

BEFORE THE FEDERAL ELECTION COMMISSION

SECRETARY

2005 SEP 26 P 2:18

SENSITIVE

In the Matter of)

Zimmer 2000, Inc. and Maria Chappa,)

MUR 5026

in her official capacity as treasurer,)

Larry Weitzner, Jamestown Associates LLC,)

Tom Blakely, and Fox Media Consulting LLC)

GENERAL COUNSEL'S REPORT #3

I. ACTIONS RECOMMENDED

(1) Find probable cause to believe that Larry Weitzner and Jamestown Associates LLC knowingly and willfully violated 2 U.S.C. § 441b by accepting prohibited in-kind contributions on behalf of Zimmer 2000, Inc.; (2) Find probable cause to believe that Tom Blakely and Fox Media Consulting LLC knowingly and willfully violated 2 U.S.C. § 441b by accepting prohibited in-kind contributions on behalf of Zimmer 2000, Inc.; (3) Find probable cause to believe that Zimmer 2000, Inc. and Maria Chappa, in her official capacity as treasurer, violated 2 U.S.C. §§ 441b and 434(b) by knowingly receiving prohibited in-kind contributions and failing to report these contributions; (4) Approve the attached conciliation agreements.

II. BACKGROUND

This matter stems from a complaint alleging that Zimmer 2000, Inc. ("Zimmer 2000" or "Zimmer Committee"), Jamestown Associates LLC ("Jamestown") and its principal Larry Weitzner, Fox Media Consulting LLC ("Fox Media") and its principal Tom Blakely coordinated a series of radio and direct mail advertisements intended to influence the 2000 Republican primary for New Jersey's 12th congressional seat. As set forth in the General Counsel Briefs ("GC Briefs"), which are incorporated herein by reference, the advertisements sought to link Dick Zimmer's opponent in the primary, Michael Pappas, to the Ku Klux Klan ("KKK"). The

1 advertisements, costing approximately \$70,000, were ostensibly paid for by New Jersey Citizens
2 for Tax Reform ("NJCTR"), a non-profit corporation that had no apparent ties to Zimmer 2000.
3 The investigation, however, revealed that, in fact, agents of the Zimmer Committee –
4 Jamestown, Weitzner, Fox Media and Blakely – orchestrated the funding, production and
5 distribution of the subject advertisements in such a way as to conceal any connection between
6 Zimmer 2000 and these negative advertisements. The scheme involved Weitzner and Blakely
7 persuading their friend, NJCTR founder and spokesman John Sheridan, to have NJCTR sponsor
8 the advertising campaign. At the time, however, NJCTR had virtually no money. So, with the
9 assistance of at least one Jamestown client, Weitzner and Blakely raised \$90,000 for NJCTR
10 from four donors. NJCTR then paid \$75,000 to Fox Media, which used \$70,000 to produce and
11 distribute the anti-Pappas advertisements.¹

12 The anti-Pappas advertisements were one aspect of the Zimmer Committee's effort to
13 press Pappas to withdraw from the primary race. After it became clear that Pappas, who was
14 attracting support from key members of the national Republican leadership, was actually making
15 headway in the primary despite his inability to raise a lot of money, respondents started
16 persuading third-parties to encourage Pappas's exit from the race. For purposes of this matter,
17 the most significant of these efforts involved a former colleague of Zimmer's, New Jersey
18 Republican State Senate Majority Leader, John O. Bennett.² Zimmer asked him to sign a letter
19 written by Weitzner and his Committee staff, requesting that Pappas withdraw from the primary
20 for a number of reasons. One of the reasons cited in this letter was that Pappas was linked to the

¹ Copies of the deposition transcripts for Dick Zimmer, Larry Weitzner, Tom Blakely, John Sheridan and Jim Treffinger are available to the Commission for review as PDF files in the DOCS Open folder for MUR 5026.

² Previously, several prominent Republican members of Congress asked Pappas to withdraw from the race for the good of the party. That effort failed.

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1 KKK through his employment at the Pillar of Fire International Christian Church ("Pillar of
2 Fire"), whose founder had aligned herself with the KKK during the early part of the last century.
3 That specific information came from the Zimmer 2000 opposition file, which Zimmer himself
4 claimed he did not want to use as part of his offensive strategy. The Bennett letter was sent
5 directly to Pappas and spread amongst the New Jersey political cognoscenti via the website
6 politicsnj.com, but did not have its desired effect. Pappas filed his primary papers and stayed in
7 the race.

