

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Jamestown Associates, Larry Weitzner,) MUR 5026
Fox Media Consulting LLC, Tom Blakely,)
Zimmer 2000, Inc., and Maria Chappa, in)
her official capacity as treasurer.)

FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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**RESPONDENTS' JOINT BRIEF IN RESPONSE TO
GENERAL COUNSEL'S PROBABLE CAUSE TO BELIEVE BRIEFS**

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RESPONDENTS' JOINT BRIEF IN RESPONSE TO GENERAL COUNSEL'S BRIEFS

Respondents Jamestown Associates ("Jamestown"), Larry Weitzner, Fox Media Consulting LLC ("Fox Media"), Tom Blakely, Zimmer 2000, Inc. and Maria Chappa in her official capacity as its Treasurer (the "Zimmer Committee") (collectively "Respondents")¹, hereby respond to the General Counsel's Briefs ("GC Briefs") and state as follows:

INTRODUCTION: "THE EVIDENCE IS EQUIVOCAL"

The evidence developed in this case shows that in May 2000, John Sheridan of New Jersey Citizens for Tax Reform conceived a set of radio advertisements highlighting Mike Pappas' connection to the Pillar of Fire International Christian Church. Sheridan, who had a long history of animosity and political opposition towards Pappas, actively sought references from New Jersey political activists for a media consultant to produce those advertisements. As a direct result of those references, Sheridan contacted Tom Blakely of Fox Media Consulting LLC, who he then retained for production and placement. Neither the Zimmer 2000 campaign nor its outside consultants Jamestown Associates had any knowledge of NJCTR's advertisements, and they certainly did not initiate or coordinate them.

¹ Respondents hereby collectively submit this joint Response Brief on behalf of each of Jamestown, Weitzner, Fox Media, Blakely, and the Zimmer Committee for reasons of judicial efficiency. However, each of Jamestown, Weitzner, Fox Media, Blakely, and the Zimmer Committee retains the right to further proceed in this matter independently and with separate counsel (or on their own behalf) if any such Respondent deems such action necessary or proper, in each such Respondent's sole and absolute discretion.

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Despite a lengthy investigation, the GC Briefs are devoid of any evidence to refute this. The GC Briefs present no evidence of coordinated communications, instead presenting circumstantial insinuations that choose to ignore the realities in the actual record showing the small and insular Republican political consulting community that existed in New Jersey in the late 1990s and continues today. Indeed, the GC itself concedes that “[t]he evidence is equivocal.” GC Jamestown Brief at 27:6.² The reality is that within the small New Jersey political consulting community, different political consultants commonly shared office space and, by necessity, used common vendors from the small pool of local specialists, as Jamestown and Fox Media did. Indeed, per the GC’s leaping logic, there would be cause to believe that Jamestown and Fox Media actually coordinated the anti-Pappas advertisements with Mike Pappas’ own political consultant Dave Millner, since he also had shared common office space with the Respondents. *See* Weitzner Tr. at 83:8-85:1. The facially frivolous nature of that contention exposes the utter lack of substance beneath the identical supposition the GC has made with respect to Jamestown and Fox Media. The governing case law interpreting the FECA provisions in effect at the time of the alleged violations requires evidence of actual discussions or negotiations, not unsubstantiated assumptions based on proximity and personal relationships. *See FEC v. Christian Coalition*, 52 F.Supp.2d 45 (D.D.C. 1999).

The New Jersey political consultant community is indeed small and most who operate in it forge relationships with one another. That is neither illegal nor controversial, and it certainly is not evidence of a grand conspiracy to violate campaign finance laws. *See Christian Coalition*, 52 F.Supp.2d at 79-80, 96-97 (finding irrelevant the Hayworth campaign manager and the

² The three GC Briefs are largely duplicative, therefore for ease of reference Respondents’ common citations will refer only to the GC Brief directed at Jamestown Associates, except as specifically noted.

Coalition Director of Voter Education's longstanding personal friendship and finding irrelevant the Coalition's hiring the same telemarketing firm used by the Hayworth campaign to conduct a GOTV campaign). Consultants worked for multiple clients, vendors had multiple customers, and independent contractors were just that -- independent. When the GC, contrary to all sworn testimony, mischaracterizes Tom Blakely as a Jamestown employee in 2000 and mislabels outside vendors and independent contractors as "Jamestown personnel" to sustain its misguided legal theories, the GC's case unravels, exposing its core theories as baseless, and certainly unproven.

After nearly two full years of exhaustive investigation of a five-year old case, the GC is unable to produce one single document or witness statement establishing that the communications at issue were coordinated in any way.³ In lieu of actual evidence, the GC Briefs instead rely on pure speculation coupled with unprincipled mischaracterizations, at times even citing to unnamed anonymous sources in an attempt to fabricate a 'cloak-and-dagger' intrigue to otherwise unremarkable facts.⁴ Some of the most egregious examples of pure conjecture, which form the foundation of the GC's case, are:

³ Given that the events at issue took place in 2000, it is not surprising that witnesses have no clear recollection, leaving the GC with only equivocal guesswork and hypothetical supposition. For example, the GC actually submits the following statement as the extent of its "evidence" of Tom Blakely's alleged participation in drafting Senator Bennett's letter: "According to Bennett, it is likely he discussed the mechanics of generating the letter, such as providing his letterhead and his signature, with either Blakely or Holub." GC Jamestown Brief at 12:17-18 (emphasis added); *but see* Affidavit of John Holub, dated August 1, 2005, ¶ 4, attached hereto as Exhibit 1 (confirming it was Holub, not Blakely). All of this testimony cannot fairly be read as supporting anything other than the witnesses' utter lack of meaningful recollection, and the GC's recommendation that such statements serve as the basis for filing a civil action in a United States Court is not credible.

⁴ The GC repeatedly has refused Respondents' requests for access to the full witness statements or for identification of the anonymously-cited sources, perplexingly citing "attorney-client privilege" as the basis for withholding them. It would seem fundamentally unfair to require Respondents to defend themselves against the GC's advocative characterization of statements

- “It is reasonable to infer that Weitzner was responsible for inserting the language relating to the issue of Pappas and the Pillar of Fire International Christian Church’s connection with the KKK into the Bennett letter ...” GC Jamestown Brief at 13:10-12 (emphasis added).
- “Certainly the layout of Jamestown’s offices where respondents were located in June 2000, made it unlikely that Fox Media’s existence and the nature of its activities were not a matter of general knowledge.” GC Fox Media Brief at 21:12-14 (emphasis added).⁵
- “The evidence suggests that the first scenario presented by Sheridan, in which Blakely made the initial contact with Sheridan, is the most plausible ...” GC Jamestown Brief at 18:17-18 (emphasis added).⁶
- “Thus, the relationship between Ferguson and Weitzner was sufficiently close that, considering all the other circumstances as well, an inference can be drawn that Weitzner was involved, directly or indirectly, in this solicitation.” GC Jamestown Brief at 21:12-14 (emphasis added).
- “It is reasonable to infer that Weitzner secured funding for the anti-Pappas advertisements ...” GC Jamestown Brief at 33:16-17 (emphasis added).

that Respondents have not been permitted to read, challenge, or evaluate for exculpatory material, and it deprives the Commission of the opportunity to evaluate Respondents’ response to the true record rather than just to the GC’s excerpts and insinuations. The credibility of those statements the GC elected to cite only anonymously, presumably too tenuous to permit identification and possible cross-examination, clearly warrants little consideration in any event. Regardless, even these statements, skewed and unattributed as they are, do not come close to establishing coordination under the applicable law. The GC’s tactics, however, reveal a justifiable lack of confidence in its “evidence.”

⁵ Apparently, where it lacks any evidence of a party’s knowledge, the GC intends to prove that knowledge simply by suggesting that it is “unlikely” the information was not a matter of common knowledge. The facial insufficiency of that strategy requires no further comment.

⁶ Where the uncontroverted sworn testimony (i.e. evidence) by the principal participants contradicts the GC’s desired theory, *see* Sheridan Tr. at 98:13-102:24; Blakey Tr. at 150:15-152:22, and where there is absolutely no evidence to counter that undisputed testimony, the GC nonetheless contends that its unsupported theory is the more “plausible.” That is a “standard” the Commission must reject. Alternatively, it is decidedly implausible that a U.S. District Court would similarly ignore the fact that not one single document or witness statement rebuts Tom Blakely’s and John Sheridan’s sworn testimony that Sheridan first contacted Blakely about the advertisements.

- “Based on this pattern, an inference can be drawn that Blakely participated in orchestrating Ferguson’s donation to NJCTR and NJCTR’s payment of the \$45,000 to Fox Media.” GC Fox Media Brief at 23:1-3 (emphasis added).⁷
- “It is reasonable to infer that Blakely secured funding for the anti-Pappas advertisements ...” GC Fox Media Brief at 43:12-13 (emphasis added).
- “An inference can be drawn that [Jim Treffinger] was asked to participate in this scheme by his Jamestown consultants, both of whom he knew prior to hiring Jamestown as his principal campaign consultant for his 2000 U.S. Senate campaign. This scenario is made all the more likely given that Treffinger and Blakely enjoyed significant political and personal connections and Treffinger was willing to use his fundraising abilities for other candidates to curry favor.” GC Jamestown Brief at 21:15-22:5 (emphasis added).⁸
- “The evidence is equivocal, but it is likely that the respondents were also responsible for issuing a district-wide mail piece featuring virtually the same content as the radio advertisements.” GC Jamestown Brief at 27:6-8 (emphasis added).⁹

⁷ It would be unprecedented indeed if hypothetical testimony that one person would have answered a telephone if another person had placed a call were used to prove the existence of a fundraising conspiracy between the two. In the face of explicit, sworn denials by each of the alleged participants, what is more glaring here is that, lacking any evidence that Tom Blakely or Larry Weitzner ever contacted Tom Ferguson to raise funds for NJCTR, the GC instead relies upon an unsupported notion that “an inference can be drawn” that either Weitzner or Blakely solicited Ferguson. In truth, with absolutely no evidence supporting that claim, it is extraordinary to conclude that each of Larry Weitzner, Tom Blakely, Tom Ferguson, and John Sheridan lied in sworn testimony to the Commission. Rather, it is eminently more reasonable to conclude that all of those individuals told the truth and that neither Weitzner nor Blakely solicited Ferguson to donate funds to NJCTR. See Affidavit of Thomas G. Ferguson, dated July 25, 2005, ¶ 3, attached hereto as Exhibit 2 (“I can categorically state that Larry Weitzner, Tom Blakely and Dick Zimmer did not solicit me for those funds.”).

⁸ The inclusion of references to Jim Treffinger in the GC’s Briefs in this matter is one of the more inexplicable theories scattered therein. It is incontrovertible that in this five-year old investigation, the GC failed to identify a single piece of evidence actually linking Treffinger to the alleged actions of these Respondents. As a result, the GC can posit nothing more than “an inference” that its theoretical Treffinger “scenario” is “all the more likely.” No amount of clever wording can disguise that unqualified concession of the absence of evidence.

⁹ Equivocal indeed, the GC’s “evidence” is limited only to Fox Media, whose records reflect preparation of a mailer during that time frame, possibly for NJCTR or for another Fox Media client, but those same records also reflect that any such mailer was never distributed. See GC Ex. 11; see also Blakely Tr. at 157:15-158:4, 220:14-17, 232:4-233:16. The GC makes the bald

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- “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.” GC Jamestown Brief at 30:2 n. 40 (emphasis added).¹⁰
- “It is inconceivable that the website was taken off-line without the knowledge of Jamestown’s founder and then president, Larry Weitzner.” GC Jamestown Brief at 35:4-5 (emphasis added).¹¹

Based on nothing more than such baseless accusation and misguided “inference,” Respondents have already been subjected to unwarranted professional embarrassment and overwhelming litigation costs. As the U.S. District Court for the District of Columbia aptly recognized:

Because a bare *allegation* of coordination can subject any given spender to a series of costly and intrusive enforcement proceedings -- whether the spender is in compliance with the law or not -- the definition [of coordination] “must be restrictive ...” That is, in the absence of a clear and narrow definition of coordination, an organization’s ideological opponents need only assert that it is

assertion not only that the mailer was issued, but that it contained “virtually the same content as the radio advertisements,” despite failing to produce any actual direct mail piece as evidence.

