megan Jencik.⁹ *See* Blakely Tr. at 39. Blakely's responsibilities
8 at Jamestown included handling client accounts, dealing with political issues, writing and
9 producing advertisements, designing print, mail and billboard advertisements and viewing voter
10 targeting. *See* Blakely Tr. at 41, 48; Weitzner Tr. at 47, 48. Weitzner testified that he assigned
11 clients based on the consultant's familiarity with the district and the client. *See* Weitzner Tr. at
12 80. Consultants were encouraged to market Jamestown to prospective clients and, if successful,
13 were rewarded with a year-end bonus. *See* Weitzner Tr. at 52-55. According to a former
14 Jamestown consultant, even if a potential client wanted to hire a particular Jamestown consultant

⁸ At his deposition Blakely stated that he worked on these client accounts out of his apartment. However, he was unwilling to identify any of these clients. *See* Blakely Tr. at 42.

⁹ In 2000, Jamestown had one employee and five independent consultants. *See* Weitzner Tr. at 43, 44, 66. Blakely and Geller handled client accounts for Jamestown. *See* Weitzner Tr. at 47, 48. Jamestown also utilized the services of a media buyer, Jencik, as well as two graphic artists and a media technician. *See* Weitzner Tr. at 44. The latter four worked on all of Jamestown's client accounts. *See* Weitzner Tr. at 119; Blakely Tr. at 137.

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1 for a project, that client, if taken on, was considered a Jamestown client. The former consultant
2 indicated that Jamestown would issue the invoices to the client.¹⁰ According to Bridget Capasso,
3 Jamestown's bookkeeper, by 2000 Blakely held the title of vice president and was considered
4 second in line at the company.¹¹

5 3. Blakely, Weitzner and Zimmer Each Has Had A Longstanding Relationship with
6 Sheridan
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8 Blakely, Weitzner, Zimmer and NJCTR spokesman Sheridan have had longstanding
9 professional and personal relationships through their association with several New Jersey based
10 anti-tax groups during the 1990s. From around 1990 through 2000, Sheridan served as a non-
11 voting board member and advisor to one such group called Hands Across New Jersey ("HANJ").
12 See Sheridan Tr. at 71. Sheridan stated that Blakely was a HANJ supporter and provided advice
13 on political and legislative issues. See Sheridan Tr. at 74, 75; see also Zimmer Tr. at 23; Blakely
14 Tr. at 18-20. According to Bobbie Horowitz who served for a time as HANJ's president, the
15 HANJ Board of Directors relied on Blakely to advise it on how to operate as a grassroots

¹⁰ Blakely testified that the work done for clients that he brought into Jamestown was billed out through Jamestown, although he asserted that they remained his clients See Blakely Tr. at 46, 48, 49, 78, 79 Blakely testified that he did not have a formal contract with Weitzner regarding how the monies brought in through these client accounts would be divided Blakely stated that if he believed that he was bringing in more business than was reflected in his monthly retainer, he would ask for more money or do less work. *Id.* at 46, 48, 49, 83.

¹¹ Blakely became a full-time Jamestown employee at some point between 2002 and 2004. See Blakely Tr. at 26, 39, Weitzner Tr. at 115, 116. He currently holds the title of president. See Jamestown Associates Website, <http://www.jamestownassociatescs.com> (last accessed April 25, 2005).

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1 organization and navigate controversial issues. As a Jamestown consultant, Blakely also
2 participated in generating media for HANJ.¹² See Sheridan Tr. at 301, 302; Weitzner Tr. at 18.

3 Sheridan testified that he first met Zimmer around 1990 during a meeting relating to a
4 ballot question HANJ supported opposing Governor Jim Florio's tax increases. See Sheridan Tr.
5 at 85-6. Zimmer confirmed in his testimony that he worked with HANJ, noting that they had
6 common political objectives. See Zimmer Tr. at 20-22.

7 Sheridan testified that he interacted with Weitzner frequently from 1990 through 2000
8 because Jamestown handled HANJ's advertising. See Sheridan Tr. at 92-4. Sheridan testified
9 that he and Weitzner were on such familiar terms that Sheridan would frequently visit the
10 Jamestown offices in both Princeton and Lawrenceville to talk with Weitzner about, among other
11 things, what was "going on at the state house." See Sheridan Tr. at 207-209. Sheridan's
12 continued access to what was effectively the Zimmer committee's headquarters during the 2000
13 election provided him with an opportunity to learn about the Zimmer campaign's plans and
14 activities. Sheridan, however, insisted that, apart from Weitzner, he did not know anyone who
15 worked for the Zimmer committee, did not see Zimmer during the primary and did not discuss

¹² Testimony indicates that the last project Sheridan hired Jamestown to do for HANJ was an anti-Bill Bradley advertisement that ran in New Hampshire during the 2000 presidential primary. Blakely and Weitzner both worked on this project See Sheridan Tr. at 301, 302, Weitzner Tr. at 18; Blakely Tr. at 144, 145.

1 the Zimmer campaign while he was working on the anti-Pappas advertisements. *See* Sheridan
2 Tr. at 87, 89, 103.

3 Blakely, Zimmer, Weitzner, and Sheridan also had interactions through a now defunct
4 political organization that Zimmer founded and chaired, called the Coalition for Lower Taxes
5 ("CLT"). Weitzner served as executive director and media consultant for CLT and Blakely
6 volunteered for the group.¹³ *See* Zimmer Tr. at 16, 17; Weitzner Tr. at 14, 15; Blakely Tr. at 15,
7 16; *see also* MUR 4238 (Zimmer for Senate, Inc.) (CLT and Weitzner, as CLT's executive
8 director, were respondents in this matter involving alleged coordinated advertisements opposing
9 a potential federal candidate). Sheridan testified that he and HANJ supported CLT's agenda and
10 attended its meetings. *See* Sheridan Tr. at 73.

11 The evidence indicates that Blakely's and Weitzner's relationships with Sheridan went
12 beyond their political association. Over the years both men have been customers at Valley
13 Furniture, Inc. where Sheridan manages the conservation and restoration departments. *See*
14 Sheridan Tr. at 67, 211, 212. Sheridan has restored furniture for Blakely and also provided
15 advice on prospective purchases. *See* Sheridan Tr. at 212; Blakely Tr. at 242. Sheridan testified
16 he has "done a lot of furniture" for Weitzner and his wife over the years and that they purchased
17 a dining room set about a year ago. *See* Sheridan Tr. at 211; Weitzner Tr. at 20.

¹³ CLT appears to have shared office space with Jamestown and Zimmer for Senate, Inc. *See* Zimmer Tr. at
18 *See also* MUR 4238 (Zimmer for Senate, Inc.) (Designation of Counsel form for CLT dated February 2, 1997)

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B. Prelude to the Anti-Pappas Advertisements

1. The Bennett Letter

Zimmer testified that his campaign against Pappas was going well during March and April 2000. He was ahead in his committee's polls and had won the endorsement of all five Republican county conventions, giving him preferred ballot position. In addition, even Pappas's own county chairman endorsed Zimmer. *See* Zimmer Tr. at 84, 85. Weitzner also viewed Zimmer as the more electable candidate – Pappas lost every county convention, was not raising any money and the Republican Leadership wanted Zimmer as the candidate. *See* Weitzner Tr. at 150, 151.

According to Pappas, however, his internal polling indicated that he and not Zimmer was the candidate more likely to defeat Democratic candidate Rush Holt. Pappas indicated that polls taken in late March 2000 showed him gaining ground on Zimmer as the primary drew closer. *See* "Pappas Poll Shows Him Beating Holt", HOUSE RACE HOTLINE, March 30, 2000 (Pappas Public Opinion Strategies Poll released March 29, 2000 in which Pappas fares better than Zimmer in general election matchups against incumbent Holt). According to Pappas, his committee was encouraged by the results of a GOTV/voter identification program informing voters how close on the issues Zimmer was to Democratic incumbent Rush Holt. It is probable that the Zimmer committee was well aware of the press reports of Pappas's continued viability as a candidate, including an article carried in the e-publication politicsnj.com, which noted that

1 “Pappas has come on strong lately.”¹⁴ See *politicsnj / Torricelli for Governor Seems and*
2 *Unlikely Scenario*, March 7, 2000, at <http://www.politicsnj.com/March72000>.