8 The press did not discover that the Zimmer Committee was behind the Bennett letter.
9 And respondents subsequently used the information contained in the Committee's opposition file
10 in the aforementioned radio and direct mail campaign in an effort to suppress Pappas's vote in
11 the June 6, 2000 primary election. To effectuate the scheme, which necessarily required
12 concealing the involvement of the Committee and its consultant Jamestown, respondents used
13 NJCTR, whose founder and spokesman, John Sheridan, had longstanding connections to
14 Zimmer, Weitzner and Blakely, as the sponsoring vehicle for the anti-Pappas advertisements.

15 Since NJCTR did not have the resources necessary to fund the advertising campaign,
16 Weitzner and Blakely raised the funds from donors to two of Jamestown's other big
17 election-year clients, Mike Ferguson and Jim Treffinger. In total, Weitzner and Blakely secured
18 \$90,000 in donations to NJCTR from four donors who had never heard of the organization and
19 were never informed of how their money was going to be used. NJCTR paid \$75,000 to Blakely
20 at Fox Media, out of which approximately \$70,000 was used on the production and distribution
21 of the anti-Pappas advertisements.

22 The anti-Pappas advertisements were produced and distributed through Fox Media, a
23 front company for Jamestown operated by Blakely. Respondents used Fox Media so that the

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1 activity could not be traced back to the Zimmer Committee and/or Jamestown, the Zimmer
2 Committee's primary political consultant. The evidence demonstrates that Blakely carried out
3 the production and distribution of the advertisements out of Jamestown's offices, using
4 Jamestown's resources, including a number of its staff and usual vendors. The radio
5 advertisements, which were broadcast from June 1, 2000, through the day of the primary
6 election, June 6, 2000, echoed the Pillar of Fire and KKK attack message of the Bennett letter.³
7 According to Sheridan and information provided by Fox Media, respondents were likely also
8 responsible for issuing a district-wide mail piece featuring virtually the same content as the radio
9 advertisements linking Pappas with the KKK.⁴

10 As a result of this coordinated activity, respondents violated 2 U.S.C. § 441b(a). Section
11 ~~441b(a) prohibits corporations such as NJCTR from making contributions for federal elections~~
12 from their corporate accounts. Section 441b(a) also makes it unlawful "for any candidate,
13 political committee, or other person knowingly to accept or receive" any corporate contribution.
14 Weitzner, Jamestown, Blakely, and Fox Media were agents of the Zimmer Committee. In their
15 capacity as agents of the Zimmer Committee, they orchestrated a plan to fund, produce and
16 distribute the anti-Pappas advertisements. Weitzner and Blakely did so for the express purpose

³ One station refused to air the advertisement based on its inflammatory content and instead ran a CTR-sponsored advertisement critical of one of Pappas's tax votes, the substance of which was substantially similar to the content of a direct mail piece generated by the Zimmer campaign.

⁴ Mike Pappas told us that someone showed him a copy of one of the mailers that he believes was connected with the radio advertisements. Blakely testified that he did not recall doing it although he provided records that he believed accounted for it. Blakely Tr. at 157, 158. Fox Media's bank statements show disbursements to direct mail vendors, including disbursements for postage. Early in the investigation of this matter, Sheridan told us that Fox Media was responsible for producing the anti-Pappas radio advertisements as well as a direct mail piece. However, Sheridan's position on this issue became less certain once he discussed the investigation at length with Blakely. In his answers to interrogatories Sheridan stated in pertinent part that "I believe there were radio ads and possibly some fliers or postcards, although I am not certain with the passage of time." See Response to Subpoena to Produce Records and Order to Submit Written Answers, Response 4b. Sheridan then testified that he might have hired Fox Media to do direct mail, but could not recall. Sheridan Tr. at 167.

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1 of benefiting Zimmer's electoral prospects. Pursuant to that plan, these agents arranged for
2 \$90,000 to be donated to NJCTR, a non-profit corporation. NJCTR then paid \$75,000 to Fox
3 Media, and Fox Media acting through Blakely, spent approximately \$70,000 producing and
4 distributing the anti-Pappas advertisements. Therefore, Weitzner and Blakely accepted at least
5 \$70,000 worth of corporate in-kind contributions from NJCTR on behalf of Zimmer 2000 in
6 violation of 2 U.S.C. § 441b(a). And, the Zimmer Committee also accepted those corporate in-
7 kind contributions from NJCTR in violation of 2 U.S.C. § 441b(a).