¹⁰ Fox Media paid Blakely and Jencik because they produced and placed the NJCTR advertisements for Fox Media. See Affidavit of Bridget Capasso, dated August 1, 2005, ¶ 4, attached hereto as Exhibit 3 (When Blakely “utilized the services of individuals for Fox Media purposes, they were paid for using Fox Media funds.”). There is no illicit “inference” to be gleaned from that standard protocol.

¹¹ Larry Weitzner’s undisputed testimony is that Jamestown used an outside vendor as webmaster, and that indeed he was not even sure Jamestown had a website in June 2000. See Weitzner Tr. at 42:5-43:12. It is therefore facetious to suggest that it is “inconceivable” that Weitzner would not have had personal knowledge of its technical operation. There is no evidence that the website even was taken down, let alone that Weitzner participated in taking it down, other than the purported statement of an anonymous Pappas staffer that he or she was unable to access the site on one day more than five years ago. More fundamentally, this is yet another example of the GC’s attempt to circumvent the production of actual evidence by proffering hollow pronouncements that it is “inconceivable” that the knowledge they failed to prove was not known, or that it is “unlikely” that the knowledge they failed to prove was not a matter of common knowledge. Far beyond even trying to prove a fact by proving a negative, the GC here attempts to prove facts merely by labeling their negatives “unlikely” or “inconceivable.” Those efforts cannot withstand scrutiny and are patently insufficient to establish probable cause under any possible formulation of that test.

engaged in such activity to initiate a crippling litigation process that could prevent the organization from participating, legally, in protected lobbying or speech activities.

McConnell v. Federal Election Commission, 251 F.Supp.2d 176, 382 (D.D.C. 2003). Just as the *McConnell* court feared, the complaint in this matter was initiated by an ideological opponent, the Democratic Congressional Campaign Committee, having absolutely no conceivable interest in the subject Republican primary advertisements, who nevertheless asserted unfounded coordination allegations as a transparent tactic to hamper the Zimmer 2000 campaign in the subsequent general election. After apparently finding in June 2000 no reason to believe a violation had occurred, the GC three years later inexplicably revived the matter and now, more than five years later, contends that probable cause exists because "an inference can be drawn" that Respondents violated FECA's coordination provisions. Respondents have cooperated, at tremendous expense, in the GC's revived investigation that, despite spanning more than eighteen months and employing extremely questionable tactics, has not uncovered one single item of actual evidence in support of those allegations. It is long past time to put an end to the "series of costly and intrusive enforcement proceedings" that have failed to produce anything other than "inferences," self-described "equivocal" evidence, and pure speculation. This is not a standard of proof that can be adopted by the Commission. The June 2000 NJCTR advertisements simply were not coordinated with the Zimmer Committee, and the GC has failed to produce any evidence that could support finding probable cause to believe such coordination occurred.

STATEMENT OF RELEVANT FACTS

The Respondents

Dick Zimmer was a candidate in the June 6, 2000 Republican primary election for New Jersey's 12th Congressional District against Mike Pappas, having previously held this congressional seat from January 1991 through January 1997. Zimmer 2000, Inc. was Zimmer's principal campaign committee for the 2000 election cycle, with Maria Chappa as its Treasurer.

Jamestown Associates is a New Jersey limited liability company. Its two members are Larry and Jacqueline Weitzner, and Larry Weitzner serves as President. Jamestown, both currently and during the relevant time period, operates as a full-service Republican political and public affairs consulting firm, specializing in general strategic consulting. In June 2000, Jamestown had at least a dozen clients, one of whom was Zimmer 2000, Inc.

Fox Media Consulting LLC is a New Jersey limited liability company. Fox Media's sole member is Tom Blakely. During the relevant time period, Fox Media operated as a media consulting and advertising firm, specializing in direct mail, television, and radio advertising. In June 2000, Fox Media had multiple clients, one of whom was New Jersey Citizens for Tax Reform. The Zimmer Committee was never a Fox Media client.

Jamestown As Zimmer 2000's Outside Consultant

As the Zimmer Committee's outside consultant, Jamestown provided general campaign strategy advice and assistance with media. During the 2000 primary election, Jamestown shared separately-leased office space with the Zimmer Committee, just as it had shared office space with Pappas' consultant, David Millner, and just as it later shared office space with Tom Blakely, Megan Jencik, and other independent graphic artists or independent media specialists.¹²

¹² While there is nothing remotely incriminating about small businesses sharing office space, it bears noting that the GC's assertion that Jamestown shared office space with Zimmer's 1996

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Contrary to the GC's repeated mischaracterizations, Jamestown did not maintain "employees" or "personnel." Jamestown utilized the services of independent consultants who were specialists in their various fields, such as media services, polling, graphic artists, media technicians, and others. See Capasso Aff. ¶ 6 ("To the best of my recollection, I was Jamestown's only employee. The office also housed independent graphic artists and media personnel. As needed, or required, the services of these independent contractors were utilized."). As is the general rule with independent contractors, these consultants were able to provide their specialized services for multiple clients concurrently, only one of which was Jamestown.¹³ Indeed, the majority of the individuals the GC has mislabeled Jamestown "personnel" or "employees" were not even consultants, but merely outside vendors who serviced Jamestown among dozens of clients. During the 2000 primary election period, Tom Blakely and Megan Jencik both performed some services as independent consultants to Jamestown, but, as independent contractors, both also worked concurrently for other clients besides Jamestown during that period.¹⁴

senatorial campaign simply is false. Indeed, the sheer number of irrelevant, yet demonstrably false, factual assertions in the GC's Briefs warrants considerable skepticism of its entire submission.

¹³ The GC's assertion that Blakely testified that he was hired by Weitzner in 1998 to "join Jamestown" is false and misleading. GC Jamestown Brief at 7:6-7. Blakely's testimony on the cited transcript page in fact is unequivocal: "And in 1998 I became an independent consultant, and last year [2004] I became an employee of Jamestown Associates." Blakely Tr. at 26:18-20 (emphasis added).

¹⁴ The fact that the GC feels that it needs to repeatedly mischaracterize the evidence as establishing that Tom Blakely was a "Jamestown vice president" during the 2000 primary is very revealing. The GC incorrectly asserts that Bridget Capasso stated that Blakely was a Jamestown vice president in 2000, GC Jamestown Brief at 7:7-9, when in fact Ms. Capasso never used the 2000 timeframe in describing Blakely as a vice president. See Capasso Aff. ¶ 2. Indeed, Ms. Capasso has testified that she was angered that the GC investigator intentionally twisted the meaning of her statements and that she specifically asked the investigator to cease such tactics. See Capasso Aff. ¶ 8. Furthermore, Tom Blakely did not work on the Zimmer 2000 primary

John Holub, the Zimmer Committee campaign manager, ran the day-to-day operations of the campaign. Jamestown provided consulting on overall strategy, message, and other big-picture issues, and neither Larry Weitzner nor anyone from Jamestown was involved in the day-to-day activities of the Zimmer 2000 campaign. Holub Aff. ¶ 1. As the GC noted, Jamestown had at least a dozen clients in 2000, thus it would not have been possible for Jamestown to run the day-to-day operations of any campaign even if Jamestown offered such services, which it did not.

Jamestown neither recruited nor hired staff for the Zimmer Committee. While Weitzner occasionally may have given his opinion of an applicant that he knew personally, such as Holub, all hiring decisions were made by candidate Dick Zimmer. See Zimmer Tr. At 58:17-59:2. Zimmer testified unequivocally that he alone hired campaign manager John Holub. *Id.*¹⁵ Zimmer alone hired Matthew Cherney, who had been recommended for the job of Zimmer's driver and scheduler by independent consultant Adam Geller. See Holub Aff. ¶ 2; see also Affidavit of Matthew J. Cherney, dated July 28, 2005, ¶¶ 2, 5, attached hereto as Exhibit 4. Tom Blakely may have been present when Cherney came to Jamestown's offices to discuss some aspects of the job position with Geller, but those discussions took place between Cherney and Geller, not Blakely. See Cherney Aff. ¶¶ 2-5. Contrary to the GC's inaccurate statements,

campaign. Holub Aff. ¶ 3. The GC's citation to Zimmer's deposition transcript for that proposition is misleading and incorrect. Compare GC Jamestown Brief at 4:3-5, with Zimmer Tr. at 81:17-21 ("Q. Does this answer help your recollection as to the services that Tom Blakely provided -- A. No. Q. -- through Jamestown to your committee? A. No.").

¹⁵ Zimmer testified that, at most, he may have discussed his decision to hire Holub with Larry Weitzner because he valued his opinion. See Zimmer Tr. At 58:6-20. The GC's citation to the Zimmer transcript in support of its contention that the evidence "suggests" Blakely helped Zimmer hire Holub is inaccurate and misleading. Compare GC Jamestown Brief at 5:7-9, with Zimmer Tr. at 59:21-60:1 ("Q. Do you recall if you ever discussed hiring John Holub with Tom Blakely? A. No."). Holub had a long-standing relationship with Zimmer and had worked for him on a previous campaign, thus Zimmer needed no "help" in hiring Holub.

Blakely did not, and indeed could not, hire Cherney to work on the Zimmer 2000 campaign. See Cherney Aff. ¶ 5 (“No one ever told me that Tom Blakely hired me for the Zimmer 2000 job and I never told the FEC investigators that Tom Blakely hired me for that job.”). Further, in the small community of New Jersey Republican political consultants, the GC’s allegation that certain former Jamestown consultants or vendors, such as Maria Chappa, later worked directly for the Zimmer Committee is neither surprising nor controversial. All were well known and respected in their specialties and were hired on the merits.

Pappas Candidacy and Senator Bennett’s Letter

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The fundamental conceptual defect in the GC’s theory of the case is that the controversial Pillar of Fire advertisements were of absolutely no value to a Zimmer 2000 campaign that already was the presumptive primary victor. To avoid that fatal flaw, the GC falsely declares that the Pappas campaign was “gaining ground on Zimmer.” GC Jamestown Brief at 9:19–10:10. All evidence is to the contrary. The reality was that Pappas had lost every county convention including his own, Pappas was no longer able to raise significant campaign funds, members of the Republican leadership, including House Speaker Dennis Hastert and National Republican Congressional Committee Chair Tom Davis, had endorsed and even recruited Zimmer, and Zimmer was consistently ahead in every poll by at least a double-digit margin.¹⁶

In a primary race whose outcome was not in doubt, the Zimmer 2000 campaign, as any prudent campaign would do, discussed strategies to avoid a primary contest and to save all possible funds for the impending general election. That strategy, completely standard in campaigns involving no legitimate primary challenge, focused on the possibility of convincing

¹⁶ The Pappas “voter identification program” upon which the GC relies was nothing more than a biased push-poll meant to be a criticism of Zimmer. Any legitimate pollster would dismiss the reliability of such an unscientific “poll” as negligible at best.