3 The evidence suggests that the Zimmer committee and its consultants were concerned
4 enough about Zimmer’s chances in the primary to begin employing a strategy of utilizing third
5 parties in an effort to effect Pappas’s withdrawal from the race. Weitzner testified that the
6 Zimmer campaign, which wanted to conserve its resources, made a “determined effort” to
7 discourage Pappas from filing.¹⁵ See Weitzner Tr. at 150, 151. For example, Weitzner admitted
8 that he and Holub spoke to the National Republican Congressional Committee (“NRCC”) about
9 having members of Congress call Pappas to discourage him from running by convincing him that
10 his chances of winning were poor. *Id.* at 151. These efforts were unsuccessful. *Id.* at 152.

11 So, Jamestown and the Zimmer committee next tried to achieve the desired result by
12 having a member of the New Jersey State Republican Leadership urge Pappas to withdraw from
13 the race. This effort was more heavy-handed than prior efforts through the NRCC in that the

¹⁴ The political website, politicsnj.com compiles political news from the morning newspapers and provides advice, opinion and commentary. It is “mandatory daily reading for the political class in New Jersey .” Herb Jackson, *Website keeps them all Guessing Delivers More Scoop than Ben and Jerry’s*, NEW JERSEY RECORD, May 6, 2002. Weitzner testified that he was a “pretty regular reader” of the site in 2000 and had even contributed information via e-mail. See Weitzner Tr. at 139. Blakely admitted that he read it “frequently” in 2000 and had contributed articles, including an analysis of field operatives See Blakely Tr. at 106,107 Zimmer was also a reader of the e-publication See Zimmer Tr. at 93.

¹⁵ It is likely that Weitzner was referring to the requirement that candidates in New Jersey file must petitions to get on the ballot. See <http://www.state.nj.us/lps/elections>

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1 Zimmer committee and its consultants communicated their message using inflammatory and
2 negative information culled from the Zimmer committee's own opposition research file and
3 communicated this message directly to Pappas and the New Jersey political cognoscenti.

4 Specifically, Zimmer 2000's opposition research file contained information relating to
5 Pappas's connection to the Pillar of Fire International Christian Church and the alleged
6 association of its founder, Alma White, with the Ku Klux Klan ("KKK"), which information
7 Zimmer testified was gathered as a part of the committee's "normal opposition research." *See*
8 Zimmer Tr. at 70, 71. Zimmer decided that this was not an appropriate issue to raise during the
9 primary and so advised Weitzner and Holub during discussions held at the campaign's
10 headquarters. *See* Zimmer Tr. at 96, 97, 101, 102. Zimmer testified that he believed this
11 discussion was enough to keep Weitzner "from doing what I didn't want him to do." *See*
12 Zimmer Tr. at 102.¹⁶ Nonetheless, Jamestown and the campaign's staff used this information
13 against Pappas through the vehicle of an "open letter," ostensibly authored by a third party, State
14 Senate Majority Leader John O. Bennett ("Bennett letter"). *See* Zimmer Tr. at 101. Bennett was

¹⁶ Weitzner admitted that the issue of Pappas's connection with the Pillar of Fire International Christian Church and its founder's alleged connection with the KKK was discussed with the campaign. *See* Weitzner Tr. at 192. Blakely testified that he might have seen the Zimmer campaign's opposition file research, but could not recall specifically. *See* Blakely Tr. at 168, 169.

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1 a friend and former State Senate colleague of Zimmer, and a former Jamestown client.¹⁷ Zimmer
2 Tr. at 85, 86.

3 The Bennett letter, dated April 11, 2000, was sent directly to Pappas and also distributed
4 on the e-publication, politicsnj.com. Ex. 3. It urged Pappas to withdraw from the primary, in
5 part because of his association with the Pillar of Fire International Christian Church. The fourth
6 paragraph of the letter stated:

7 The Democrats will not hesitate to exploit the recent news article detailing your
8 employment with the Pillar of Fire church and its association with the Ku Klux Klan.
9 And I am certain the Democrats can't wait to dust off their commercial of you singing,
10 "Twinkle, Twinkle Kenneth Star." Ex. 3.

11 According to Bennett, while he takes overall responsibility for the letter, he was not its
12 true author. Bennett indicated that the letter was not generated out of his office and it contained
13 certain information that he was unaware of at the time of the letter's release. Specifically,
14 Bennett knew nothing about and did not write the sentence relating to Pappas's connection to the
15 Pillar of Fire International Christian Church and the alleged link between that church and the
16 KKK. Bennett believes his participation in the letter originated with a call from Zimmer.

¹⁷ Bennett ran against Pappas in the 1996 Republican congressional primary for New Jersey's 12th congressional seat. According to Bennett, Jamestown provided him with consulting services during this congressional campaign. Bennett also indicated that he had worked with both Blakely and Weitzner in the past. *See also* Weitzner Tr. at 148.

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1 According to Bennett, it is likely he discussed the mechanics of generating the letter, such as
2 providing his letterhead and his signature, with either Blakely or Holub.

3 While Zimmer claimed he did not permit his own campaign to use the information
4 relating to Pappas and his association with the Pillar of Fire International Christian Church, the
5 evidence suggests that he did not have a problem with the information being used on his behalf
6 by a third party. *See* Zimmer Tr. at 88, 89, 97. Zimmer's deposition testimony indicates that he
7 played, at the very least, some kind of oversight role with regard to the Bennett Letter. Although
8 Zimmer was unable to recall whether he had any input into its contents or specifically approved
9 its release, he testified that he was sure he discussed the letter with Weitzner at around the time it
10 was written and admitted that he probably saw the letter itself at some time in April 2000. *See*
11 *id.* at 87, 92. Zimmer testified that he could not rule out that he called Bennett and asked him to
12 sign the letter. *See* Zimmer Tr. 88, 89.

13 The evidence confirms that Weitzner and Zimmer campaign manager Holub were
14 directly involved in the creation and distribution of the letter. *See* Weitzner Tr. at 149, 150, 152;
15 Zimmer Tr. at 87-90, 92. In particular, Weitzner remembered drafting parts of the letter but was
16 unable to recall what he specifically contributed. Ex. 4, Response dated September 13, 2004; *see*
17 Weitzner Tr at 152. Blakely testified that he did not recall being involved in creating the "open
18 letter," but was sure he must have read it when it was posted on-line. *See* Blakely Tr. at 108-

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1 110. However, Blakely did state that he saw Bennett frequently and that they may have
2 discussed the letter at some point in time. *Id.*

3 Through the "open letter" format, Zimmer 2000 was able to use the potentially damaging
4 information contained in its opposition files about Pappas, his association with the Pillar of Fire
5 International Christian Church and the church's alleged connections to the KKK while insulating
6 itself from any criticism about engaging in negative campaigning. It appears that this strategy
7 was successful as the press never linked Zimmer 2000 to the "open letter" and instead
8 characterized it as a call from New Jersey's Republican political leaders for Pappas to withdraw
9 from the race and line up behind Zimmer. *See* politicsnj / *Morris Republicans Pursue Possible*
10 *Open Assembly Seat*, April 14, 2000, at <http://www.politicsnj.com/April112000html>; Enid
11 Weiss, *State Majority Leader Calls on Pappas to Drop Out of Race*, NEW JERSEY JEWISH NEWS,
12 April 27, 2000; *Zimmer Hits Airwave*, HOUSE RACE HOTLINE, April 26, 2000. Once again these
13 efforts did not have the desired effect, with the press reporting that Pappas's campaign dismissed
14 Bennett's letter as "sour grapes" stemming from Bennett's loss to Pappas in the 1996 Republican
15 primary. *State Senate Majority Leader Calls on Pappas to Drop Out of Race*, NEW JERSEY
16 JEWISH NEWS, April 27, 2000; *see also* Weitzner Tr. at 152.

17 2. Formation of NJCTR and Fox Media

18 Since the strategy of eliminating Pappas as an opponent through leadership intervention
19 did not work, the evidence suggests that as the primary drew close Blakely decided to bring the

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1 inflammatory information relating to Pappas's connection to the Pillar of Fire International
2 Christian Church directly to the electorate through a radio and direct mail advertising campaign.
3 But, realizing that the harshness of such an attack from the Zimmer committee would damage
4 Zimmer's candidacy, Blakely and Weitzner arranged to have this anti-Pappas advertising
5 campaign sponsored by NJCTR, a non-profit corporation controlled by Sheridan, and produced
6 by Fox Media, the media company run by Blakely out of Jamestown's offices. The evidence
7 demonstrates that by coordinating the anti-Pappas advertisements through these groups, Blakely
8 believed that there was little chance that this activity would be traced back to the Zimmer
9 committee.