8 Weitzner and Blakely took deliberate actions to conceal the Zimmer Committee's
9 participation in the coordinated activity, including but not limited to: funding the anti-Pappas
10 advertisements through means they thought untraceable; presenting the anti-Pappas
11 ~~advertisements as a production of Fox Media; taking Jamestown's website off-line after the press~~
12 linked Jamestown's media buyer to the anti-Pappas advertisements; misleading the press
13 regarding the media buyer's connection to both Zimmer 2000 and Jamestown; and issuing Fox
14 Media checks after the fact to Blakely and to Jamestown's media buyer. As detailed in the GC
15 Briefs, these factors leads to the conclusion that Weitzner and Blakely deliberately coordinated
16 the activity and therefore knowingly and willfully violated 2 U.S.C. § 441b(a) by accepting
17 corporate in-kind contributions on behalf of the Zimmer Committee.

18 In their Reply Brief, respondents argue that the evidence presented in the GC Briefs that
19 Blakely and/or Fox Media were agents of Zimmer 2000 or that the anti-Pappas advertisements
20 were the product of respondents' coordinated activity is legally insufficient. Respondents assert
21 ~~that neither Blakely nor Fox Media can be considered agents of the campaign because they were~~
22 not empowered to make decisions on behalf of Zimmer 2000 or authorized to make expenditures
23 for the campaign. Further, respondents argue that the facts fail to meet the *Christian Coalition*

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1 standard for coordinated activity, which would require actual evidence that the subject
2 ~~advertisements were produced at the request or suggestion of the Zimmer Committee or resulted~~
3 ~~from substantial discussions or negotiations between the Zimmer Committee and its agents with~~
4 the sponsoring organization.

5 ~~As discussed below, however, respondents do not present any arguments or any new facts~~
6 that would refute the conclusion that respondents coordinated the subject anti-Pappas
7 advertisements to benefit the Zimmer Committee in violation of the Act. Accordingly, this
8 Office recommends that the Commission find probable cause to believe that Larry Weitzner,
9 Jamestown Associates LLC, Tom Blakely and Fox Media Consulting LLC knowingly and
10 willfully violated 2 U.S.C. § 441b by accepting prohibited in-kind contributions on behalf of
11 ~~Zimmer 2000 and find probable cause to believe that Zimmer 2000 and Maria Chappa, in her~~
12 official capacity as treasurer, violated 2 U.S.C. §§ 441b and 434(b) by knowingly receiving
13 prohibited in-kind contributions and failing to report these contributions.

14 III. ANALYSIS

15 In this section we detail the key elements that respondents fail to deny or adequately
16 challenge, those facts and issues that are still in dispute, as well as the evidence, direct and
17 indirect, demonstrating that respondents coordinated the anti-Pappas advertisements in violation
18 of 2 U.S.C. § 441b. Respondents do not challenge that Jamestown and Weitzner served as
19 Zimmer 2000's agents during the 2000 primary period and in this position played a pivotal role
20 in the formulating and executing certain campaign strategies, including the Bennett letter.
21 ~~Further, the Respondents do not deny that candidate Zimmer initiated the Bennett letter and~~
22 supervised his Committee staff and Weitzner who drafted and distributed it. Finally, respondents
23 do not even attempt to provide any plausible alternative explanation as to how NJCTR, a non-

1 profit organization unknown to the donors, raised the \$90,000 from them that it used to sponsor
2 the anti-Pappas advertisements.

3 Respondents, however, deny that Blakely and Fox Media were agents of Zimmer 2000.
4 They also dispute the notion that Fox Media served as a front for Jamestown, claiming instead
5 that Fox Media was a distinct and independent entity. In addition, respondents assert that the
6 association among Pappas, the Pillar of Fire and the KKK was well known in 2000 and deny
7 therefore that respondents had any motive to generate the anti-Pappas advertisements.

8 Respondents also deny that after the anti-Pappas advertisements attracted press attention, they
9 took certain deliberate actions to distance Zimmer 2000 or Jamestown from Jencik, who had
10 placed the advertisements on behalf of Fox Media.