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Pappas not to file as an official primary candidate. For example, the campaign considered having members of the Republican leadership reach out to convince Pappas that it would hurt the Republicans' chances in the general election if he forced Zimmer to continue spending money in a primary Pappas had no chance of winning. In addition, it had been widely reported in both the national and local press that Pappas was connected to the Pillar of Fire International Christian Church, whose founder, Alma White, was an avowed supporter of the Ku Klux Klan.¹⁷ As that widely reported connection obviously would have prevented Pappas from winning in the general election in any event, the Zimmer Committee and its outside consultant Jamestown discussed with State Senate Majority Leader John O. Bennett the possibility of writing an open letter to Pappas urging him not to file as a primary candidate because of that negative publicity.¹⁸ The letter plainly did not, as the GC has characterized, use the Pillar of Fire information "against"

¹⁷ Here again, the GC's penchant for presenting exaggerated and misleading facts should be a warning sign to the Commissioners. The GC repeatedly refers to an "alleged" association between Alma White and the Ku Klux Klan, despite knowing that in fact Ms. White was an avid and notorious supporter who had written numerous books openly praising the Klan and its philosophies of hate. Even more disingenuous is the GC's repeated attempt to characterize the Pillar of Fire connection as secret information "gathered" by the Zimmer 2000 campaign and "culled" from some shadowy "opposition research file." GC Jamestown Brief at 11:10-14. The truth, which is inconvenient for the GC's purposes, is that Pappas' connection to the Pillar of Fire International Christian Church was widely reported and discussed public information for more than a year prior to the primary, and indeed had been the subject of a major story in the New York Times and repeated stories in the Associated Press, Courier News and other publications. See, e.g., James Dao, *On Politics; Is This Seat Reserved? Not in the 12th District*, N.Y. TIMES, Feb. 14, 1999; Laurence Arnold, *As House Candidate, Pappas Is Vocal About His Singing*, THE ASSOCIATED PRESS STATE AND LOCAL WIRE, Feb. 13, 2000; *National Journal's House Race Hotline*, NATIONAL JOURNAL, March 29, 2000; *Weddings*, COURIER NEWS, July 1, 1999; Enid Weiss, *Pappas Retains Ties to Pillar of Fire Church*, NEW JERSEY JEWISH NEWS, March 30, 2000.

¹⁸ In a desperate attempt to link Blakely to the Bennett letter, the GC asserts misleadingly that it is "likely" that Bennett discussed the "mechanics" of the letter "with either Blakely or Holub." GC Jamestown Brief at 12:17-18 (emphasis added). Bennett's conversations were with Holub, not Blakely, and there is no evidence whatsoever that Blakely played any role in the Bennett letter. See Holub Aff. ¶ 4.

Pappas, but rather provided the information to Pappas in an obvious and standard request for him to step aside.¹⁹ Indeed, Zimmer testified repeatedly that he had instructed his campaign staff and his consultants that the Pillar of Fire issue was not to be used against Pappas as part of the primary campaign. See Zimmer Tr. at 96:5-97:14, 101:16-102:10.

The problem with the GC Briefs is that there is no connection between the Zimmer 2000 campaign's urging Pappas not to run as a primary candidate in part because of his widely-known Pillar of Fire connection and NJCTR's later use of the Pillar of Fire connection in an issue advertisement during the primary campaign. It is neither reasonable nor logical to "infer" -- as the GC repeatedly urges in lieu of evidence -- that the Zimmer 2000 campaign's participation in an open letter that merely presented the likely consequences of the Pillar of Fire connection to Pappas himself, without violating FECA or any law, makes it any more likely that the campaign would subsequently coordinate the use of that widely-reported issue in a general public communication in violation of FECA's provisions. The Bennett letter, even to the extent that the Zimmer Committee and its outside consultant Weitzner participated in it, has no relevance whatsoever to NJCTR's subsequent radio advertisements conceived by John Sheridan and placed through Fox Media and Tom Blakely, and that letter certainly does not constitute evidence supporting coordination allegations.

New Jersey Citizens for Tax Reform and John Sheridan

Immediately after its discussion of the April 2000 Bennett open letter, the GC misleadingly inserts a section entitled "Formation of NJCTR and Fox Media" as if that were the

¹⁹ The GC asserts that it would be "reasonable to infer that Weitzner was responsible for inserting the language" about the Pillar of Fire connection into the Bennett letter. GC Jamestown Brief at 13:10-16. But, there is no evidence -- not a single document or witness statement -- indicating that Larry Weitzner participated in drafting or inserting that language. More importantly, nothing about the Bennett letter even arguably violates FECA or any other law, thus its contents and the identity of its drafters are irrelevant to the allegations at issue in this matter.

proper chronology. GC Jamestown Brief at 14:10. To be clear, NJCTR was formed in 1997 as a New Jersey not-for-profit corporation and Fox Media was formed in 1999 as a New Jersey limited liability company, thus both were existing and functioning as independent entities well before either the Bennett letter or the subject radio advertisements were ever conceived.

John Sheridan, founder of NJCTR and a member of its Board of Trustees, knew Larry Weitzner from his 1990s involvement with Hands Across New Jersey, an anti-tax group for which Jamestown provided advertising services.²⁰ Sheridan also knew Blakely as a HANJ supporter, though Blakely never provided true consulting services to HANJ and never received any consulting payment. Sheridan's participation in NJCTR, as it has been with HANJ and CLT, was for the purposes of opposing tax increases and promoting tax reform.

As opposed to the fanciful and counter-intuitive "inferences" proffered to link the Zimmer 2000 campaign to the NJCTR advertisements, the GC's own Brief lays out the very facts that make it eminently more reasonable that John Sheridan did in fact initiate the anti-Pappas advertisements, just as all parties have testified. See GC Jamestown Brief at 15:5-11. Indeed, the GC stresses that Sheridan "had tremendous animosity towards Pappas," that "Pappas had publicly belittled HANJ and also betrayed the organization through tax votes made during his tenure as a Freeholder and as a member of Congress," and that "HANJ tried to defeat Pappas in the 1996 primary and general elections and even went so far as to give his Democratic opponent 'everything we had on him.'" *Id.*

²⁰ The GC attempts to bolster its guilt-by-association theory by insinuating that Sheridan also knew Weitzner, Blakely, and Zimmer through their common association with the now defunct Coalition for Lower Taxes, which was the subject of MUR 4238. The GC fails to note, however, that the allegations in MUR 4238, just as here, were baseless accusations brought strategically by a political opponent and that the Commission dismissed MUR 4238 for lack of evidence.

Given that animosity and history, it is far more logical to conclude that Sheridan initiated the June 2000 anti-Pappas advertisements, just as he had previously in 1996. The sworn testimony of multiple witnesses to that effect only buttresses the clear logic of the conclusion. It is simply incredible for the GC to suggest that, despite Sheridan's proven animosity and his long history of actively opposing Pappas in past elections, it nevertheless is more reasonable to infer that instead the Zimmer 2000 campaign engaged in a complex conspiracy to coordinate controversial negative advertisements in the closing days of a campaign they were winning by double-digits. The very notion is so counter-intuitive as to be dismissed out-of-hand, and yet the GC has clung stubbornly to the theory throughout a five-year investigation that, not surprisingly, has uncovered no supporting evidence.

Fox Media Consulting and Tom Blakely

John Sheridan, after conceiving the advertisements highlighting Pappas' involvement with the Pillar of Fire church, first contacted Jamestown Associates to produce and run those ads, but was turned down because Jamestown was consulting on the Zimmer 2000 campaign. *See Sheridan Tr. at 98:13-20.* Sheridan testified unequivocally that he then telephoned several other New Jersey political activists, "shopping around" for a media company to produce the advertisements, and that one of those activists -- completely unaffiliated with Jamestown -- provided him the information about Fox Media. *Id. at 98:15-102:24.* Sheridan testified that he then telephoned Tom Blakely on his cell phone or home telephone, with the specific understanding that Blakely was no longer affiliated with Jamestown and with no knowledge of shared office space, and requested Fox Media's services in placing radio advertisements for NJCTR. *Id. at 100:15-101:15.*

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Fox Media Consulting LLC, formed by Tom Blakely in 1999, was its own separate entity in every sense. Indeed, Fox Media and Jamestown have never had overlapping ownership or membership, have never shared finances or co-mingled funds, and have never permitted one another access to confidential financial or client records. *See* Capasso Aff. ¶ 3. While the two entities often use overlapping vendors from the small market of qualified local specialists, that is not always the case and Fox Media has used different vendors on multiple occasions.²¹ Contrary to the GC's inaccurate assertions, Fox Media had its own letterhead listing a separate address, its own business cards, its own bank accounts, its own cell phone, its own computers and printers, its own furniture, and its own travel and meeting budget.²² Although the GC would have the Commission believe that NJCTR was Fox Media's only client, the truth is that Fox Media did maintain its own distinct client base, entering business relationships with multiple clients over a six-year period. Fox Media remains a distinct legal entity, as recognized both by the State of New Jersey and by the Internal Revenue Service, and neither Larry Weitzner nor Jamestown has ever contributed to, or benefited from, Fox Media in any way.

The GC repeatedly mischaracterizes outside vendors as "Jamestown personnel" or "Jamestown resources" in an inaccurate and unfair effort to link Fox Media and Jamestown. *See, e.g.,* GC Jamestown Brief at 16. Those mischaracterizations do not withstand even minimal

²¹ As a matter of fact, Fox Media's vendors for the NJCTR advertisements were different from the vendors Jamestown used for the Zimmer 2000 campaign.

²² The majority of Fox Media's work was conducted from its 200 East Chestnut Street address in Bordentown, not from Blakely's office at 3131 Princeton Pike in Lawrenceville, and the majority of Fox Media's mail was also delivered to its Chestnut Street address. Indeed, the Commission's initial complaint against Fox Media in this matter was not even delivered to the Princeton Pike address. Blakely's concurrent maintenance of a separate and private office in a space shared with Jamestown in not a relevant indicia of coordination, particularly given the fact that he initially took his office over from Mike Pappas' consultant, Dave Millner, who also was sharing space with Jamestown. That fact alone amply demonstrates that mere physical proximity to Larry Weitzner's office is hardly dispositive to a proper coordination inquiry.

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scrutiny. Fox Media did not share the services of a Jamestown attorney and accountant, but rather separately retained those common outside professionals, each of whom literally had hundreds of other clients. Blakely did not, as the GC claims, testify that "Jamestown's graphic designer" produced letterhead for Fox Media, but rather testified that Fox Media retained the services of an independent graphic design vendor who did work for dozens of other clients, including Jamestown.²³ See Blakely Tr. at 133:6-8. The use of colleagues' references for outside vendors is a common and uncontroversial practice, and does not qualify as a legitimate factor under any conceivable test for piercing a corporate veil. Similarly, Blakely did not testify that Jamestown personnel were authorized to write checks or make deposits for Fox Media, but rather that individuals like Bridget Capasso and Megan Jencik, each of whom was hired independently by Fox Media, were authorized to do ministerial tasks like making deposits or filling out checks for Blakely's signature where such transactions were necessary in the course of their doing work for Fox Media. See Blakely Tr. at 208:8-209:15. Neither Larry Weitzner nor any other true Jamestown "personnel" ever had access to Fox Media's checks, deposits, or financial records of any kind.

These statements regarding Fox Media, in addition to being riddled with inaccuracies, reveal the gulf between the GC's strained legal theory and the facts, even the skewed facts as portrayed in the Briefs. With only supposition and no actual evidentiary support, the GC alleges that Jamestown and the Zimmer Committee secretly coordinated anti-Pappas advertisements through outside groups NJCTR and Fox Media so that the activity would not be "traced back" to them, but then concedes that Capasso and Jencik's independent work for Fox Media "was not a

²³ The graphic design vendors, like all of the outside vendors, frequently did work for their numerous other clients even while "on call" for a specific project at Jamestown. Their other clients included, *inter alia*, other political clients, colleges and universities, newspapers, satellite communications companies, and entertainment entities.

secret.”²⁴ GC Jamestown Brief at 14:15-21, 17:5-14. The truth is that Blakely signed a public affidavit openly acknowledging that he ran the advertisements, which in any event were nothing more than repetition of a story that had been widely reported in the media. However, while certain of Jamestown’s vendors and consultants knew of Fox Media’s “existence and the nature of its activities,” none of them had any knowledge as to the specifics of any Fox Media project, all of which was kept private as confidential client information.²⁵ In fact, as to the Pillar of Fire advertisements in particular, no one other than Tom Blakely and John Sheridan ever had access to the script up until the final minutes before they aired, including Megan Jencik who merely purchased the advertisements’ radio time. See Blakely Tr. at 162:20-163:18.