10 Incorporated as a non-profit with the state of New Jersey in 1997, NJCTR's purpose was
11 to heighten "public awareness for [*sic*] higher taxes and need for reform."¹⁸ See Sheridan Tr. at
12 119. The evidence demonstrates that Sheridan, who controlled all of NJCTR's activities, was
13 favorably inclined to cooperate in a scheme to defeat Pappas in the 2000 Republican primary.
14 Apart from Sheridan's longstanding relationship with Weitzner and Jamestown and support for

¹⁸ According to Sheridan, NJCTR was an offshoot of HANJ, which, until it ceased functioning, was a for-profit continuing political committee registered with the New Jersey Election Law Enforcement Commission. He also said that NJCTR was formed to handle national issues while HANJ handled state issues. Bill Green, Holly Ferraro and Bobbie Horowitz, who made up HANJ's Board of Directors as of 2000, are also listed on NJCTR's Incorporation papers as members of its Board of Trustees. See also Sheridan Tr. at 116-121, 133. According to Green, Ferraro and Horowitz, they had little or nothing to do with NJCTR's activities, including but not limited to, its finances. Ferraro and Horowitz indicated that they knew nothing about the anti-Pappas advertisements. This conflicts with statements made by Sheridan in interviews and in his deposition. See Sheridan Tr. at 98, 99, 102, 103, 178, 179, 193, 194, 198, 199, 262.

1 Zimmer, he had tremendous animosity towards Pappas. *See* Sheridan Tr. at 104-110. According
2 to Sheridan, Pappas had publicly belittled HANJ and also betrayed the organization through tax
3 votes made during his tenure as a Freeholder and as a member of Congress. *See* Sheridan Tr. at
4 104-107. Sheridan testified that HANJ tried to defeat Pappas in the 1996 primary and general
5 elections and even went so far as to give his Democratic opponent “everything we had on him.”
6 *Id.* at 107, 109, 110.

7 While NJCTR served as the named sponsor of the planned anti-Pappas advertising
8 campaign, a virtually unknown media company called Fox Media produced and distributed the
9 advertisements on behalf of Jamestown. Papers filed with the State of New Jersey indicate that
10 Blakely formed the company as a single member limited liability company in December 1999,
11 although Blakely testified that he began soliciting work for Fox Media in late 1998 or early
12 1999.¹⁹ *See* Blakely Tr. at 36, 47, 118, 119, 124; Ex. 4. The entity, which did no advertising, did
13 not have a website, and may not have had business cards, allegedly found its clients through
14 “word of mouth.”²⁰ *Id.* at 124, 125, 131, 135. The investigation indicates that, prior to the press

¹⁹ According to Blakely, he formed Fox Media as a limited liability company to provide legal protection for his consulting work. *Id.* at 134, 135.

²⁰ Blakely testified that Fox Media had no clients in 2005 and could not recall whether the company had any clients during the 2002 or 2004 election cycles. *Id.* at 131. Blakely was unable or unwilling to provide the names of any other clients served by Fox Media beyond NJCTR. *Id.* at 130, 143, 148, 149.

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1 maelstrom following the release of the anti-Pappas advertisements, Fox Media did not have a
2 listed telephone number and the firm neither received nor did any publicity. *Id.* 128-130.
3 Blakely testified that he was unsure whether those with whom he worked at Jamestown,
4 including Weitzner and Geller, were aware of Fox Media's existence or whether he had told
5 anyone on the Zimmer campaign about his firm.²¹ *See* Blakely Tr. at 132, 133, 136, 137.

6 Fox Media and Jamestown were not separate entities in any meaningful way. Rather,
7 Fox Media's purpose was to serve as a front organization for certain activities, like the anti-
8 Pappas advertisements, to which Jamestown did not want to attach its name.²² The evidence
9 demonstrates that during the relevant time period, Blakely freely utilized Jamestown facilities
10

²¹ Blakely testified that he could not "recall offhand" whether Weitzner knew he had started Fox Media, but he believed that Weitzner may have been aware of the firm. *See* Blakely Tr. at 133. Weitzner testified that he could not recall specifically when he first heard of Fox Media. He claimed that he did not know prior to the publicity surrounding the anti-Pappas advertisements that Blakely was using Jamestown resources and personnel on behalf of Fox Media. *See* Weitzner Tr. at 161, 169, 170. Blakely also testified that he did not know whether Geller was aware that he had started the firm or whether Jencik was aware of Fox Media's existence until right before June 1, 2000 when the anti-Pappas advertisements ran. *See* Blakely Tr. at 134. Zimmer thinks he first learned about Blakely's connection to Fox Media through reading press articles relating to the anti-Pappas advertisements. He testified that he did not know that Fox Media was operating out of Jamestown's offices. *See* Zimmer Tr. at 46, 47, 111, 123.

²² According to a former Jamestown consultant, Fox Media was a Blakely/Weitzner creation.

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1 and resources in the operation of Fox Media. Fox Media and Jamestown operated from the same
2 offices, and shared the services of an attorney as well an accountant. *See* Blakely Tr. at 116,
3 122, 123; Weitzner Tr. at 27, 28, 36. Fox Media's mail was delivered to Jamestown's offices
4 and its checks carried Jamestown's address. Ex. 5. Blakely testified that one of Jamestown's
5 graphic designers laid out some letterhead for Fox Media. Blakely Tr. at 131, 133. Jamestown's
6 bookkeeper Capasso maintained and balanced Fox Media's checkbook, wrote checks for
7 Blakely's signature and made deposits. *See* Blakely Tr. at 139, 142, 173-5, 209. In fact, Blakely
8 testified that anyone at Jamestown, including but not limited to Capasso and media buyer Jencik,
9 was authorized to write a check or make a deposit on Fox Media's behalf. *Id.* at 207-209.

10 According to Capasso and Jencik, Fox Media's use of Jamestown's offices and
11 Jamestown's resources was well known by Jamestown's personnel. Capasso indicated that
12 everyone seemed aware that she was doing work for Fox Media. Certainly the layout of
13 Jamestown's offices where respondents were located in June 2000, made it unlikely that Fox
14 Media's existence and the nature of its activities were not a matter of general knowledge.

15 According to Jencik, Weitzner had a corner office in-between the offices occupied by Capasso
16 and Blakely. Jencik's own office was separated from Blakely's by a conference room. Jencik
17 indicated that her office was directly across from the open area in the suite where the file
18 cabinets and the Zimmer 2000 campaign staff had their desks.

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C. The Anti-Pappas Advertisements

1. Initiation and Funding of the Advertising Campaign

Blakely and Weitzner were the driving forces behind the anti-Pappas advertisements.

The evidence suggests that Blakely engineered NJCTR's sponsorship of the advertising campaign through his association with Sheridan and that the funds NJCTR used in the anti-Pappas advertising campaign were deliberately solicited by Blakely and Weitzner from individuals with no direct ties to Zimmer or his committee.

Sheridan stated during an interview that the first contact between NJCTR and Fox Media relating to the anti-Pappas advertisements occurred in April or May 2000. During this interview, Sheridan also indicated that Blakely might have called him and asked him if NJCTR "was doing anything" on Pappas during the primary. According to Sheridan, this was typical of the way political organizations such as NJCTR did business. On a later date, after Sheridan had conferred with Blakely about the Commission's investigation, Sheridan presented a different scenario in which he developed the idea of NJCTR running the advertisements based on his own research and, claiming this was his usual practice, called Jamestown to see whether Jamestown could produce and distribute the advertisements. According to Sheridan, the person he spoke with at Jamestown said that Jamestown could not get involved because they were managing Zimmer's campaign against Pappas, but suggested that he call Blakely, "who had his own media firm." At his deposition, Sheridan changed his story yet again, testifying that in fact he was not

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1 referred to Blakely after being turned down by Jamestown, that instead Fox Media's name came
2 up in subsequent conversations with political activists whose names he could not recall. *See*
3 Sheridan Tr. at 98-100.