11 ~~Nonetheless, the conclusion respondents coordinated the anti-Pappas advertisements on~~
12 behalf of the Zimmer Committee is supported by direct and circumstantial evidence.

13 Respondents' motivation to win the 2000 primary propelled them into using third - parties and
14 negative information they had assembled in their opposition research file to attack Pappas,
15 linking him to the KKK through his employment with the Pillar of Fire. They carried out the
16 anti-Pappas advertising campaign starting with a request Blakely made of his friend Sheridan
17 that NJCTR participate in the scheme, by arranging donations to NJCTR to fund the project, and
18 they maintained total control of the details of the production and distribution of the advertising
19 campaign itself.

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A. Respondents Admit or Fail to Challenge Essential Components of the Coordinated Activity

1. Jamestown and Weitzner Served as Zimmer 2000's Agents During the Primary Campaign

Respondents do not dispute that Weitzner and his political consulting firm Jamestown

were agents of the Zimmer campaign, RB at 28, and fail to challenge seriously Jamestown's

unique and pivotal role in Zimmer's bid to seek re-election. They attempt to argue that

Jamestown was merely an "outside consultant" that happened to share separately leased office

space with the Zimmer campaign, but that is inconsistent with the evidence.⁵

RB at 8, 9. Such statements ignore the fact that Jamestown provided Zimmer 2000 with more

professional services than any other vendor and that the Committee was *headquartered* in

~~Jamestown's offices at two different locations throughout the duration of the campaign.~~⁶

With this arrangement, Zimmer 2000 had ready access to its lead consultant and all of its

resources. See Weitzner Tr. at 109. Indeed, most of Jamestown's staff participated in the

Zimmer primary campaign – including Weitzner who served as lead consultant, Jamestown vice

president and independent consultant Blakely, media buyer Megan Jencik, and its graphic artists

⁵ Respondents assert that Jamestown shared "separately leased office space" with its own consultants, like Blakely and Jencik, as well as Zimmer 2000 and Pappas's consultant David Millner. RB at 8. Weitzner and Blakely conceded, however, that Jamestown's independent consultants did not pay rent nor contribute to overhead, such as the utilities. Weitzner Tr. at 56, 57; Blakely Tr. at 83. Jamestown comptroller Capasso concurred, stating definitively that independent consultants Blakely and Adam Geller did not pay rent. With respect to Zimmer 2000, the committee's disclosure reports do not list any separate disbursements for rent until its operations moved along with Jamestown's to Lawrenceville, New Jersey. According to Capasso, Millner, who did consulting work for the Pappas campaign, occupied the second floor at 199 Nassau Street in Princeton, New Jersey, while Jamestown occupied the first floor. See also Weitzner Tr. at 80. At some point during the primary election period Millner moved his operations elsewhere. See Mike Pappas for Congress 2000 July Quarterly Report.

⁶ Approximately half of the total amount of money disbursed by Zimmer 2000 between February 9, 1999 and June 6, 2000, the date of the primary, was paid to Jamestown (\$441,113.19 out of \$866,019.73). See Zimmer 2000's: 1999 Mid-Year Report, 1999 Year-End Report; 2000 April Quarterly Report; and 2000 12-Day Pre-Primary Report.

1 and media production resources.⁷ During the general election, all of these resources

2
3 were working on the campaign. See Weitzner Tr. at 109.

4 2. Respondents Admit that Zimmer 2000 and Jamestown Generated the Bennett
5 Letter

6
7 Respondents concede that the Zimmer Committee and its campaign consultants at
8 Jamestown were behind the creation and distribution of the Bennett letter. Notwithstanding
9 Zimmer's testimony that he essentially forbade Weitzner and campaign manager John Holub
10 from using information in the committee's opposition research file relating to Pappas's
11 connection to the Pillar of Fire during the primary campaign, see Zimmer Tr. at 91, 92, 96, 97,
12 101, 102, he approved the use of this information in the Bennett letter. Respondents do not
13 contest that Zimmer contacted Bennett to secure his cooperation on the project, which (according

7 Respondents state that Blakely and media buyer Megan Jencik were merely "outside vendors who serviced Jamestown among dozens of clients." RB at 9, 25. Respondents' assertion with respect to Jencik, *id.*, is contradicted by Jencik's statements to us. According to Jencik, she was a professional tennis player, who started working at Jamestown during her off-season. Jencik stated that during the relevant time period the only other "consulting work" she did besides serving as Jamestown's media buyer were two instances where she stuffed envelopes for fundraising events. Jencik did not routinely work for multiple clients and did not seek out a position with the Zimmer campaign. Instead, Weitzner "recommended" that she work for the Zimmer campaign because, at that particular time, there was not enough work to keep her fully occupied at Jamestown.