NJCTR’s Pillar of Fire Advertisements

As discussed above, the unsupported hypothesis that it is “plausible” Blakely first contacted Sheridan about running the Pillar of Fire advertisements is directly contradicted by all of the evidence and by the sworn testimony of both witnesses. Even more tenuous are the GC’s allegations that Weitzner and Blakely were involved in raising the funds that NJCTR used, in part, to produce and run those advertisements, charges that are belied by the available evidence and testimony. See GC Jamestown Brief at 17:16-25:6. Throughout the many pages of strained insinuations regarding bank account balances and purported friendships, not one single witness

²⁴ Aside from the absence of factual support, the very theory itself is fundamentally unsound. If, as the GC alleges (GC Jamestown Brief at 14:15-16), Jamestown and the Zimmer Committee realized that the Pillar of Fire negative advertisements “would damage Zimmer’s candidacy,” it is nonsensical to suggest that they nevertheless would seek an indirect way to run them in a race they were winning soundly.

²⁵ Bridget Capasso testified as to that confidentiality as follows: “I could not be certain who, if anyone, would know exactly what I was working on at any given moment nor would I always know what they were working on. The office atmosphere was fast paced, high anxiety offering little, if any, time to discuss daily activities. Therefore a statement that people in the office had general knowledge of the projects being worked on in the office would be inaccurate.” Capasso Aff. ¶ 6.

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testified that Weitzner or Blakely solicited funds for NJCTR and not one single document indicates that any such solicitation occurred.

Thomas Ferguson issued a \$50,000 check to NJCTR and testified that the organization's anti-tax platform was consistent with the type of conservative candidates he wished to support. See GC Jamestown Brief at 20:4-7. Ferguson stated explicitly that he did not support Zimmer because Zimmer was pro-choice. *Id.* at 20 n. 22; see also Zimmer Tr. at 138. For that reason, neither Weitzner nor Blakely, who were not fundraisers in any event, would have asked Ferguson to contribute to Zimmer directly, and it defies logic to suggest that Ferguson nevertheless would violate the law to make such contributions indirectly to a candidate he did not support.²⁶

Ferguson did know Weitzner and Blakely through his son Mike Ferguson's 1998 and 2000 congressional campaigns, but the GC's characterizations of Tom Ferguson's level of involvement and his relationship with the consultants is greatly exaggerated.²⁷ More

²⁶ Blakely's issuance of checks to radio stations on May 31, 2000 evidences nothing more than the fact that Fox Media, like any vendor, fully expected its client NJCTR to pay its bill. See GC Fox Media Brief at 27:7-28:7. NJCTR did pay in full the following day on June 1, 2000, the first day that the radio advertisements began running. *Id.* There is nothing remotely remarkable about that sequence, and there is no evidence that Blakely had any reason to question how NJCTR intended to pay for Fox Media's services, let alone participate in raising the funds. Nothing about the sequence of payments makes it any more likely that Blakely "knew in advance that the Ferguson donation was being made to NJCTR" than it is for any vendor to know the source of its client's payments. *Id.* Fox Media expected an "infusion of money" on June 1, 2000 simply because payment was due from its client NJCTR for services rendered, not because of any knowledge about a specific Ferguson donation. *Id.* There is no basis, therefore, for the GC's "inference" that Blakely "orchestrated" Ferguson's donation based on the "pattern" of payments. *Id.*

²⁷ Ferguson was not "heavily" involved in his son's campaign, nor did he call the Jamestown office "frequently," but merely kept abreast of the campaign and called occasionally. GC Jamestown Brief at 21:5-9. Similarly, Ferguson did not host any private reception in Washington, DC during the 2004 presidential inauguration. *Id.* at 21:10-12; see also Ferguson Aff. ¶ 4. That reception was hosted by a number of businesses honoring Mike Ferguson, and

importantly, the GC's assertion that the fact that Weitzner, Blakely, and Zimmer were "among those individuals who could have gotten through to him directly" if they had telephoned somehow supports "an inference" that they solicited Ferguson to donate to NJCTR is beyond frivolous.²⁸ GC Jamestown Brief at 21:2-14. Each and every one of those witnesses categorically denies that either Weitzner, Blakely, or Zimmer ever solicited Tom Ferguson for those funds. See Ferguson Aff. ¶ 3; Blakely Tr. at 246:17-247:3; Zimmer Tr. at 139:10-17; Weitzner Tr. at 200:1-203:9. Indeed, Tom Ferguson, who is not a Respondent in this matter, has testified unequivocally:

Moreover, while I do not recall who solicited me for that contribution, I can categorically state that Larry Weitzner, Tom Blakely or Dick Zimmer did not solicit me for those funds.

Ferguson Aff. ¶ 3. The evidence overwhelmingly prohibits any "inference" to be drawn that this imaginary solicitation took place despite the sworn testimony to the contrary of all four witnesses who could have knowledge.

In the most flummoxing subplot of the GC's tale, it is alleged that "Jim Treffinger solicited the remaining \$40,000 for NJCTR," and that "an inference can be drawn that he was asked to participate in this scheme by his Jamestown consultants," Weitzner and Blakely.²⁹ GC Jamestown Brief at 21:15-22:3. It is unclear how the GC arrives at the figure of a "remaining

was attended by more than two hundred guests. Not surprisingly, one of his son's consultants attended along with many others from New Jersey.

²⁸ The GC cannot truly believe that testimony that Respondents were "among those individuals who could have gotten through to him directly" on the telephone constitutes evidence of a specific illegal solicitation, and yet after more than five years of investigation that is the full extent of the support offered for that frivolous allegation.

²⁹ The GC's rationale that Treffinger raised the funds to "curry favor" makes no sense, as both Weitzner and Blakely already were Treffinger's paid consultants. The GC does not explain the counter-intuitive notion of why a candidate would "curry favor" from his own paid political consultants.

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\$40,000” after Ferguson’s \$50,000, when it has never alleged at any point during this five-year investigation that NJCTR paid Fox Media more than \$70,000 total. Despite the numbers not adding up, and in willful disregard of the sworn testimony that NJCTR and Treffinger both were promoting a concurrent anti-tax initiative in Essex County, the GC refuses to acknowledge the much more reasonable “inference” that those funds were, in fact, “for Treffinger,” just as they were expressly designated on at least one of the checks.³⁰ *Id.* at 23:13.

There is not a single witness statement or piece of evidence indicating that the Zimmer Committee, Weitzner, or Blakely ever discussed having Treffinger solicit funds for NJCTR.³¹ Matthew Kirnan is the only witness who apparently even referenced Zimmer, and his cited testimony makes it clear that it was Treffinger himself who “said that he ‘wanted to help our friend Zimmer’ in his race by raising money for CTR.” GC Jamestown Brief at 22:19-23:3. Although Kirnan’s testimony was that any such notion came from Treffinger himself and not from any of the Respondents, even that purported tangential connection warrants little credence in light of the source’s obvious credibility deficiencies. Matthew Kirnan is an admitted liar who pled guilty to making misrepresentations on FEC reports, and he still owes Jamestown money from his own failed 1998 congressional bid. His statements that “the Treffinger campaign had

³⁰ The GC takes great pains to establish that none of the donors had any connection to the Zimmer 2000 campaign or to Weitzner or Blakely, that none had ever supported Zimmer in the past, that all were told by Treffinger or Kirnan that their donations were going to help Treffinger, and that at least Vernon Hill specified on the face of the check itself that the funds were in fact “for: Treffinger.” GC Jamestown Brief at 22:19-24:13. The immediately subsequent claim that the “evidence outlined above indicates” that the fundraising was “arranged by Weitzner and Blakely,” therefore, can only leave the reader wondering if he has missed several pages of the brief. *Id.* at 24:22-25:6 The theories are not coherent, let alone supported.

³¹ Neither Zimmer nor Treffinger endorsed one another in their respective 2000 primaries, nor did Zimmer endorse Treffinger in his 2002 primary. The idea that Treffinger nevertheless would be spending his time raising funds for Zimmer during the final week of his own contested primary is ludicrous.

effectively shut down five weeks before the primary, so Treffinger's schedule was open ... [and] Treffinger's staff had little to do" are demonstrably false and clearly refuted by the FEC's own disbursement records (which the GC notably ignores) showing that the Treffinger campaign spent more in that final five-week period than in the previous eight months combined.³² *Id.* at 22:15-18. While Kirnan's statement is not incriminatory whatsoever as to these Respondents, it is not remotely credible either.

In early June 2000, NJCTR ran radio advertisements that referenced Pappas' connection to the Pillar of Fire church that had been so widely reported in the media's news articles and editorials. Fox Media used Jencik, an outside vendor with multiple clients, to place the NJCTR advertisements with the appropriate radio stations. Jencik had terminated any affiliation with the Zimmer 2000 campaign nearly two months prior to that time, and though she still received payments from Jamestown for the work she performed as an independent contractor consultant, she was not a Jamestown "employee" or "personnel" of any sort. See GC Jamestown Brief at 27:1-3.

Fox Media used Pam Lewis to do the voice-overs and used Full House Productions for recording.³³ *Id.* at 27:4-5. Jamestown, on the other hand, predominantly used Peter Thomas to

³² Jamestown's records reveal that a full 75% of the Treffinger campaign's total billing was attributable to those final five weeks. Indeed, the Treffinger campaign produced and aired numerous media pieces and fourteen out of its fifteen total direct mail pieces during that time, belying any claim that it had "shut down."

³³ Despite Blakely's clear testimony and Fox Media's bank statements firmly establishing that Fox Media used Full House to record the NJCTR advertisements, the GC continues to misstate that Fox used "Baker Sound" in an attempt to bolster its irrelevant "common vendors" argument. Compare GC Jamestown Brief at 27:4-5, with Ex. 11 thereto and Blakely Tr. at 185:15-19. The GC employs that fabrication because the truth -- Full House Productions, unlike Baker Sound, was not a regular Jamestown vendor and Jamestown never once used Full House in all of 2000 or 2001 -- is inconveniently inconsistent with its "common vendors" theory. Fox Media did not use Baker Sound in connection with the NJCTR advertisements and Respondents repeatedly have made the GC well aware of that fact. This is yet another example of a legally irrelevant fact

do the voice-overs for the Zimmer 2000 advertisements and used Alan Cagen for their recording studio. Furthermore, all media production for the Zimmer campaign and other Jamestown campaigns was organized by Burke Wood Communications, which had nothing whatsoever to do with the NJCTR advertisements. Pam Lewis and Full House Productions were skilled outside vendors with dozens of other clients, and there is nothing surprising nor noteworthy about Fox Media's selecting them as its outside vendors for the NJCTR advertisements. It is noteworthy, however, that the GC falsely states that Fox Media and Jamestown used common vendors on their respective NJCTR and Zimmer 2000 media projects, despite knowing that statement is inaccurate.

The message of the radio advertisements was not, as the GC mischaracterizes, "virtually identical" to the Bennett letter, and indeed bore little resemblance to its text. GC Jamestown Brief at 25:8-12. While the Bennett letter simply reiterated to Pappas that the Democrats likely would use his Pillar of Fire affiliation against him in the general election, the radio advertisements spoke of "hatred and intolerance" and urged people to tell Pappas to resign from the Pillar of Fire. *Id.* There is little similarity in either content or strategy.