4 Blakely testified that Sheridan initiated the ad campaign on behalf of NJCTR. *See*
5 Blakely Tr. at 150. The evidence suggests that the first scenario presented by Sheridan in which
6 Blakely made the initial contact with Sheridan is the most plausible as that explanation preceded
7 Sheridan's conferring with Blakely and is entirely consistent with prior efforts to alter the
8 dynamics of the race, i.e., the Zimmer committee's attempts to force Pappas' withdrawal through
9 the use of third parties via the Republican congressional leadership and Bennett.

10 An additional factor pointing to Blakely as the one who instigated the advertising
11 campaign is that NJCTR did not have the funds or the capability to raise the funds necessary to
12 underwrite the anti-Pappas advertisements. The group's bank statements show that it started the
13 month of April with a bank balance of \$31.21. Ex. 6. In fact, there was little activity in the
14 account during April 2000 and most of May 2000. Despite Sheridan's claims that he raised the
15 funds for the advertisements himself through a direct mail solicitation, the fact is that neither
16 Sheridan nor anyone else connected with NJCTR solicited the funds used to produce and
17 distribute the anti-Pappas advertising campaign. *See* Sheridan Tr. at 186-192. According to

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1 NJCTR board member Green, NJCTR had generated fundraising letters in the past, but never
2 raised much money as the average contribution was in the range of \$35.²³

3 As the following chart demonstrates, between May 31, 2000 and June 5, 2000, NJCTR
4 deposited six checks totaling \$90,000 into its bank account. Ex. 7. Fifty-thousand dollars
5 (\$50,000) came from a single donor, Thomas Ferguson, whose son, Representative Mike
6 Ferguson, was one of Jamestown's biggest clients in 2000. *See* Weitzner Tr. at 112. Another of
7 Jamestown's biggest clients, Essex County Executive and U.S. Senate candidate James
8 Treffinger, solicited the remaining \$40,000 from three of his supporters. *Id.* It does not appear
9 that these four individuals were aware that their donations to Citizens for Tax Reform ("CTR")
10 were going to be used to underwrite an advertising campaign opposing Pappas.²⁴
11

²³ NJCTR board member Horowitz, who knew nothing about the anti-Pappas advertising campaign, was unaware that the organization was raising money and did not know of any large donations to group, including any in the amount of \$50,000.

²⁴ The evidence suggests that in a further effort to obscure the true identities of those involved in the scheme, the sponsoring organization was identified to donors and the public as Citizens for Tax Reform and not New Jersey Citizens for Tax Reform. All six checks were made out to CTR Ex. 7. Radio station documents related to the radio advertisements also refer to the sponsoring organization as CTR Ex 8

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1

DEPOSIT DATE	PAYOR	AMOUNT
May 31, 2000	Thomas Ferguson	\$50,000
June 1, 2000	SSH, Inc Check signed by Vernon W. Hill II	\$10,000
June 1, 2000	COMPAC NJ Check signed by. Vernon W. Hill II	\$10,000
June 5, 2000	Correctional Health Services, Inc. Check signed by: Robert Detore and Andrew Cavaliere	\$10,000
June 5, 2000	King Realty Assoc. LLC Check signed by: Anthony Marino	\$5,000
June 5, 2000	Barbara Realty Check signed by: Anthony Marino	\$5,000
		Total: \$90,000

2

3 Thomas Ferguson not does not have a specific memory of the circumstances surrounding
4 the solicitation that caused him to issue a check for \$50,000 to CTR, but he was under the
5 impression that CTR was somehow connected to Americans for Tax Reform ("ATR").²⁵
6 According to Ferguson, if CTR was a state chapter of ATR, it would be the type of conservative

²⁵ According to Ferguson, he did not support either Zimmer or Pappas in the 2000 Republican primary. Ferguson indicated that he was disinclined to contribute to either Zimmer or Pappas in 2000 because the former was pro-choice and the latter failed to demonstrate the appropriate gravitas while he was serving in Congress.

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1 organization that would support candidates he wanted to support.²⁶ Ferguson offered that he had
2 hoped that CTR would give to his son and other Republicans running at the time.

3 While most requests to Thomas Ferguson for donations and contributions would have to
4 be in writing and go through his personal staff, Ferguson acknowledged that Blakely was among
5 those individuals who could have gotten through to him directly to request a donation or
6 contribution.²⁷ Ferguson knew both Blakely and Weitzner because Jamestown was the
7 consultant on his son's 1998 and 2000 congressional campaigns.²⁸ *See also* Blakely Tr. at 55,
8 58; Weitzner Tr. at 140, 141. According to a former Jamestown consultant, Ferguson was
9 heavily involved in his son's 2000 campaign and called Jamestown frequently. Ferguson's
10 interactions with Jamestown included his attendance at polling meetings presided over by Arthur
11 Finkelstein, one of Jamestown's consulting pollsters, and telephone discussions with Weitzner.
12 *See* Weitzner Tr. at 141, 144; Blakely Tr. at 61. Ferguson and Weitzner were on such good
13 terms that Weitzner even attended a private reception that Ferguson hosted at a D.C. restaurant

²⁶ Sheridan testified that NJCTR was not a state chapter of ATR. *See* Sheridan Tr. at 134. CTR is however listed as a coordinating organization for Americans for Tax Reform's 1997 State Taxpayer Protection Pledge. This list also provides Sheridan's home address as the New Jersey address for CTR. *See State Taxpayer Protection Pledge Listing of State Organizers as of October 14, 1997*, <http://home.southwind.net/~ktn/statepledge.html>

²⁷ According to Ferguson, Weitzner and Zimmer could also reach him directly. Ferguson did not know Treffinger.

²⁸ Weitzner testified that the Ferguson for Congress committee was a big client for Jamestown in 2000. *See* Weitzner Tr. at 112.

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1 during the 2004 presidential inauguration. Weitzner Tr. at 142-143. The relationship between
2 Ferguson and Blakely was sufficiently close that considering all the other circumstances,
3 including Blakely's prior knowledge of the Ferguson donation as described below, an inference
4 can be drawn that Blakely was involved, directly or indirectly, in this donation.

5 Blakely claimed not to know how the NJCTR advertising project was financed and
6 specifically denied soliciting Ferguson for a donation to that organization. *See* Blakely Tr. at
7 170, 246-248. The timing of NJCTR's receipt and deposit of Ferguson's check, Blakely's
8 placement of the anti-Pappas radio advertisements, and Fox Media's receipt of its first check
9 from NJCTR, however, suggest that Blakely knew in advance that the Ferguson donation was
10 being made to NJCTR and that, in turn, Fox Media could expect a large infusion of money.
11 Ferguson's check was dated on May 31, 2000 and deposited into NJCTR's account on that same
12 date, suggesting that the check was either picked up or delivered to NJCTR on May 31, 2000.
13 Ex. 7; Ex. 9. Sheridan testified that he did not know Ferguson and was surprised to receive the
14 donation for \$50,000. *See* Sheridan Tr. at 225, 232.²⁹ Also on May 31, 2000, Blakely issued
15

²⁹ Sheridan did not recall soliciting the Ferguson donation and assumed that Ferguson was "somebody on our mailing list." *Id.* at 225, 226. Although he did not have a specific memory of receiving this check, Sheridan claimed that the donation checks he received in May and June 2000 were delivered by mail and not delivered by hand. *Id.* at 229-231

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1 at least \$32,351 in checks to radio stations for placement of the anti-Pappas advertisements.³⁰
2 Ex. 9; Ex. 10. Blakely issued these checks despite Fox Media having a \$16,343.55 balance in its
3 bank account. Ex. 9. The next day, June 1, 2000, Sheridan provided Blakely with a \$45,000
4 NJCTR check to cover the checks Blakely issued to the radio stations. Ex. 9; Ex. 11. The
5 NJCTR check, dated June 1, 2000, was deposited in the Fox Media account on that same day.³¹
6 Ex. 9. Based on this pattern, an inference can be drawn that Blakely participated in orchestrating
7 Ferguson's donation to NJCTR and NJCTR's payment of the \$45,000 to Fox Media.
8 Jim Treffinger solicited the remaining \$40,000 for NJCTR.³² The evidence suggests that

³⁰ These checks, all dated May 31, 2000, were issued to WWOR for \$10,880 (check #1011); WCBS-AM for \$14,450 (check #1012); and NJ 101.5 for \$5,418.75 (check #1014). Ex. 9 Written on the memo lines on the WWOR check was "6/1-6/6 Citizens." Ex. 5. Written on the memo lines for the latter two checks was 6/1-6/6. Ex. 6, *See also* Blakely Tr. at 209-211. Fox Media's bank statement also reflects that a check (#1013) for a \$1,602.25 check to WCTC cleared on June 5, 2000. Ex. 9. Given the check number and the date of clearance it is likely that the anti-Pappas advertisement also aired on this radio station Ex. 9.