With respect to Blakely, the evidence is that his only "client" during the relevant time period was Jamestown. Blakely worked on a number of political campaigns that were billed as Jamestown clients, like those of Dick Zimmer, Mike Ferguson and Jim Treffinger. Respondents' counsel refused to permit Blakely to identify his other clients at his deposition, but agreed to provide a complete list later. Then respondents' other counsel refused to produce the information in response to a follow-up letter, in part because this information was "not conceivably relevant to the claims and defenses at issue in this matter." Blakely Tr. at 39, 40, 47, 160; letter from Patton Boggs, dated May 2, 2005. Clearly a list of Blakely's "other clients" would be probative given that one of respondents' key defenses is that Blakely, as an independent contractor, serviced a client list separate and distinct from Jamestown's. Based on respondent's deliberate refusal to provide this information, it is reasonable to infer that as an independent consultant Blakely had only one client, and that client was Jamestown. The adverse inference rule provides that "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *International Union (UAW) v NLRB*, 459 F.2d 1329, 1336 (D.C. Cir 1972); see also, *Arvin-Edison Water Storage Dist. v Hodel*, 610 F. Supp. 1206, 1218 n.41 (D.D.C. 1985). The theory underlying this rule is that, all things being equal, "a party will of his own volition introduce the strongest evidence available to prove his case." *International Union (UAW)*, 459 F.2d at 1338. Conversely, if the party fails to introduce such evidence, then the trier of fact may infer that the evidence was withheld because it contravened the position of the party suppressing it. *Id.*

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1 to Bennett) was limited to providing his letterhead and his signature. Nor do respondents contest
2 that Zimmer supervised the activity, discussing the letter with Weitzner at the time it was written
3 and seeing the letter itself in April 2000.

4 Holub, Zimmer 2000's campaign manager, states in his affidavit that he discussed the
5 letter with Weitzner and dealt with Bennett on the mechanics of obtaining Bennett's letterhead
6 and signature. RB, Ex. 1. The only person identified through discovery as actually drafting the
7 Bennett letter is Weitzner. See Jamestown Response, dated Sept. 13, 2004. As Zimmer's chief
8 campaign strategist he had access to the Zimmer committee's opposition file with its references
9 to the Pillar of Fire issue, had engaged in prior efforts to discourage Pappas from the primary,
10 and took credit for drafting all of the scripts for the Zimmer campaign's television, radio and
11 direct mail advertisements.⁸ See Weitzner Tr. at 118, 151,

12 3. Respondents Provide No Alternative Explanation Regarding the Donations That
13 Were Given to NJCTR Just in Time to Fund the Anti-Pappas Advertisements
14

15 In the GC Briefs, we argue that in order to distance the Zimmer Committee from the anti-
16 Pappas advertisements, respondents also had to distance the donations to NJCTR that were used
17 to sponsor the negative advertisements. Although respondents claim that there is no direct
18 evidence connecting Blakely or Weitzner to the \$90,000 donated to NJCTR by supporters of two
19 Jamestown clients, RB at 18, 19, they fail to rebut the circumstantial evidence presented in the
20 GC Briefs that connects the Committee to these donations to NJCTR. The connection between
21 the Zimmer Committee and the donations provides a strong basis to infer the Zimmer

⁸ Beyond taking general umbrage at the inference in the GC Briefs that Weitzner inserted this language in the Bennett letter, respondents do not actually deny it, but only protest that there are no documents or witness statements to support the inference RB at 13. fn. 19

1 Committee, through its agents, coordinated with NJCTR to produce and distribute the radio and
2 direct mail advertisements.