The GC claims that one radio station, WKXW (NJ101.5 FM), refused to run the advertisement and "instead ran a CTR sponsored advertisement." *Id.* at 25:14-26:1. Neither Blakely nor Sheridan were even aware of an alleged substitution, if one did occur, thus Respondents are uncertain whether the GC correctly identified the sponsor of the substitute ad as "CTR" or if it meant the distinct entity NJCTR. Respondents are certain, however, that Exhibit 14, which the GC incorrectly labels as the "script for a mailer that Jamestown produced on behalf of Zimmer 2000," is not a mailer at all, but rather is the text of a radio advertisement, as that the GC nevertheless feels it needs to mischaracterize and misstate to bolster what ultimately is an insufficient collection of unsubstantiated insinuations.

clearly indicated in the second line from its top. *Id.* at 26 n. 35; *see also* GC Ex. 14. Given that the GC has produced neither the text of the alleged substitute advertisement nor an actual Zimmer mailer, Respondents cannot possibly comment on the paraphrased statement of an unnamed anonymous “volunteer for the Pappas campaign,” a dubious source if ever there was one, that there were similarities in their discussions of Pappas tax votes. Even if there were any such similarities, for which there is of course no evidence, mere similarity of content would have no relevance to the alleged coordination violations in this matter where there is not even a hint of control, discussion, or negotiation.

This is not the only alleged “mailer” that the GC references but fails to produce. Acknowledging that “[t]he evidence is equivocal,” the GC nevertheless adheres to accusations that Respondents issued a district-wide mail piece “featuring virtually the same content” as the Pillar of Fire radio advertisements. GC Jamestown Brief at 27:6-8. First, there is no evidence of this mail piece even existing, much less that any of the Respondents other than Fox Media alone participated in any way in a mailer for NJCTR. Second, while Blakely testified that Fox Media’s records indicate the preparation of some mailer during that period, either for NJCTR or for another client, those same records indicate that any mailer prepared was in fact never distributed. *See* GC Ex. 11; *see also* Blakely Tr. at 157:15-158:4, 220:14-17, 232:4-233:16. Moreover, there are no records indicating that Fox Media ever produced any mailer, distributed or otherwise, that referred to the Pillar of Fire. *Id.* In fact, Sheridan’s sworn testimony was that he personally produced anti-Pappas fliers and did not use Fox Media at all for that purpose. *See* Sheridan Tr. at 126:22-131:12, 271:20-275:13. Thus, the evidence, or lack thereof, is “equivocal” indeed, and does not establish even the existence of the mailer or participation of any kind by Fox Media, let alone coordination with the Zimmer 2000 campaign.

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The Pillar of Fire radio advertisements predictably generated negative reaction in New Jersey -- the very reason the Zimmer Committee had prohibited its staff or consultants from using the issue. *See* Zimmer Tr. at 96:5-97:14, 101:16-102:10. Zimmer testified unambiguously that he was "angry" immediately upon hearing the advertisements and that he publicly repudiated them before any press coverage began, not in response to press coverage. *See* Zimmer Tr. at 65:16-67:10. Any subsequent public statements that, at the time she placed the advertisements for Fox Media, Jencik had ceased working for the Zimmer 2000 campaign or that she had left any employment at Jamestown were entirely accurate. Even if Jencik could be deemed "Jamestown's media buyer" during that period, she clearly performed such services as an independent outside vendor with multiple clients, not as a Jamestown employee.³⁴

The well-settled legal distinction between an employee and an independent contractor withstands the purported observations of an unnamed anonymous "volunteer for the Pappas campaign" surfing the internet in June 2000 that Jencik was still referenced as a consultant to Jamestown. GC Jamestown Brief at 28:17-18. Indeed, in perhaps its most tortured of many mischaracterizations, the GC takes the Pappas volunteer's bare statement that the Jamestown website apparently "had gone off-line" and twists it into "Weitzner's participation in taking down his firm's website," which it then twists even further into "a deliberate effort to maintain the fiction that the anti-Pappas advertisements were not coordinated with the Zimmer campaign."

³⁴ Jencik's \$2,500 payment from Fox Media is strong evidence that she was, in fact, working for Fox Media in placing the advertisements, and Blakely testified that he thought the amount was "fair compensation" under the circumstances. Blakely Tr. at 218:7-8. That payment was made promptly, within the six-day period in which the advertisements allegedly still were running, thus there also is nothing inappropriate about its "timing." *See* GC Jamestown Brief at 29:10-11. Fox Media paid Adam Geller during that period in partial compensation for the damage Jamestown suffered because of Blakely's placement of the NJCTR advertisements. *See* Weitzner Tr. at 73:17-74:12. It is notable that the GC believed the payment "suggests that Geller performed unrelated work for Fox Media," contradicting earlier assertions that Fox Media was a shell company that in fact had no unrelated work. GC Jamestown Brief at 30 n. 40.

Id. at 28:19-29:3. Orwellian fiction to be sure, that conclusion -- upon which the GC actually relies as proof of knowing and willful violations -- is based on nothing more than the alleged statement of an anonymous Pappas volunteer that he or she personally was unable to access the Jamestown website from his or her computer on one particular day more than five years ago.³⁵ After a five-year investigation, that is the sum quality of "evidence" on which the GC asks the Commission to move forward in this matter.

ARGUMENT

I. Respondents Blakely and Fox Media Were Not Authorized to Make Expenditures on Behalf of the Zimmer Campaign During the 2000 Republican Primary Period, Had No Decisionmaking Authority Whatsoever, and Thus Were Not Agents of the Campaign as a Matter of Law

FECA, as it existed in June 2000, provided that expenditures made "in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate," and prohibited any person from knowingly accepting or receiving such a coordinated contribution from a corporation on behalf of the candidate's political committee. 2 U.S.C. §§ 441a(a)(7)(B)(i), 441b (2000 ed.) (emphasis added).

In turn, the Commission regulations in effect in June 2000 defined a candidate's "agent" as follows:

Agent means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the

³⁵ Larry Weitzner testified that he did not even know if Jamestown had a website in June 2000 and that, until recently, Jamestown retained an outside vendor as its web master. Weitzner Tr. at 42:5-43:12. An analogy underscores the absurdity of this leap-of-logic: when a customer has technical difficulties accessing the Citibank website, it would be definitively unreasonable to assume even that the entire site had been taken off-line, much less that the Citibank CEO had done so personally and deliberately.

campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

11 C.F.R. § 109.1(b)(5) (2000 ed.). However, where, as here, a campaign is alleged to have coordinated expressive expenditures through an individual alleged to have been an agent both of the campaign and of the purported contributor, the *Christian Coalition* court made it clear that such “veil-piercing” could be applied only when that individual had substantial decisionmaking authority for both entities regarding the content, timing, location, mode, intended audience, or volume of the public communications. *FEC v. Christian Coalition*, 52 F.Supp.2d 45, 96-97 (D.D.C. 1999).

In *Christian Coalition*, Republican Party precinct committeeman Tom Grabinski had a close personal relationship for many years with candidate J.D. Hayworth. *Id.* at 79. Indeed, Grabinski was an actual official member of the volunteer “finance committee” of the 1994 Hayworth campaign for the U.S. House of Representatives seat from the Sixth District of Arizona. *Id.* Grabinski subsequently became the chairman of the Arizona Christian Coalition. *Id.* Though the court acknowledged his active position in both the campaign and the Coalition, it noted that “Grabinski did not discuss his new role with the Coalition in much detail with Hayworth.” *Id.* (emphasis added). For the general election, the Coalition prepared a voter guide comparing the positions of Hayworth and his opponent on six carefully selected issues. *Id.* at 80. Though Grabinski himself was responsible for identifying churches where the guides would be distributed and for recruiting the individuals to distribute those guides, the court noted that, as here, “[n]o record evidence demonstrates that Grabinski discussed his selection of distribution points or personnel with the Hayworth campaign.” *Id.*

The *Christian Coalition* court held that those facts establishing Grabinski’s dual roles with the Hayworth campaign and with the Coalition, which far exceed the bare speculation that

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the GC has presented here with respect to Tom Blakely, nevertheless were insufficient to establish that Grabinski was an agent of both organizations for purposes of coordinating expressive expenditures. The court held:

The Court cannot so readily engage in this veil-piercing. Not only would it burden associational rights, but the evidence also shows that Grabinski's position in the campaign was such that his view of where the campaign might want the guides distributed would not necessarily be the candidate's view. A veil-piercing approach to coordination may be appropriate if an individual had more complete decisionmaking authority for both a corporation and a campaign and the evidence indicated that corporate decisions to make expressive expenditures were taken to assist the campaign. But on these facts, coordination cannot be inferred merely from the fact that the Coalition's voter guide distributor wore two caps. Some discussion or negotiation is required.

Id. at 96-97 (emphasis added).

Here, though Blakely had personal and professional relationships with both Zimmer and Weitzner, all of the sworn testimony and evidence establishes that he did not have the "more complete decisionmaking authority" required under *Christian Coalition* to make him an agent of the Zimmer 2000 campaign so as to "pierce the veil" between NJCTR and the Zimmer Committee.

A. During the 2000 Primary Campaign, Blakely Was Merely an Independent Consultant for Jamestown on Other Projects and Was Not an Authorized Agent of the Zimmer Committee

Even assuming, *arguendo*, that Jamestown and Larry Weitzner were agents of the Zimmer Committee, neither Tom Blakely nor Fox Media were ever authorized to make expenditures on behalf of the Zimmer 2000 primary campaign, nor did they have any decisionmaking authority regarding the content, timing, location, mode, intended audience, or volume of the campaign's public communications. Blakely and Fox Media were not agents of the Zimmer 2000 primary campaign.

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In its depositions and in its Briefs, the GC relies heavily on an interrogatory response by Zimmer 2000 Campaign Manager John Holub, in which he responded that Tom Blakely “provided services to the campaign.” See GC Jamestown Brief at 4:3-5 and Ex. 1 thereto at 2a. The GC focuses on the subpoena’s separate “instruction” that the discovery requests shall refer to the time period from January 1, 1999 through June 6, 2000 to support its interpretation that Holub’s response suggests that Blakely “provided services to the campaign” during the 2000 primary period. *Id.* However, the GC fails to acknowledge that its own “definitions” in the very same subpoena provided the contradictory definition that “‘2000 election cycle’ shall mean the period beginning on January 1, 1999 and extending through December 31, 2000.” *Id.*

Blakely, who did not work on the Zimmer 2000 primary campaign at all, subsequently did consult for Jamestown on the 2000 general election, specifically on the recount. As Holub clarifies in his attached affidavit, it was that general election work to which he was referring in his initial interrogatory response, despite the GC’s attempt to use the conflicting instructions and definitions to suggest otherwise. See Holub Aff. ¶ 3. Holub’s affidavit states explicitly:

To the best of my knowledge, Tom Blakely did not do any work for the Zimmer 2000 primary campaign. Tom Blakely did some work on the Zimmer 2000 general election. When I stated in my June 2004 answer to interrogatories to the FEC that Tom Blakely provided services to the campaign, I was referring to his services during the general election. Indeed, even during the general election, my primary contact with respect to campaign consultants was with Larry Weitzner and I had very little interaction with Tom Blakely.

Id. In addition to the ambiguous interrogatory response, the GC also inexplicably cites pages 80-82 of the Zimmer deposition transcript for the proposition that Blakely worked on the primary campaign. See GC Jamestown Brief at 4:3-5. That citation is misleading at best, as Zimmer’s unequivocal testimony on those pages states the exact opposite. When confronted with Holub’s interrogatory response and the GC’s skewed interpretation of its meaning, Zimmer testified clearly: “Q. Does this answer help your recollection as to the services that Tom Blakely

provided -- A. No. Q. -- through Jamestown to your committee? A. No." Zimmer Tr. at 81:17-21; *see also* Zimmer Tr. at 77:14-18 ("Q. Did Tom Blakely work on your congressional campaign in 2000? A. I don't think he worked in the primary because I think he was engaged in another campaign.").