³¹ Sheridan testified that all the checks to Fox Media were sent by mail and that when he mailed a check he so informed Blakely by telephone. *See* Sheridan Tr. at 232-234. Blakely, however, did not recall being notified in advance to expect the NJCTR checks and did not recall the specifics of how he received the NJCTR checks, although he stated he received at least one check through the mail. *See* Blakely Tr. at 170, 171. Despite testimony regarding donation checks and checks to Fox Media being mailed, the fact that Ferguson's donation of \$50,000 was made and deposited on the same day and that the \$45,000 check to Fox Media was also dated and deposited on the same date suggests that these two checks, at least, were delivered by hand.

³² Treffinger asserted the Fifth Amendment with respect to virtually all questions posed during the deposition, including but not limited to, questions pertaining to his relationships with Zimmer, Weitzner, Blakely and Sheridan, the identities of those who enlisted his services in soliciting the \$40,000 for NJCTR; the involvement of Zimmer, Weitzner, Blakely and Sheridan in the solicitation and donation of funds to NJCTR; the details and circumstances surrounding his solicitation of these funds, the reasons for his participation in the scheme to raise money for the anti-Pappas advertisements, and his knowledge regarding how the funds he raised were used. *See* Treffinger Tr. at 10-63.

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1 Treffinger was asked to participate in this scheme by his Jamestown consultants, both of whom
2 he knew prior to hiring Jamestown as his principal campaign consultant for his 2000 U.S. Senate
3 campaign.³³ This scenario is made all the more likely given that Treffinger and Blakely enjoyed
4 significant political and personal connections and Treffinger was willing to use his fundraising
5 abilities for other candidates to curry favor. Blakely, who came from Essex County, took a leave
6 of absence from Zimmer's congressional office to manage Treffinger's first campaign in 1994
7 for Essex County Executive. *See* Blakely Tr. at 29. According to Matthew Kirnan, Treffinger's
8 campaign manager, Blakely is generally credited with engineering Treffinger's victory in that
9 campaign. Blakely also served as a strategic advisor during Treffinger's 1998 re-election
10 campaign. *See* Blakely Tr. at 64; *see also* Jamestown Website,
11 <http://web.archive.org/web/20000920075508/www.jamestownassociates.com> (last accessed May
12 5, 2005). In addition, Blakely had connections to Treffinger through Blakely's cousin, who
13 happened to be Treffinger's chief of staff. *Id.* at 67, 68.

14 Kirnan indicated that Treffinger was eager to help other candidates in order to lay the
15 groundwork for future runs for office, and that Treffinger was in a position to participate in the

³³ The evidence indicates that Treffinger became a Jamestown client through Blakely's efforts. *See* Blakely Tr. at 63, 64, 79; Weitzner Tr. at 167, 168. Blakely served as the lead Jamestown consultant on Treffinger's 2000 U.S. Senate campaign with Weitzner participating in meetings, conference calls and media creation. *See* Blakely Tr. at 62, 63; Weitzner Tr. at 145-146. Weitzner testified that the Treffinger for Senate committee was a big client of Jamestown's in 2000. *See* Weitzner Tr. at 112. According to Weitzner, he and Treffinger met at some point during Treffinger's tenure as Essex County Executive. *Id.* at 145.

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1 solicitation of these funds in May and June of 2000. According to Kirnan, the Treffinger
2 campaign had effectively shut down five weeks before the primary, so Treffinger's schedule was
3 open during what is typically a busy time for campaigns. Moreover, Kirnan indicated that five
4 weeks before the primary, Treffinger's staff had little to do.

5 According to Kirnan, Treffinger approached him at the Treffinger campaign headquarters
6 and said that he "wanted to help our friend Zimmer" in his race by raising money for CTR; that
7 the money would be used by the group to "help Zimmer" do a mailing; that the plan was to
8 approach Treffinger's top supporters and tell them that their contributions to CTR were
9 important to Treffinger; and that they should give the money as a favor "for Jim."³⁴

10 Treffinger first solicited for CTR two \$10,000 checks signed by Vernon W. Hill II
11 ("Hill"), the president of Commerce Bancorp, Inc. During the relevant time period, Hill also
12 served as chairman of the bank's state political action committee, COMPAC NJ.³⁵ As chairman,
13 he determined which political committees and entities received contributions and donations.

³⁴ Zimmer, who once lived in Essex County, stated that he has known Treffinger since the early 1990s. According to Zimmer, Treffinger helped him in his 1996 campaign for the U.S. Senate and may have endorsed him in that race. *See* Zimmer Tr. at 131, 133. Kirnan confirmed that Treffinger and Zimmer were friendly during that time period, often appearing at the same campaign events.

³⁵ COMPAC NJ does not file with the FEC. It is affiliated with Commerce Bancorps federal PAC, Commerce Bancorp, Inc – Political Action Committee, which is registered with the FEC.

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1 According to Hill, he also had check writing authority for SSH, Inc. bank accounts, which is a
2 design and architectural firm operated by his wife, Shirley Hill.

3 Hill did not have a specific recollection of the solicitation, but believed that Treffinger,
4 whom he knew personally, may have asked him to make the contribution. This belief is
5 supported by the COMPAC NJ's check register, which contained the notation that the check to
6 "Citizens for Tax Reform" was "for: Treffinger." Ex. 12.

7 According to Robert Detore, Treffinger personally solicited the \$10,000 donation he
8 made to CTR through Detore's company, Correctional Health Services, Inc.³⁶ Detore recollected
9 that Treffinger said that he needed him to contribute \$10,000 to a public interest group.
10 According to Detore, Treffinger was insistent that he make the donation. When Detore
11 complained that \$10,000 was "quite a bit of money," Treffinger told him that if he made the
12 contribution he would not ask Detore to contribute to any of his other political campaigns.
13 Detore, whose business interests at the time spanned seventeen New Jersey counties, felt it was
14 easier to acquiesce and contribute the money. At the time, Detore assumed that the recipient,
15 CTR, was promoting Treffinger's tax agenda. According to Detore, Treffinger arranged to have
16 someone, whom Detore did not see, pick the check up at his office.

³⁶ The check, drawn on a corporate account, was also signed by company CFO, Andrew Cavaliere
According to Detore, company policy at the time was that all checks for over \$5,000 required two signatures

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1 Anthony Marino signed two \$5,000 checks made payable to CTR issued from bank
2 accounts held by two of his companies, Barbara Realty and King Realty Associates LLC Kirnan
3 solicited these funds at the behest of Treffinger. According to Marino, Kirnan requested that he
4 "help Treffinger" in the upcoming primary. Marino indicated that he made the two donations
5 assuming that CTR was a Republican political action committee, which would in some fashion
6 help Treffinger's campaign.

7 Out of the \$90,000 raised, NJCTR issued four checks totaling \$75,000 to Fox Media. Ex.
8 11. The evidence indicates that Fox Media made disbursements amounting to about \$70,000 on
9 the advertising campaign: \$50,064.81 on producing and distributing the radio and direct mail
10 advertisements opposing Pappas and \$23,000 in payments Blakely made to himself and Jencik.
11 Ex. 9; Ex. 10. Blakely made two payments to himself out of the Fox Media account: one for
12 \$5,500 on June 5, 2000, and a second one for \$15,000 on June 21, 2000.³⁷ See Blakely Tr. at
13 186, 187, 201, 202; Ex. 9. Blakely also made a payment to Jencik in the amount of \$2,500 on or
14 about June 6, 2000. Ex. 13.