3 For example, consistent with what Thomas Ferguson told this Office, he states in an
4 affidavit attached to the Reply Brief that he has no "specific memory" of the solicitation for the
5 \$50,000 check, dated May 31, 2000, that he donated to Citizens for Tax Reform ("CTR"). RB at
6 Ex. 2 ¶2. Although he now "categorically state[s] that Larry Weitzner, Tom Blakely and Dick
7 Zimmer did not solicit me for a donation," Ferguson does not exclude the possibility that anyone
8 else associated with Jamestown, e.g., Jamestown client Mike Ferguson, solicited the \$50,000.⁹

9 Likewise, respondents' theory that Treffinger raised these funds for NJCTR for his own
10 purposes is contradicted by the evidence or is otherwise implausible.¹⁰ Most significantly,
11 Treffinger's campaign manager, Matthew Kirnan, told us the monies that he and Treffinger
12 solicited were for the Zimmer campaign.¹¹ Respondents have not refuted Kirnan's statements
13 that Treffinger approached Kirnan at the Treffinger campaign headquarters and said that he

⁹ Ferguson told us that he did not feel strongly enough about Zimmer to give him \$50,000, but would give that amount to his son.

¹⁰ Respondents' assertion that "NJCTR and Treffinger both were promoting a concurrent anti-tax initiative in Essex County" is inaccurate. RB at 21. While Blakely mentioned working with NJCTR on getting a tax initiative on the ballot in Essex County, he never mentioned that Treffinger was involved. Blakely Tr. 148, 149. Sheridan did not testify that NJCTR was involved in such a program during the relevant time period, with or without Treffinger. In addition, Sheridan never identified nor do NJCTR's bank records reflect any disbursements through August 2000 that appear to relate to putting a tax initiative on the ballot in Essex County.

¹¹ Instead of presenting any contrary evidence respondents attempt to impeach Kirnan's credibility by falsely asserting that Kirnan had "pled guilty to making misrepresentations on FEC reports" and questioning his motives because his 1998 congressional campaign still owes Jamestown money. RB at 21. In fact Kirnan pled guilty to one count of subscribing to a false tax return, in connection with the Department of Justice's ("DOJ") investigation of a "pay to play" scheme involving James Treffinger's tenure as Essex County Executive and his 2000 campaign for United States Senate. In accordance with his plea agreement, Kirnan agreed to cooperate fully with DOJ's investigation of Treffinger and with any other investigations being conducted by any other federal agency. In pertinent part, Kirnan agreed to "truthfully disclose all information concerning all matters about which this Office and other Government agencies designated by this Office may inquire." See Letter from Department of Justice, dated October 10, 2002. The U.S. Attorney's Office determined that Kirnan was a cooperative and valuable witness and recommended him to us as a possible source of information regarding Jamestown and Weitzner. To date, this Office has found Kirnan to be cooperative and his information to be reliable. According to the debt settlement plan

[Footnote continued on next page]

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1 "wanted to help our friend Zimmer" in his race by raising money for NJCTR and that the money
2 would be used by the group to "help Zimmer" do a mailing.¹²

3 Furthermore, Sheridan never connected Treffinger and the \$40,000 donated to NJCTR in
4 any of the statements he made to this Office or in his deposition testimony. He testified, in fact,
5 that he does not know Treffinger personally beyond seeing him at a political event.¹³ Sheridan
6 Tr. at 112, 296. That Sheridan and Treffinger had no verifiable personal or professional
7 connections makes it unlikely that Treffinger would raise any money, let alone \$40,000, for the
8 virtually unknown NJCTR. Finally, there is no evidence that any of the subject funds raised for
9 NJCTR were used to benefit Treffinger or his campaign committee.¹⁴

10 While the money was not spent for Treffinger, that is what the donors were told. In order
11 to conceal that their donations were going to be used to sponsor the anti-Pappas advertisements,
12 Treffinger and Kirnan approached Treffinger's top supporters and told them that their

submitted recently submitted to the Commission by the Kirnan for Congress committee, Kirnan and Jamestown
have reached an accommodation with respect to monies owed Jamestown for services the company rendered during
the 1998 campaign.

12 According to Kirnan, Treffinger had raised money for other candidates because he saw it as a way to curry
favor with state party leaders

13 It is clear from Sheridan's testimony that Sheridan did not know Marino or Hill and had no idea how or
why he received donations from their companies or from COMPAC NJ. See Sheridan Tr. at 250, 261.