Similarly, the GC falsely states that "Blakely interviewed and hired Matthew Cherney" for the Zimmer campaign and that Cherney "was interviewed by Blakely who explained his duties and salary." GC Fox Media Brief at 6:8-12. To correct those misstatements, Cherney testified: "No one ever told me that Tom Blakely hired me for the Zimmer 2000 job and I never told the FEC investigators that Tom Blakely hired me for that job." Cherney Aff. ¶ 5. Cherney also clarified that "Adam Geller informed me of the duties and salary of the position, not Tom Blakely." *Id.* ¶ 3. The similar hypothesis that it was "likely" Blakely assisted Zimmer in hiring John Holub is flatly refuted by Zimmer's clear testimony to the contrary. *Compare* GC Jamestown Brief at 5:12-15, *with* Zimmer Tr. at 59:21-60:1.

Even more egregiously, the GC represents that "[a]ccording to Jamestown's former bookkeeper, Bridget Capasso, in 2000 Blakely held the title of Jamestown vice president and was considered second in line at the company after Weitzner." GC Jamestown Brief at 7:7-9. The assertion that Blakely was a Jamestown vice president in 2000 is misleading, as was, it turns out, the claim that Bridget Capasso ever stated that he was. Ms. Capasso, upon learning of the GC's misstatement, clarified: "I do not recall whether Tom Blakely held the title of Vice President during the 2000 election cycle." Capasso Aff. ¶ 2; *see also* Blakely Tr. at 41:20-42:9; Weitzner Tr. at 115:8-116:10. Indeed, as to the fact that the GC would attribute to her a statement she never made, Ms. Capasso testified:

I would also like it noted that during my FEC's [sic] telephone interview several months ago, I felt it necessary to inform the investigators that they were twisting

my words and saying things that I just did not say. I informed them that if they proceeded in this fashion that "our interview would be over for now and that the next time that they spoke with me would be in the presence of an attorney".

Capasso Aff. ¶ 8. Lest one find this a mere oversight, it is notable that in the very same paragraph the GC misleadingly cites page 26 of Blakely's deposition transcript as supporting its assertion that Blakely "was hired by Weitzner to join Jamestown" in 1998. GC Jamestown Brief at 7:6-7. Quite to the contrary, Blakely's cited testimony actually established unambiguously that "in 1998 I became an independent consultant, and last year [2004] I became an employee of Jamestown Associates." Blakely Tr. at 26:18-20 (emphasis added).

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These factual mischaracterizations, and outright misstatements, would be unnecessary if the GC had any actual evidence indicating that Blakely or Fox Media ever worked on the Zimmer 2000 primary campaign. The need to distort the factual record is powerful evidence that the true record is insufficient. More importantly, even the misstated facts are insufficient to establish agency under 11 C.F.R. § 109.1(b)(5) and *Christian Coalition*. The GC's twisted interpretation of the Holub interrogatory response, which interpretation Holub expressly refutes, would establish only that Blakely "provided services to the campaign." See GC Jamestown Brief at Ex. 1 thereto. It would not even suggest that Blakely was authorized to make expenditures on behalf of the Zimmer Committee, as required under 11 C.F.R. § 109.1(b)(5) as it existed in June 2000, or that Blakely possessed substantial "decisionmaking authority" for the campaign, as required under *Christian Coalition*. The inescapable truth is that there is not one single witness statement or document indicating Blakely had that requisite authority on behalf of the Zimmer Committee. See *Christian Coalition*, 52 F.Supp.2d at 97 ("But on these facts, coordination cannot be inferred merely from the fact that the Coalition's voter guide distributor wore two caps.").

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Unable to establish that Blakely himself was an authorized agent of the Zimmer 2000 primary campaign, the GC includes the extraordinary fallback theory that “Fox Media and Jamestown were not separate entities in any meaningful way” and that Fox Media was a mere “front organization” for Jamestown. GC Jamestown Brief at 16:7-9. The argument is so specious that the GC does not even see fit to provide the Commission with the relevant case law showing just how exacting the standard is for piercing the corporate veil under New Jersey law, particularly for two unrelated companies not in a parent/subsidiary relationship.

That omission is understandable, as the law requires an exceptionally stringent showing of “pervasive domination” and “does not allow recovery unless the party seeking to pierce the corporate veil on an alter-ego theory establishes that the controlling corporation wholly ignored the separate status of the controlled corporation and so dominated and controlled its affairs that its separate existence was a mere sham.” *Culbreth v. Amosa (PTY) Ltd.*, 898 F.2d 13, 14-15 (3d Cir. 1990). That demanding standard requires no less than “a threshold showing that the controlled corporation acted robot- or puppet-like in mechanical response to the controller’s tugs on its strings or pressure on its buttons.” *Id.* at 15. Moreover, “New Jersey law requires a plaintiff seeking to recover on an alter-ego theory to show the controlling corporation engaged in fraud or deceit in the manipulation of the controlled corporation.” *Id.* at 14.

Here, as set forth in more detail in the Statement of Relevant Facts, *supra*, Fox Media and Jamestown have never had overlapping ownership or membership, have never shared finances or co-mingled funds, and have never permitted one another access to financial records or confidential client information.³⁶ Bridget Capasso testified to that separation as follows:

³⁶ Indeed, as to the Pillar of Fire advertisements specifically, no one other than Blakely and Sheridan ever had access to the script until minutes before they aired, including the independent media consultant, Megan Jencik, who placed the advertisements with the radio stations.

Jamestown Associates and Fox Media were separate entities and were operated as separate entities. I believed them to be owned by different people and there was no co-mingling of funds as far as I was aware... I do not recall ever discussing the Fox Media account or the EXCEL spreadsheet with Larry Weitzner nor do I recall ever showing him the spreadsheets.

Capasso Aff. ¶ 3. Fox Media used its own distinct vendors on multiple occasions, and had its own separate address, its own letterhead listing that separate address, its own business cards, its own bank accounts, its own cell phone, its own computers and printers, its own furniture, and its own travel and meeting budget. Ms. Capasso testified to those distinct resources as follows:

Tom Blakely had his own desktop computer at the Jamestown office. He had his own email account. To the best of my recollection, when he utilized the services of individuals for Fox Media purposes, they were paid for using Fox Media funds.

Capasso Aff. ¶ 4. Fox Media has maintained its own distinct client base, and has entered business relationships with multiple clients over a six-year period. Fox Media remains a distinct legal entity, as recognized by the State of New Jersey and by the I.R.S. In short, Larry Weitzner and Jamestown Associates have never contributed to, benefited from, or participated in Fox Media in any way, and the GC has failed to produce a single witness statement or document even suggesting the "pervasive domination" and fraud necessary to pierce the corporate veil. *See Culbreth*, 898 F.2d at 14-15. Therefore, neither Tom Blakely nor Fox Media, individually or as "alter-egos" of Jamestown, qualified as "agents" of the Zimmer 2000 primary campaign under the governing law. *See* 11 C.F.R. § 109.1(b)(5) (2000 ed.); *Christian Coalition*, 52 F.Supp.2d at 96-97.

Moreover, even if Blakely were an agent of Jamestown, which he was not, neither Blakely nor Jamestown was an authorized agent of the Zimmer 2000 campaign for the purposes of running advertisements concerning Pappas' Pillar of Fire connection. It is well settled that an agent is in fact authorized to do only "what it is reasonable for him to infer that the principal desires him to do in the light of the principal's manifestations and the facts as he knows or

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should know them at the time he acts.” *Lewis v. Travelers Ins. Co.*, 239 A.2d 4, 8 (N.J. 1968) (citation omitted); *see also Rodriguez v. Hudson County Collision Co.*, 686 A.2d 776, 780 (N.J. Super. 1997) (Apparent authority exists only where “the principal has by his voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business uses, ... is justified in presuming that such agent has the authority to perform the particular act in question.”) (emphasis added) (citations omitted) (ellipses in original). Here, Zimmer could not have been more clear that his staff and his consultants were expressly not authorized to run advertisements referencing the Pillar of Fire. *See* Zimmer Tr. at 96:5-97:14, 101:16-102:10. In fact, even aside from the prohibition on the specific issue, Zimmer testified that his consultants were not authorized to place any media advertising without his review and explicit approval of the content. *See* Zimmer Tr. at 49:3-9, 76:12-19. Thus, while factually Fox Media and Jamestown truly were distinct entities, that distinction is legally irrelevant because neither was an authorized agent of the Zimmer Committee for purposes of running the NJCTR Pillar of Fire advertisements.

B. As an Independent Media Consultant Who Was Not an Agent of the Campaign, Even if Blakely Had Conceived of and Raised Funds For the NJCTR Advertisement – Which He Did Not – Such Actions Would Not Constitute Coordination and Would Not Violate FECA

The GC spends countless pages, and exhausts considerable credibility, attempting in vain to establish that Tom Blakely conceived of, and raised the funds for, NJCTR’s Pillar of Fire advertisements. As recounted in detail in the Statement of Relevant Facts, *supra*, all of the evidence in the case establishes that John Sheridan alone conceived of the advertisements and that Blakely played no part whatsoever in soliciting the funds for their production and airing. *See, e.g.*, Sheridan Tr. at 98:13-102:24; Ferguson Aff. ¶ 3; Blakely Tr. at 246:17-247:3; Zimmer Tr. at 139:10-17. It is worth noting, however, that even aside from the factual inaccuracy of

those allegations, the dispute is entirely irrelevant to the GC's coordination claim. As established in the immediately preceding section, Tom Blakely and Fox Media were not agents of the Zimmer Committee, and therefore even if Blakely had raised the funds for the advertisements and approached NJCTR about airing them -- which he did not -- it still would not have violated FECA as it existed at the time. See 2 U.S.C. § 441b (2000 ed.).

II. The GC Has Failed to Identify A Single Witness Statement or Document Evidencing Any Request or Suggestion by the Zimmer Campaign, or the Requisite Substantial Discussions or Negotiations Between Blakely and the Zimmer Campaign, Regarding the Subject Advertisements

A. The GC's Unsupported Allegations Fall Short of the Exacting Coordination Test Under *Christian Coalition*

FECA, in June 2000, treated coordinated expenditures as a contribution to the candidate. 2 U.S.C. § 441a(a)(7)(B)(i) (2000 ed.). The Commission regulations then in effect provided that any expenditure that did not qualify as an "independent expenditure" shall be a contribution in-kind to the candidate and an expenditure by the candidate, unless otherwise exempted." 11 C.F.R. § 109.1(c) (2000 ed.). FECA, in turn, defined an "independent expenditure" as follows:

The term "independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

2 U.S.C. § 431(17) (2000 ed.). The governing regulations further defined an "independent expenditure" as one "which is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate." 11 C.F.R. § 109.1(a) (2000 ed.). In defining "independent expenditure," the regulations provided the following sub-definition:

Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee

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of the candidate – (i) Means any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication.

11 C.F.R. § 109.1(b)(4) (2000 ed.).

The Commission has considered coordination allegations, in which the coordinated activity purportedly occurred prior to the effective date of the since-repealed 11 C.F.R. § 100.23, under the standards set forth in *Christian Coalition*. *Christian Coalition* was decided August 2, 1999, ten months before NJCTR's Pillar of Fire advertisements were ever conceived, and the stringent constitutional constraints of that decision therefore govern the complaint in this matter. See, e.g., *AFL-CIO v. Federal Election Commission*, 333 F.3d 168, 171 (D.C. Cir. 2003) (Noting *Christian Coalition* "decision narrowing the circumstances under which the Commission could regulate coordination practices under FECA") (emphasis added). The *Christian Coalition* court rejected the FEC's overbroad interpretation of coordination, finding:

This Court fully agrees that the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which the coordination is extensive enough to make the potential for corruption through legislative *quid pro quo* palpable without chilling protected contact between candidates and corporations and unions.