15 As the evidence outlined above indicates, the funds used to underwrite the anti-Pappas
16 advertising campaign were deliberately arranged by Blakely and Weitzner to come from

³⁷ Blakely testified that the \$15,000 Fox Media check, which according to the redacted Fox Media bank statement was posted on June 21, 2000, represented his salary for a portion of all the work he did that year, although he was unable to state how much salary he paid himself out of the Fox Media account in 2000 or whether he paid himself a salary out of that account on a regular basis. See Blakely Tr. at 186, 187, 201, 202

1 individuals with no direct ties to Zimmer or his committee.³⁸ The only discernable connection
2 between these donors and the anti-Pappas advertisements is that they had significant connections
3 to two of Jamestown's biggest clients, Representative Mike Ferguson and Treffinger. Blakely
4 and Weitzner used their connections with Representative Mike Ferguson's father and Treffinger
5 to raise what they believed would be untraceable funds to generate the anti-Pappas
6 advertisements.

7 2. Production and Distribution of the Anti-Pappas Advertisements

8 Sheridan testified that he told Blakely he "wanted to run some ads attacking Pappas," at
9 which point the Blakely drafted the script.³⁹ See Sheridan Tr. at 102, 103; *see also* Blakely Tr. at
10 155. Both Blakely and Weitzner testified that the subject radio advertisements stated, at least in
11 part, that "[t]here is no room in America for hatred and intolerance. Tell Mike Pappas to resign

³⁸ None of the individuals or entities that donated to NJCTR appears to have contributed to Zimmer 2000, but the evidence demonstrates that they were supporters of Treffinger. According to the FEC database, Marino, his wife Barbara, Hill and his wife Shirley contributed to Treffinger's 2000 senate campaign committee. Detore made a contribution in 2002 to Treffinger for Senate, Inc. The New Jersey Election Law Enforcement Commission database indicates that the Essex County Republican Committee received contributions from COMPAC NJ in 1998 and 2000, from Barbara Realty in 1998 and 1999, and from Marino in 1999.

³⁹ Blakely testified that Sheridan did not tell him why he was running the advertisements, but stated that Sheridan laid out a general theme for the advertisement, which Blakely characterized as "anti-Klan." See Blakely Tr. at 152, 154. Blakely testified that the advertisements referenced "the Pillar of Fire church, Zarapeth, New Jersey, and discussed their connection to the KKK." He acknowledged that the script referred to Pappas, although he stated that he did not know why Pappas was included in the advertisement. *Id.*

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1 from the Pillar of Fire, and never work for that type of organization again.”⁴⁰ See Weitzner Tr. at
2 179, 185; Blakely Tr. at 169. The message in the radio advertisement was virtually identical to
3 that of the Bennett letter to Pappas generated by the Zimmer campaign and its consultants in
4 April 2000.

5 The radio advertisements were broadcast on WCBS, WWOR, WCTC and WKXW from
6 June 1 through June 6, 2000. Ex. 5; Ex. 8. According to Jencik and personnel at WKXW
7 (NJ101.5 FM), the radio station refused to run this advertisement based on its inflammatory
8 content and instead ran a CTR-sponsored tax advertisement. According to a volunteer for the
9 Pappas campaign, the substitute was an advertisement critical of one of Pappas’s tax votes, the
10 substance of which was identical to the content of a mailer issued by the Zimmer campaign.⁴¹
11 The evidence demonstrates that Fox Media spent \$36,321 on the production, placement and
12 disbursement of the radio advertisements. See Blakely Tr. at 185, 206-212, 215; Ex. 9; Ex. 10.

13 Although the funds to pay for the advertisements came from NJCTR, the anti-Pappas
14 advertising campaign was a Jamestown project, which respondents ran through Fox Media in a

⁴⁰ Zimmer testified that this statement comports with the content of the advertisement that he heard on or about June 1, 2000. See Zimmer Tr. at 63-65. Zimmer also recalled that the disclaimer identified the sponsor as CTR. *Id.* at 117.

⁴¹ The script for a mailer Jamestown produced on behalf of Zimmer 2000 references several occasions during which Pappas allegedly raised taxes. Ex. 14

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1 deliberate effort to hide its origins.⁴² Jamestown vice president Blakely admitted that he
2 managed the project by drafting the script, overseeing production and distribution, and covering
3 the associated costs through Fox Media's bank account. *See* Blakely Tr. at 150. The
4 advertisements were developed, produced and distributed using Jamestown's facilities, resources
5 and personnel, including but not limited to, the services of Jencik in placing the advertisement.
6 Blakely admitted that he provided Jencik with the information necessary to place the radio buy at
7 her Jamestown office. *See* Blakely Tr. at 216. Jencik, who had left the Zimmer campaign
8 payroll sometime in April 2000, placed these advertisements at some point in late May or early
9 June of 2000. Jamestown records reflect that Jencik continued to receive her regular semi-
10 monthly Jamestown retainer of \$1,500 during this time period. Ex. 2. Pam Lewis, who did the
11 voice-overs, and Baker Sound, where the advertisements were recorded, were both Jamestown
12 vendors. *Id.* at 165, 216, 217.

13 The evidence is equivocal, but it is likely that the respondents were also responsible for
14 issuing a district-wide mail piece featuring virtually the same content as the radio

⁴² Although NJCTR nominally paid for the anti-Pappas advertisements, the evidence suggests that Sheridan was minimally involved in the mechanics of creating these advertisements. For example, Blakely – not Sheridan – decided how long the radio advertisements ran. Sheridan meanwhile did not know how often the advertisements ran, had no idea what the radio advertisements cost, had no idea what he was paying Fox Media to handle the campaign, and had no idea what profit Blakely took for his participation in the project. *See* Sheridan Tr. at 167, 173, 175, 182, 183, 200, 214, 215. According to Capasso, Sheridan telephoned Blakely once or twice at Jamestown during the relevant time period; making it likely that their communications were limited to discussions relating to the transfer of funds to cover the advertising campaign.

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1 advertisements.⁴³ Although Blakely testified that he couldn't recall doing a direct mail piece on
2 the same theme as the radio advertisement linking Pappas to the KKK, he did state that his
3 records appear to reflect distribution of funds for such a project. *Id.* at 157, 231-233. Blakely
4 was unable to identify any other direct mail projects that Fox Media was involved with at the
5 time that could account for these disbursements. Based on Blakely's testimony, Fox Media's
6 bank statements and information from one vendor, it appears that Fox Media spent
7 approximately \$12,218.81 in payments made to vendors and consultants who worked on the
8 direct mail piece.⁴⁴ *Id.* at 197, 198, 231, 232, 233; Ex. 10. At least one of Jamestown's graphic
9 artists, Sheila "Buffy" Swanson, as well as several of the vendors involved with the labeling and

⁴³ In an interview, Sheridan stated that Blakely produced direct mail on behalf of NJCTR. During another interview, Sheridan claimed that he himself printed up some anti-Pappas fliers, which were distributed in some shopping malls and around Pappas's neighborhood by individuals whom he paid in cash. At his deposition, however, Sheridan was unsure whether Fox Media had created an anti-Pappas mailing on NJCTR's behalf. He did state that he, on behalf of NJCTR, produced and had distributed an anti-Pappas flyer, tens of thousands of which were distributed right before the June 2000 primary throughout the entire congressional district. Sheridan claimed that he paid an NJCTR "volunteer" who either owned a copying business or worked in one to print the fliers. Sheridan was unable to recall the first or last name of this individual, identify his business or state how much the project cost. *See Sheridan Tr.* at 126-131. Sheridan testified that he paid the out of pocket expenses for this project, such as paying the individuals who circulated the fliers as well as the person who arranged for the printing, and then reimbursed himself with an NJCTR check, dated June 14, 2000, for \$4,000. The notation in the check's memo line was "ad campaign production." *Id.* at 273-275.

⁴⁴ Based on this evidence, it appears that Fox Media made the following disbursements in connection with the anti-Pappas flyer: Smith Edwards Dunlop - \$2,758 (6/5/00) and \$1,635 (6/16/00), A&E Mailers, Inc. - \$886 (6/6/00) and \$2,086 (6/16/00); Lists and Labels, Inc. - \$2,256 (6/26/00); and Sheila Swanson - \$1,625 (6/26/00). Ex. 9; Ex. 10. Swanson was able to account for at least \$1,025 worth of work that she did for Fox Media in May and June 2000. Blakely was unable to identify any clients or direct mail projects other than NJCTR that could account for these disbursements. *See Blakely Tr.* at 232

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mailing of the anti-Pappas brochure were Jamestown subcontractors. *See* Weitzner Tr. at 44;
Blakely Tr. at 137.