14 There is no testimony or documentation showing that Fox Media used the funds received from NJCTR for
any purpose other than to generate the anti-Pappas radio and direct mail advertisements and pay for related general
business expenses. As for the NJCTR money remaining, Sheridan disbursed funds to, among other payees and
individuals: the state for corporate filing fees; himself; his brother-in-law; his cell phone company; the Trenton
Municipal Court; and to a Philadelphia restaurant. Sheridan did testify that NJCTR sponsored a phone bank on
behalf of Treffinger. See Sheridan Tr. at 82. This testimony, however, is questionable because Sheridan appeared to
know little or nothing about Treffinger's campaign and he was unable to state definitively whether the alleged phone
bank was for an Essex County Executive race (Treffinger's race for County Executive was in 1998) or whether it
was for the 2000 Senate race during the primary or general election. *Id.* at 82-84, 111. In addition, Kirnan stated
that he was unaware of any polling done by NJCTR or CTR on behalf of Treffinger during the 2000 primary
campaign.

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contributions to CTR were important to Treffinger, and that they should give the money as a favor "for Jim."¹⁵

B. Facts and Issues that Remain in Dispute¹⁶

1. Blakely and Fox Media Were Agents of Zimmer 2000

The Reply Brief also alleges that Blakely did not work on the Zimmer 2000 primary campaign and, because neither Blakely nor Fox Media could make expenditures on behalf of Zimmer 2000, they cannot be considered agents of that committee for purposes of the activity at issue. RB at 28. Blakely was a consultant at Jamestown during the relevant time period.

Although he does not dispute that fact, the Reply Brief denies that as a Jamestown consultant Blakely worked on the Zimmer primary election as well as the general election campaign.¹⁷

As support for their position, respondents offer an affidavit signed by Zimmer campaign manager John Holub in which he states, "to the best of his knowledge, Tom Blakely did not do any work for the Zimmer 2000 primary campaign." This statement contradicts the answers to interrogatories that Holub signed on behalf of Zimmer 2000 on June 1, 2004. When requested to identify all persons providing services to the Zimmer Committee through Jamestown during the "relevant time period," which is described as the primary election period, Holub identified Blakely along with Weitzner, Jencik and two graphic artists. RB, Ex. 1. Holub now claims that

¹⁵ As outlined in the GC Briefs, this plan succeeded in that Hill, Marino and Detore each believed that their donations were somehow going to benefit Treffinger.

¹⁶ The Reply Brief makes several misrepresentations relating to the Commission's determinations in this matter and one previous MUR involving respondents. With respect to the instant case, respondents assert that the Commission found no reason to believe in June 2000 that a violation had occurred and that this Office then "revived" the investigation. RB at 7 Neither the Commission nor this Office took such action.

¹⁷ Jamestown's redacted Quicken document, which spanned January 2000 through the primary period, indicate that Blakely received his \$5,500 retainer each month except for June 2000. GC Brief (Blakely and Fox Media) at 40, fn. 48 and Ex 2

1 when he answered this interrogatory, he was referring to Blakely's services during the general
2 election. Had Holub truly thought that this interrogatory addressed the general election period,
3 his response would necessarily also have included Geller and media producer Gilman Burke
4 Wood, who both provided services to the Zimmer campaign during the general election period.
5 See Weitzner Tr. at 47, 119.

6 Moreover, the Zimmer Committee's original interrogatory answer – that Blakely worked
7 on the Zimmer primary campaign – is corroborated by Jencik.¹⁸

8
9
10 The day-to-day operations apparently included helping
11 to assemble the campaign staff, including Matthew Cherney, who started serving as Zimmer's
12 driver and scheduler in January 2000. GC Brief (Blakely and Fox Media) at 6.

¹⁸ Indeed, respondents make no attempt to explain why Blakely would have stayed out of the campaign, or why he would have been separated from Zimmer 2000's campaign activities. RB at 29, 30. See also Blakely Tr. at 83, 84; Weitzner Tr. at 119; Zimmer Tr. at 78. Jamestown's political consultants typically worked on a number of client accounts at the same time. For instance, during the 2000 primary Blakely and Weitzner both provided consulting services to the Ferguson and Treffinger campaigns in addition to the Zimmer campaign. See Blakely Tr. at 55, 58, 62, 63; Weitzner Tr. 140, 141, 145, 146. In fact, Blakely had known Zimmer professionally and socially for 10 years, during which time he worked on one and managed two out of three of Zimmer's prior campaigns, for federal office and ran Zimmer's district office for six years. Under these circumstances it is inconceivable that even if Blakely were busy on other campaigns that he would not assume an informal advisory role or even take an interest in Zimmer 2000's plans, strategies and activities. Consistent with this as next discussed in the text, Blakely played a significant role in the Zimmer primary campaign.