Christian Coalition, 52 F.Supp.2d at 88-89. The restrictive and narrowly-tailored standard was required by the First Amendment, and the court explained:

I take from *Buckley* and its progeny the directive to tread carefully, acknowledging that considerable coordination will convert an expressive expenditure into a contribution but that the spender should not be deemed to forfeit First Amendment protections for her own speech merely by having engaged in some consultations or coordination with a federal candidate. First Amendment clarity demands a definition of "coordination" that provides the clearest possible guidance to candidates and constituents, while balancing the Government's compelling interests in preventing corruption of the electoral process with fundamental First Amendment rights to engage in political speech and political association.

Id. at 91.

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With due regard to the primacy of those First Amendment freedoms, the *Christian Coalition* court held that an expressive expenditure may be considered “coordinated” in only two circumstances. First, the court held that an expressive expenditure “made at the request or the suggestion of the candidate or an authorized agent” could be considered coordinated. *Id.* (emphasis added). Second, in the alternative, the court held:

In the absence of a request or suggestion from the campaign, an expressive expenditure becomes “coordinated” where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication’s: (1) contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) “volume” (e.g., number of copies of printed materials or frequency of media spots).

Id. at 92 (emphasis added).³⁷

It is notable that, in fashioning that strict standard, the *Christian Coalition* court was faced with a set of facts where “the evidence shows, among other things, that the corporation was privy to non-public information about a campaign’s strategies and discussed the corporation’s plans to make campaign-related expenditures in-advance with the campaign.” *Id.* at 86. If there was no coordination under the facts of that seminal case, there certainly can be no coordination here, where the GC has produced no evidence of any discussions between Sheridan/Blakely and Zimmer/Weitzner regarding the subject advertisements let alone “substantial” discussions as to contents, timing, mode, or volume.

B. There Is No Evidence That the Zimmer Committee/Jamestown Requested or Suggested NJCTR’s Pillar of Fire Advertisements

After five years of investigation, the GC has failed to produce any testimony or documents showing that the Zimmer Committee, or even Jamestown as its alleged agent,

³⁷ The court clarified that “[s]ubstantial discussion or negotiation is such that the candidate and the spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.” 52 F.Supp.2d at 92.

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requested or suggested that NJCTR run its Pillar of Fire advertisements. In fact, the only reference in the entire Brief relevant to this first prong of the *Christian Coalition* test is the speculative hypothesis that Weitzner's relationship with Tom Ferguson was such that "an inference can be drawn that Weitzner was involved, directly or indirectly," in solicitation of funds to produce and run the advertisements. GC Jamestown Brief at 21:12-14. That evidentiary failure was inevitable, as the GC's proffered "inference" is categorically false and refuted by the sworn testimony of every witness with personal knowledge. *See* Ferguson Aff. ¶ 3 ("I can categorically state that Larry Weitzner, Tom Blakely or Dick Zimmer did not solicit me for those funds.").

The evidence establishes that NJCTR's John Sheridan, without request or suggestion from anyone, decided to air his well-known "animosity" and ideological opposition to Pappas through a public communication referencing Pappas' widely-reported connection to the Pillar of Fire International Christian Church. The GC itself concedes that Sheridan "had tremendous animosity towards Pappas," that "Pappas had publicly belittled HANJ and also betrayed the organization through tax votes made during his tenure as a Freeholder and as a member of Congress," and that "HANJ tried to defeat Pappas in the 1996 primary and general elections and even went so far as to give his Democratic opponent 'everything we had on him.'" GC Jamestown Brief at 15:5-11. Sheridan testified repeatedly that NJCTR conceived of the Pillar of Fire advertisements before he ever contacted media consultants, including Jamestown and Fox Media, for assistance in producing and placing them. *See* Sheridan Tr. at 98:15-19, 100:15-16, 102:13-24. Blakely and Weitzner's testimony confirms that sequence. *See* Blakely Tr. at 150:15-20, 152:6-22; Weitzner Tr. at 175:4-10.

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With the evidence soundly refuting any allegation that the Zimmer Committee or Jamestown suggested or requested that NJCTR run advertisements concerning Pappas, the GC nevertheless proffers an “inference” that Weitzner must have been tangentially involved by soliciting funds for their production and placement. For the sake of legal argument only, beyond the utter lack of evidentiary support for the GC’s misguided fundraising theory, mere participation in fundraising would be wholly irrelevant to the question of requesting or suggesting an expressive expenditure under the *Christian Coalition* test as a matter of law. Soliciting funds for a specific project necessarily would follow temporally the project’s conception, thus any alleged participation in that subsequent fundraising bears no relation to the question of who initially suggested or conceived of the advertisement. Moreover, as set forth in detail in the Statement of Relevant Facts, *supra*, no witness has stated that Weitzner or anyone at Jamestown solicited funds for NJCTR or requested that a third party solicit funds for NJCTR, and no document evidences any such solicitation.

Indeed, the extent of the GC’s “evidence” is donor Tom Ferguson’s statement that Weitzner was “among those individuals who could have gotten through to him directly” if he had telephoned. GC Jamestown Brief at 21:2-3. The chain of “inferences” between that irrelevant hypothetical statement and a required finding that the actual radio advertisements were made at the Zimmer Committee or Jamestown’s request or suggestion under *Christian Coalition* is too attenuated and broken even to articulate, which explains the GC’s failure even to attempt to do so. Furthermore, each and every witness with knowledge has categorically denied that Zimmer, Weitzner, or Blakely ever solicited funds for the NJCTR advertisements. *See* Ferguson Aff. ¶ 3; Blakely Tr. at 246:17-247:3; Zimmer Tr. at 139:10-17; Weitzner Tr. at 200:1-203:9. Ferguson himself, who is not a Respondent, testified: “Moreover, while I do not recall who solicited me

for that contribution, I can categorically state that Larry Weitzner, Tom Blakely or Dick Zimmer did not solicit me for those funds.” Ferguson Aff. ¶ 3. The GC has offered no evidence to dispute that dispositive testimony.

There is no testimonial or documentary evidence, either direct or inferential, that the NJCTR Pillar of Fire advertisements were “made at the request or the suggestion of the candidate or an authorized agent,” therefore the GC has failed to make even a minimal proffer of coordination under the first prong of the *Christian Coalition* test. 52 F.Supp.2d at 91.

C. There Is No Evidence That the Zimmer Committee/Jamestown Had Substantial Discussions or Negotiations With NJCTR, Fox Media, or Blakely Regarding the Content, Timing, Location, or Volume of NJCTR’s Pillar of Fire Advertisements

In the absence of a request or suggestion from the campaign, the GC must show actual control or “substantial discussion or negotiation between the campaign and the spender” over the communication’s contents, timing, location, mode, intended audience, or volume. *Id.* at 92. Faced with a complete dearth of evidence of any such communication, the most that the GC can offer is an assertion that the layout of Jamestown’s offices “made it unlikely that Fox Media’s existence and the nature of its activities were not a matter of general knowledge amongst those who worked in that office.” GC Jamestown Brief at 17:7-10. That statement is worth careful scrutiny, for it is truly remarkable what the GC is asking of the Commission. Unable to prove the existence of the required discussions or negotiations over the specifics of the advertisements, and indeed unable to prove that anyone at Jamestown even had knowledge that Fox Media was engaged in a project for NJCTR, the GC is attempting to establish probable cause for coordination with the bare assertion that it is “unlikely” that Blakely’s project was “not a matter of general knowledge.” *Id.* The *Christian Coalition* court made it clear that even a campaign’s actual knowledge of a corporation’s expressive expenditures, without more, is insufficient to

establish coordination, much less bare conjecture that it is unlikely that the campaign did not have "general" knowledge" about "the nature of its activities." See 52 F.Supp.2d at 93 (Court held that even the corporation's outright "announcement to the campaign that it plans to" make an expressive expenditure "is not enough to be coordination. Coordination requires some to-and-fro between corporation and campaign on these subjects.").

Patently insufficient to establish coordination even if the GC's conjecture were true, the fact is that Fox Media's production and placement of advertisements for NJCTR was not generally known at Jamestown, and no Jamestown personnel had any input into their contents, timing, mode, or volume. Larry Weitzner testified specifically that the first time he ever knew anything about NJCTR's Pillar of Fire advertisements was after they had already aired in early June 2000.³⁸ See Weitzner Tr. at 175:4-10. Bridget Capasso testified that it is, in fact, very likely that those in Jamestown's offices would have no knowledge of one another's activities. See Capasso Aff. ¶ 6. Thus, refuting the GC's mischaracterization of her statement, Ms. Capasso testified:

I could not be certain who, if anyone, would know exactly what I was working on at any given moment nor would I always know what they were working on. The office atmosphere was fast paced, high anxiety offering little, if any, time to discuss daily activities. Therefore a statement that people in the office had general knowledge of the projects being worked on in the office would be inaccurate.

³⁸ In typically conclusory fashion, the GC attempts to implicate Weitzner by insinuation, contending that the radio advertisement's script was "virtually identical" to the Bennett letter. GC Jamestown Brief at 25:8-12. As noted in detail in the Statement of Relevant Facts, *supra*, a simple review of the text of the two communications reveals there is in fact very little similarity of either content or intent. More importantly, mere congruence of content is insufficient as a matter of law to establish coordination. *Christian Coalition*, 52 F.Supp.2d at 91-92.

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Id. (emphasis added). Indeed, for NJCTR's Pillar of Fire advertisements specifically, no one other than Tom Blakely and John Sheridan ever had access to, or knowledge of, the script, including Megan Jencik. *See* Blakely Tr. at 162:20-164:18.

Fox Media used Jencik, a well-regarded independent media buyer, to place the completed NJCTR advertisements with the appropriate radio stations. Throughout its Briefs, the GC mischaracterizes Jencik's independent contractor status by portraying her as Jamestown "personnel," a Jamestown "employee," or as "Jamestown's media buyer." *See* GC Jamestown Brief at 26, 28, 33, 35. Under New Jersey law, as elsewhere, there is a well-settled distinction between a "servant" and an "independent contractor." *See AT&T v. Winback and Conserve Program, Inc.*, 42 F.3d 1421, 1435 (3d Cir. 1994). Jencik, while she maintained separately-leased office space at Jamestown and consulted for Jamestown on various projects, remained entirely independent and served as a media buyer for multiple clients, of which Jamestown and Fox Media were only two. Bridget Capasso testified dispositively as to Jencik's independent contractor status: "To the best of my recollection, I was Jamestown's only employee. The office also housed independent graphic artists and media personnel. As needed, or required, the services of these independent contractors were utilized." Capasso Aff. ¶ 6. Blakely and Weitzner also confirmed that Jencik was an independent contractor and not Jamestown personnel.³⁹ *See* Weitzner Tr. at 43:18-45:18; Blakely Tr. at 50:5-52:1.

Because a customer lacks general control over an independent contractor, an agency relationship can arise between the two only as to the specific task for which the independent contractor was retained, and only where the principal consents to have the contractor act on his

³⁹ Others, such as Full House Productions, were not only independent but in fact were outside vendors with literally hundreds of clients. While such outside vendors could never conceivably be considered "agents" of Jamestown, it is noteworthy that Jamestown did not use Full House Productions on any of its projects in 2000 or 2001, including the Zimmer 2000 campaign.