3. Aftermath

The anti-Pappas advertisements garnered a great deal of press attention in New Jersey.
See Sheridan Tr. at 179; Zimmer Tr. at 110. Weitzner and campaign manager Holub formulated
the Committee's response. *See* Weitzner Tr. at 186, 189; *see also* Zimmer Tr. at 66, 67. The
Zimmer committee publicly responded to these news reports by stating that Jencik had ceased
working for the Zimmer campaign in April 2000 to become an independent media buyer and by
asserting that she had left Jamestown's employment. *See* Aron Pilhofer, *Ex-aide of Zimmer*
Linked to Ads, HOME NEWS TRIBUNE, June 3, 2000 (hereinafter *TRIBUNE* article); *Freshman (19R,*
23D) – New Jersey 12: Six Degrees of Separation from Indie Ads?, HOUSE RACE HOTLINE, June
5, 2000. Susan Livio, *Democrats File Charges Against Zimmer Over Radio Ad Campaign*, THE
STAR-LEDGER, June 9, 2000. At the time these statements were made, the Zimmer committee
and Jamestown knew that Jencik had placed the anti-Pappas radio advertisements while she was
still working as Jamestown's media buyer. *See* Weitzner Tr. at 119, 129, 185. According to a
volunteer for the Pappas campaign, they checked out the Jamestown website on Thursday, June
1, 2000 and Megan Jencik was still listed as working there. *See also*, *TRIBUNE* article. This

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1 individual indicated that by the weekend, the entire website had gone off-line.⁴⁵ Jamestown's
2 participation in taking the website down represented a deliberate effort to maintain the fiction
3 that the anti-Pappas advertisements were not coordinated with Jamestown or the Zimmer
4 campaign. Neither the Zimmer committee nor Blakely himself ever publicly addressed his
5 participation in the advertising campaign, despite being identified in several articles as a partner
6 at Jamestown. *See* Susan Livio, *Pappas Calls Zimmer On Ad Linking Him to Klan*, THE STAR-
7 LEDGER, June 2, 2000; *TRIBUNE* article.

8 On or about June 6, 2000, Blakely issued a \$2,500 check to Jencik from Fox Media's
9 bank account. Ex. 14. This single payment to Jencik, which Blakely made only after she was
10 identified in the press as having been connected to the anti-Pappas advertisements, was one and
11 two thirds as much as her semi-monthly retainer of \$1,500. Ex. 2.; *see also* Blakely Tr. at 218.
12 According to Jencik, she was surprised to receive the money as there was never any discussion
13 or agreement that she would be paid extra for placing the anti-Pappas radio advertisements. The
14 size of the check and its timing make it likely that it was an after-the-fact effort to distance
15 Jencik's work on the project from Jamestown and attach it more firmly to Fox Media. Blakely
16 first claimed this payment compensated Jencik "[f]or placing the buy, doing the work on it,
17 whatever. Whatever was entailed in the project." *See* Blakely Tr. at 215. Only after being

⁴⁵ Weitzner testified that he could not recall whether Jamestown had a website in 2000. *See* Weitzner Tr. at 42

1 reminded of the check's size and date of issuance, did Blakely state that he gave Jencik the
2 money because she had been accused of wrongdoing in connection with placing the
3 advertisement and it seemed like "fair compensation" for the trouble he had caused her. *Id.* at
4 218.

5 Blakely and Weitzner both testified that Weitzner and the candidate were in the dark
6 about the advertisements and that Weitzner and Zimmer were disappointed and angry once they
7 found out about Blakely's involvement in the anti-Pappas advertisements.⁴⁶ *See* Weitzner Tr. at
8 32, 36, 189, 190; Blakely Tr. at 223 -227; Zimmer Tr. at 65-68, 114, 115, 126. However,
9 Weitzner and Zimmer's claims that they reacted negatively to Blakely's involvement and that
10 they were disappointed and angry with him are less than credible in view of the ultimate result
11 for Blakely.⁴⁷ *Id.* Instead of getting fired from Jamestown or banned from the general election
12 campaign, Blakely continued to work on Zimmer's campaign during the general election and

⁴⁶ Neither Weitzner nor Zimmer appeared interested in finding out why and how Blakely came to be involved in the anti-Pappas advertisements. Weitzner testified that he was more interested in "moving on" because they had a general election to win. *See* Weitzner Tr. at 190. Although he could not recall when, Zimmer testified that he spoke with Weitzner and Blakely after finding out that Blakely and Jencik were involved with the anti-Pappas advertisements. *See* Zimmer Tr. at 112, 113. Zimmer was angry that someone connected with his campaign was linked to advertisements and asked for an explanation, but could not recall the response. *Id.* at 114, 115. According to Zimmer, he never obtained a clear understanding of how the advertisements got on the air and never attempted to find out after the election. *Id.* at 115-117.

⁴⁷ It appears that Sheridan and Zimmer were on good terms even after Sheridan and his organization were identified in the press as the sponsor of the anti-Pappas advertisements. Sheridan attended Zimmer's invitation only victory party and felt comfortable enough in that environment to walk up and congratulate Zimmer personally. *See* Zimmer Tr. at 29, 30.

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1 participated in efforts connected with the recount that took place after the general election.⁴⁸ See
2 Blakely Tr. at 241; Weitzner Tr. at 122, 123.

3 **III. RESPONDENTS' COORDINATED ACTIVITY RESULTED IN THEIR**
4 **RECEIPT OF CORPORATE IN-KIND CONTRIBUTIONS ON BEHALF OF**
5 **ZIMMER 2000**

6
7 **A. Respondents Coordinated the Anti-Pappas Advertisements in Violation of**
8 **2 U.S.C. § 441b**
9

10 The Act prohibits any person from knowingly accepting or receiving any corporate
11 contribution on behalf of a political committee. 2 U.S.C. § 441b. The Act further provides that
12 expenditures made "in cooperation, consultation, or concert, with, or at the request or suggestion
13 of, a candidate, his authorized political committees, or their agents, shall be considered to be a
14 contribution to such candidate" 2 U.S.C. § 441a(a)(7)(B)(i); *see also Buckley v. Valeo*, 424
15 U.S. 1, 46 (1976) ("controlled or coordinated expenditures are treated as contributions"). The

⁴⁸ According to Jamestown's Quicken records Blakely did not receive his monthly \$5,500 retainer in June 2000. Typically he received this payment on the first of the month. Ex 2 Weitzner testified that as a consequence of Blakely's involvement in the advertising campaign, Blakely offered to pay his own retainer for the month of June as well as that of another consultant, Geller. See Weitzner Tr. at 69-74. Blakely testified that he could not recall whether he received his June 2000 retainer from Jamestown and did not remember even seeing the \$5,500 check he issued himself from the Fox Media account. See Blakely Tr. at 190, 191. An inference can be drawn that Blakely and Weitzner decided, as they had with Jencik, that Fox Media would pay Blakely as part of the effort to distance Blakely and his involvement with the anti-Pappas advertisements from Jamestown and Zimmer 2000. Fox Media's bank statement does reflect that a check for \$7,500 was issued to Geller on or about June 26, 2000. Ex 10. The check was \$2,500 more than his monthly Jamestown retainer, which suggests that Geller performed unrelated work for Fox Media or, like Jencik, Geller was paid for his trouble in helping to respond to the press maelstrom after the release of the anti-Pappas advertisements. What is not credible is that Blakely's alleged payment of his and Geller's Jamestown retainer represents some form of negative consequence for his participation in the anti-Pappas advertising campaign, as the total payments from Fox Media to Blakely, Geller and Jencik all far exceeded their regular monthly compensation from Jamestown. Ex. 2, Ex. 10.

1 Commission's regulations during the applicable period provided that an expenditure made in
2 coordination with a candidate's campaign would be presumed to be an in-kind contribution to
3 that campaign when it is "made by or through any person who is, or has been, authorized to raise
4 or expend funds, who is or has been, an officer of an authorized committee, or who is, or has
5 been receiving any form of compensation or reimbursement from the candidate, the candidate's
6 committee or agent." 11 C.F.R. § 109.1(b)(4)(i)(B).⁴⁹

7 In his response to the Commission's reason to believe findings, Blakely, on behalf of
8 himself and Fox Media, did not deny the factual allegations made in the complaint or
9 coordinating the subject advertisements with Weitzner, Jamestown, the Zimmer committee and
10 NJCTR. Blakely did not present any countervailing facts apart from stating that CTR's
11 spokesman, Sheridan, had been quoted in certain newspaper articles as denying any connection
12 between CTR and the Zimmer campaign. In Blakely's deposition testimony, he denied that he
13 and Fox Media participated in a coordinated effort to fund, produce and distribute the anti-

⁴⁹ On December 6, 2000, 11 C.F.R. § 109.1 was amended in part by revising certain paragraphs, including 11 C.F.R. § 109.1(b)(4), on which the original complaint in this matter relies. This particular regulation was revised to eliminate any presumption of coordination based on overbreadth concerns. *See Explanation and Justification for Regulations on General Public Political Communications Coordinated With Candidates and Party Committees, Independent Expenditures*, 65 Fed. Reg. 76138, 76145 (Dec 6, 2000) Subsequently, the Commission approved new regulations regarding coordinated public communications codified at 11 C.F.R. § 100.23, which became effective on May 9, 2001. *See* 66 Fed. Reg. 23,537 (May 9, 2001) BCRA repealed 11 C.F.R. § 100.23 and on December 5, 2002, the Commission approved new coordination regulations. Newly promulgated 11 C.F.R. § 109.20(a) defines "coordinated" to mean "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, the candidate's authorized committee, a political party committee, or the agents of any of the foregoing."

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1 Pappas advertisements. Instead, Blakely stated that he, as an independent consultant, and his
2 firm, Fox Media, were hired by NJCTR to produce and distribute anti-Klan advertisements,
3 which activities did not involve Weitzner, Jamestown or the Zimmer committee. The
4 investigation has revealed, however, that Blakely and Fox Media generated the anti-Pappas
5 advertising with others for the purpose of benefiting Zimmer 2000.

6 As one of the Jamestown consultants working on the Zimmer 2000 campaign, Blakely
7 was responsible for achieving victory in the June 6, 2000 Republican primary election. As
8 detailed in Section II of this Brief, Blakely and Weitzner had a broad grant of authority to
9 achieve this goal, in that their firm, Jamestown, was responsible for developing the campaign's
10 strategy and theme, making expenditures for the production and distribution of direct mail and
11 radio and television advertisements, and managing the committee's day to day activities through
12 their participation in the selection of campaign staff. *See* Weitzner Tr. 109, 116, 117; Ex. 15.
13 They used their authority within the campaign and every resource at their disposal, including but
14 not limited to, Jamestown's personnel, facilities and client contacts, to ensure Zimmer's victory.

15 Blakely and Weitzner's broad grant of authority to produce a victory for Zimmer is
16 further demonstrated by the Zimmer committee's approval of Jamestown's strategy of using
17 third parties to effect Pappas's withdrawal from the race before the 2000 primary. Jamestown
18 and the Zimmer committee first appealed to Republican Congressional leaders to encourage
19 Pappas to leave the race and support Zimmer's candidacy. When that did not work, State

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1 Senator Bennett was enlisted by the committee and Jamestown to sign the "open letter," which
2 urged Pappas's withdrawal in part by spotlighting the highly inflammatory information from the
3 Zimmer committee's opposition research file relating to Pappas's association with a church
4 linked to the KKK. When this effort failed, Blakely's next step was to orchestrate, with
5 Weitzner and others, the third-party sponsored and produced anti-Pappas radio and direct mail
6 advertisements.

7 While the evidence may be equivocal as to whether Blakely participated in generating the
8 Bennett letter, there is no doubt of his involvement in the anti-Pappas advertisements. Blakely
9 and Weitzner engineered the anti-Pappas advertisements with individuals and entities that to the
10 general public appeared to be outside the Zimmer committee's sphere of influence. Specifically,
11 Blakely secured the participation of NJCTR as nominal sponsor of the advertisements through
12 NJCTR founder and spokesman Sheridan. It is reasonable to infer that Blakely secured funding
13 for the anti-Pappas advertisements by orchestrating \$90,000 in donations to NJCTR from donors
14 with connections to Jamestown clients Ferguson and Treffinger, donors who were unaware that
15 their funds were going to benefit the Zimmer campaign. NJCTR then transferred \$75,000 of this
16 money to Fox Media, which in turn spent approximately \$70,000 on the production and
17 distribution of the anti-Pappas advertisements.

18 Blakely produced and distributed the advertisements through Fox Media so that the
19 activity could not be traced back to Jamestown and the Zimmer committee. By permitting the

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1 advertisements to be produced and distributed under the Fox Media name, Blakely and Weitzner
2 were able to hide the true provenance of the advertisements, while all related activity was
3 performed in Jamestown's offices, using Jamestown's resources, by Jamestown's own personnel.
4 By using NJCTR's money to produce and distribute the radio and direct mail advertisements
5 opposing the election of Pappas in the June 6, 2000 Republican primary, Blakely and Fox Media
6 accepted over \$70,000 in corporate in-kind contributions from NJCTR on behalf of Zimmer
7 2000.

8 In sum, Tom Blakely and Fox Media Consulting LLC, agents of Zimmer 2000,
9 coordinated the anti-Pappas advertisements with Weitzner, Jamestown, NJCTR, and Zimmer
10 2000 in order to influence the outcome of the 2000 Republican primary in New Jersey's 12th
11 congressional district. Thus, there is probable cause to believe that Tom Blakely and Fox Media
12 Consulting LLC violated 2 U.S.C. § 441b by knowingly and willfully accepting or receiving
13 prohibited in-kind contributions on behalf of Zimmer 2000.

14 **B. Blakely and Fox Media Violated 2 U.S.C. § 441b Knowingly and Willfully**

15 The evidence demonstrates that Blakely and Fox Media engaged in this prohibited
16 activity knowingly and willfully. The phrase knowing and willful indicates that "actions [were]
17 taken with full knowledge of all of the facts and a recognition that the action is prohibited by
18 law." H.R. Rpt. 94-917 at 4 (Mar. 17, 1976) (*reprinted in* Legislative History of Federal
19 Election Campaign Act Amendments of 1976 at 803-4 (Aug. 1977)); *see also National Right to*

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1 *Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983) (citing *AFL-CIO v. FEC*, 628 F.2d
2 97, 98, 101 (D.C. Cir. 1980) for the proposition that knowing and willful means “‘defiance’ or
3 ‘knowing, conscious, and deliberate flaunting’ [sic] of the Act”). *United States v. Hopkins*, 916
4 F.2d 207, 214-15 (5th Cir. 1990). In addition, the *Hopkins* court held that taking steps to
5 disguise the source of funds used in illegal activities may reasonably be explained as a
6 “motivation to evade lawful obligations” and will be considered evidence of knowing and
7 willing behavior. *Hopkins* 916 F.2d at 213, 214 (citing *Ingram v. United States*, 360 U.S. 672,
8 679 (1959)).

9 Blakely made deliberate efforts to conceal the Zimmer committee’s, and thus
10 Jamestown’s, participation in the coordinated activity. First, he participated in a scheme to raise
11 funds for NJCTR in a manner that intentionally disguised the source of those funds with the
12 knowledge that the monies would be used for the purpose of attacking Zimmer’s opponent.
13 Second, Blakely was responsible for presenting the anti-Pappas advertisements as a production
14 of Fox Media, all the while knowing that Fox Media merely served as a front for Jamestown,
15 which in reality produced and distributed the advertisements. In addition, Blakely’s issuance of
16 checks to himself and particularly to Jencik after the negative press reports linked them both to
17 the anti-Pappas advertisements appears to be intentional efforts to distance Blakely and Jencik’s
18 participation in that activity away from Jamestown and link their participation in the activity
19 more securely to Fox Media.

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For the foregoing reasons, there is probable cause to believe that Tom Blakely and Fox Media Consulting LLC's acceptance of prohibited in-kind contributions on behalf of Zimmer 2000 was a knowing and willful violation of 2 U.S.C. § 441b.

IV. GENERAL COUNSEL'S RECOMMENDATION

Find probable cause to believe that Tom Blakely and Fox Media LLC knowingly and willfully violated 2 U.S.C. § 441b.

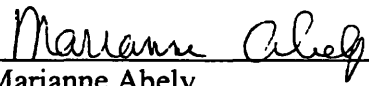
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Attachments:
Exhibits 1 – 15.

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