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behalf and is “controlling and directing” the acts of that agent on that task. *Sears Mortgage Corp. v. Rose*, 634 A.2d 74, 79 (N.J. 1993). There is no evidence that Weitzner or anyone at Jamestown even knew that Jencik placed the NJCTR advertisements for Fox Media until after they began airing, let alone that Weitzner controlled or directed Jencik’s actions on that task. *See* Weitzner Tr. at 185:10-186:18; Blakely Tr. at 164:4-18. Tom Blakely retained Jencik for the project on behalf of Fox Media, gave her the completed radio advertisements, gave her instructions as to their placement, and promptly paid her \$2,500 for her services from Fox Media’s bank account. Neither Weitzner nor anyone at Jamestown had anything to do with Jencik’s performance of those duties for Fox Media, therefore the independent contractor Jencik was not “Jamestown personnel” and was not acting as a Jamestown agent when she placed the NJCTR advertisements for Fox Media.

There is no testimony nor document showing the requisite control or “substantial discussion or negotiation between the campaign and the spender” over the Pillar of Fire advertisements’ contents, timing, location, mode, intended audience, or volume. As with the first prong, the GC cannot establish coordination under the second prong of the *Christian Coalition* test. 52 F.Supp.2d at 92.

CONCLUSION

After a five-year investigation, there is not one single witness statement or document establishing that the NJCTR Pillar of Fire advertisements were coordinated with the Zimmer 2000 campaign. To the contrary, all of the direct testimonial and documentary evidence shows that the advertisements were not coordinated with the Zimmer Committee or with Jamestown Associates. Indeed, after years of full-blown discovery, depositions, and aggressive witness interviews, the GC has been unable to produce any evidence whatsoever, relying instead on baseless “inferences” and conjecture. Even that tangled web of speculation is crafted of

carefully paraphrased witness statements to which the Respondents have been denied access, and thus unquestionably will unravel even further if Respondents are given the opportunity to cross-examine those witnesses and to use their statements in context, including all exculpatory testimony which the GC thus far has kept secret. In short, the GC's case for coordination, brought under a repealed statute and repealed regulations, will never again be as strong as presented in these Briefs, and even that one-sided presentation falls far short of establishing probable proof of violations. For the reasons set forth above, Respondents state that there is no probable cause to believe that any of the Respondents have violated the FECA, or any other statute or regulation over which the Commission has jurisdiction, and respectfully request that the Commission accordingly find no probable cause and order termination of the Commission proceedings.

Respectfully submitted,

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Counsel for Respondents

Dated: August 4, 2005

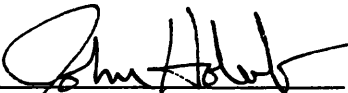
BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Jamestown Associates, Larry Weitzner,) MUR 5026
Fox Media Consulting LLC, Tom Blakely,)
Zimmer 2000, Inc., and Maria Chappa, in)
her official capacity as treasurer.)

AFFIDAVIT OF JOHN HOLUB

I, John Holub, being duly sworn according to law on my oath, depose and say as follows:

1. I was the Campaign Manager for Zimmer 2000 and was in charge of the day-to-day operations of the primary and general campaign. Neither Larry Weitzner nor anyone from Jamestown Associates was involved in the day-to-day activities of the Zimmer 2000 campaign.
2. To the best of my recollection, Matthew Cherney was recommended as Dick Zimmer's scheduler and driver by Adam Geller, not by Tom Blakely.
3. To the best of my knowledge, Tom Blakely did not do any work for the Zimmer 2000 primary campaign. Tom Blakely did some work on the Zimmer 2000 general election. When I stated in my June 2004 answer to interrogatories to the FEC that Tom Blakely provided services to the campaign, I was referring to his services during the general election. Indeed, even during the general election, my primary contact with respect to campaign consultants was with Larry Weitzner and I had very little interaction with Tom Blakely.
4. I recall discussing with Larry Weitzner Senator John Bennett's letter of April 2000 regarding Mike Pappas. To the best of my recollection, Tom Blakely did not work on that letter. To the best of my recollection, I discussed with Senator Bennett the mechanics of producing the letter, such as providing his letterhead and signature.


John Holub

Date: ~~July 21, 2005~~ 8/1/05

STATE OF NEW JERSEY)
COUNTY OF MERCER) SS.

Subscribed and sworn to
Before me this 8/1/05
Day of July, 2005


(Notary Public of New Jersey)

My commission expires on 02/25, 2007

JOHN E. SMART
NOTARY PUBLIC
NEW JERSEY

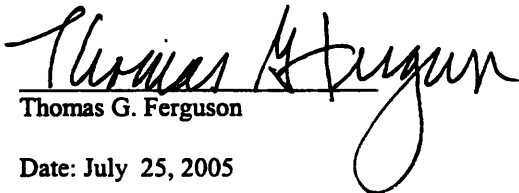
BEFORE THE FEDERAL ELECTION COMMISSION

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Zimmer 2000, Inc., and Maria Chappa, in)
her official capacity as treasurer.)

AFFIDAVIT OF THOMAS G. FERGUSON

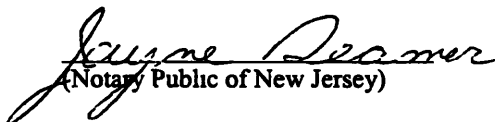
I, Thomas G. Ferguson, being duly sworn according to law on my oath, depose and say as follows:

1. I have reviewed certain statements purportedly made by me that were contained in a brief submitted in June 2005 by the FEC's General Counsel's Office in the above-entitled matter. I submit this affidavit to correct certain misstatements contained in that brief.
2. While I have no specific memory regarding the solicitation that caused me to write a check to Citizens for Tax Reform on May 31, 2000 for \$50,000, it was my understanding that the funds would be used in an issue campaign in support of tax reform. I can state without any doubt that the contribution was not intended or expected to be passed through to any candidate, including my son who at the time was running for Congress. The only benefit for my son could have been the articulation of a position with which he agrees.
3. Moreover, while I do not recall who solicited me for that contribution, I can categorically state that Larry Weitzner, Tom Blakely and Dick Zimmer did not solicit me for those funds. Those individuals have never asked me to give money to a political cause, and I would remember if they had solicited me with respect to the donation to Citizens for Tax Reform.
4. I did not host a reception in Washington, D.C. during the 2004 presidential inauguration or establish a guest list for any such reception
5. I do not have a close relationship with Larry Weitzner or Tom Blakely. I have met them only occasionally at meetings relating to my son's campaign strategy.


Thomas G. Ferguson
Date: July 25, 2005

STATE OF NEW JERSEY)
) SS
COUNTY OF MORRIS)

Subscribed and sworn to
Before me this 25th
Day of July, 2005


(Notary Public of New Jersey)

JOYCE M. DEANER
A Notary Public of New Jersey
My Commission Expires July 13, 2010

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of
Jamestown Associates, Larry Weitzner,)
Fox Media Consulting, LLC, Tom Blakely,) MUR026
Zimmer 2000, Inc, and Maria Chappa, in her)
official capacity as treasurer.)

Affidavit of Bridget Capasso

I, Bridget Capasso, being duly sworn according to law on my oath, depose and say as follows:

1. I was comptroller at Jamestown Associates during the 2000 election cycle. I have reviewed certain statements purportedly made by me that were contained in a brief submitted in June 2005 by the FEC's General Counsel's Office in the above-entitled matter. I submit this affidavit to correct certain misstatements contained in that brief.

I would also like it duly noted that at the time of my interview with the FEC's General Counsel's Office I did make it known to them that I was under the influence of pain killer medication just recently recouping from a minor surgical procedure. After which, the investigator and counsel discussed whether or not to proceed or postpone my interview. They decided to proceed.

Without looking at my resume, I am uncertain as to my starting date with Jamestown Associates, I believe it to have been October, 1998. I do know that I worked their for three years.

2. I did tell the investigators that Tom Blakely held the title of Vice President of Jamestown Associates and that I considered him to be second in line at Jamestown after Mr. Weitzner. But I do not recall whether Tom Blakely held the title of Vice President during the 2000 election cycle.

3. Jamestown Associates and Fox Media were separate entities and were operated as separate entities. I believed them to be owned by different people and there was no co-mingling of funds as far as I was aware.

With regards to Fox Media, when the bank statements came in for Fox Media, Tom Blakely would give them to me to post them on an EXCEL spreadsheet that I created. I wrote some checks for Blakely's signature and I believe Tom Blakely wrote some checks on his own. I also believe that we both (Capasso and Blakely) made deposits. I do not recall ever discussing the Fox Media account or the EXCEL spreadsheet with Larry Weitzner nor do I recall ever showing him the spreadsheets.

4. Tom Blakely had his own desktop computer at the Jamestown office. He had his own email account. To the best of my recollection, when he utilized the services of individuals for Fox Media purposes, they were paid for using Fox Media funds.

5. I assumed that my limited work with Fox Media was to record bank transactions, write checks and make bank deposits as instructed and keep the spreadsheet and make it available to Tom Blakely.

6. To the best of my recollection, I was Jamestown's only employee. The office also housed independent graphic artists and media personnel. As needed, or required, the services of these independent contractors were utilized. I could not be certain who, if anyone, would know exactly

what I was working on at any given moment nor would I always know what they were working on. The office atmosphere was fast paced, high anxiety offering little, if any, time to discuss daily activities. Therefore a statement that people in the office had general knowledge of the projects being worked on in the office would be inaccurate.

7. The FEC brief represented that I stated that a John Sheridan telephoned Tom Blakely at Jamestown during the 2000 primary. I would like to clarify this statement. I am unclear on the time frame, but I can recall that a John Sheridan did call the Jamestown office for Mr. Blakely. I do not remember exactly how many times he called and I can't recall whether he actually spoke with Mr. Blakely when he called nor would I be privy to the topic of any conversation, if one had occurred. In any event, I am aware of two individuals with the name of John Sheridan who may have called, I am not able to differentiate their voices and would not be able to pick either out of a crowd.

8. I would also like it noted that during my FEC's telephone interview several months ago, I felt it necessary to inform the investigators that they were twisting my words and saying things that I just did not say. I informed them that if they proceeded in this fashion that "our interview would be over for now and that the next time that they spoke with me would be in the presence of an attorney".

Bridget Capasso
Bridget Capasso

August 1st, 2005

State of New Jersey
County of Mercer

Subscribed and sworn to before me this
1st day of August, 2005

Margaret H. Payne
Notary Public of New Jersey

My commission expires on 4/3/08

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
Jamestown Associates, Larry Weitzner,) MUR 5026
Fox Media Consulting LLC, Tom Blakely,)
Zimmer 2000, Inc., and Maria Chappa, in)
her official capacity as treasurer.)

AFFIDAVIT OF MATTHEW J. CHERNEY

I, Matthew J. Cherney, being duly sworn according to law on my oath, depose and say as follows:

1. I was scheduler and driver for the Zimmer 2000 campaign.
2. I got the job with Zimmer 2000 through the recommendation of Adam Geller, for whom I had worked on a prior campaign.
3. To the best of my recollection, I met with Adam in December 1999 to discuss the position. Also present for at least part of that discussion was Tom Blakely. At that meeting, Adam Geller informed me of the duties and salary of the position, not Tom Blakely.
4. Sometime after that meeting, Adam Geller called me and said that if I was still interested in the job I should report to the Zimmer 2000 offices at a certain date and time. I believe it was early January 2000.
5. No one ever told me that Tom Blakely hired me for the Zimmer 2000 job and I never told the FEC investigators that Tom Blakely hired me for that job. I don't know who in the Zimmer 2000 organization made the decision to hire me.

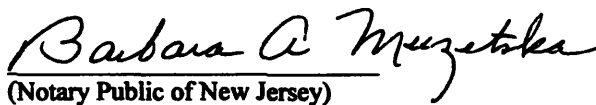
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Matthew J. Cherney

Date: July 28 2005

STATE OF NEW JERSEY)
COUNTY OF Essex) SS:

Subscribed and sworn to
Before me this 28
Day of July, 2005


(Notary Public of New Jersey)

My commission expires on July 18, 2007

Barbara A. Muzetka
Notary Public Of New Jersey
My Commission Expires July 18, 2007

4