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1 Jencik also stated that Blakely was "definitely" involved in the campaign. She stated that
2 Blakely and Zimmer appeared to work closely together, with Blakely providing the candidate
3 with advice and drafting direct mail.²¹ Matthew Cherney, Zimmer's driver and scheduler, also
4 understood that Weitzner and Blakely were consultants for the Zimmer Committee and he
5 reported observing Blakely, Weitzner and Zimmer speaking together on many occasions during
6 the course of the campaign.

7 Under general principles of agency law, an agent is only authorized to do "what it is
8 reasonable for him to infer that the principal desires him to do in the light of the principal's
9 manifestations and the facts as he knows or should know them at the time he acts." Restatement
10 (Second) of Agency § 33 (1958). In other words, a principal is liable for the acts of its agents
11 committed within the scope of his or her employment.²² *Weeks v. United States*, 245 U.S. 618,
12 623 (1918); *see also* Restatement (Second) of Agency § 228(1); *Rouse Woodstock Inc. v. Surety*
13 *Federal Savings & Loan Ass'n*, 630 F. Supp. 1004, 1010-11 (N.D. Ill. 1986) (principal who
14 places agent in position of authority normally must accept the consequences when the agent
15 abuses that authority); *Lewis v. Travelers Insurance*, 51 N.J. 244, 251 (1968). Zimmer granted
16 his Jamestown consultants, including Weitzner and Blakely, a wide grant of authority to help

²¹ According to Zimmer 2000's disclosure reports, the committee disbursed approximately \$217,155 to Jamestown for direct mail services during the primary election period. *See* Zimmer 2000's: 1999 Mid-Year Report; 1999 Year-End Report, 2000 April Quarterly Report; and 2000 12-Day Pre-Primary Report.

²² While "authority to do illegal or tortious acts . . . is not readily inferred," if an agent "has reason to infer his principal's consent," the principal may be held accountable for the agent's illegal acts. Restatement (Second) of Agency § 34, cmt. g; *see also* Restatement (Second) of Agency § 31, cmt. a ("if a servant is directed to use any lawful means to overcome competition, the bribery of employees of the competitor, or the circulation of malicious stories, might be found to be within the scope of employment"). Even if the agent's conduct is illegal, it is a "well-settled general rule . . . that a principal is liable civilly for the tortious acts of his agent which are done within the course and scope of the agent's employment." 5 Am. Jur. 2d Agency § 280 at 782.

1 him win the 2000 Republican primary. Furthermore, even though Zimmer claimed he had
2 forbidden his campaign staff and Jamestown from using the Pillar of Fire's historic association
3 with the KKK in its own media campaign, by participating in and approving of its use in the
4 Bennett letter, Zimmer implicitly authorized Jamestown's future use of this information against
5 Pappas. As long as Zimmer 2000's agents Weitzner and Blakely reasonably believed that by
6 generating the anti-Pappas advertisements, they were acting in a way that would be approved of
7 by the principal, regardless of statements to the contrary, the principal may be liable for the
8 actions of those agents. *See Sibley v. City Service Transit Co.*, 2 N.J. 458, 463 (N.J. 1949).

9 In sum, the scope of Zimmer 2000's broad grant of authority to its Jamestown
10 consultants, Weitzner and Blakely, created the implied actual authority for respondents'
11 ~~participation in the coordinated activities that resulted in the production and distribution of the~~
12 anti-Pappas advertisements. The anti-Pappas activities were done on behalf of the principal
13 Zimmer as part of the strategy to "find the best way to win [the] election." *See* Weitzner Tr. at
14 117. Thus, Weitzner and Blakely were acting within an implied scope of its actual authority
15 when Blakely suggested the anti-Pappas advertisements to NJCTR, when Weitzner and Blakely
16 orchestrated the funding of the advertisements, and when Blakely proceeded to coordinate the
17 production and dissemination of the advertisements through Fox Media using Jamestown's
18 facilities and resources.

19 In addition to Weitzner and Blakely's implied actual authority discussed above, the
20 Zimmer Committee may have ratified their actions. Under New Jersey law, "a principal is
21 accountable for the authorized acts of his agent and *for any acts which he may have ratified.*"
22 *Kugier v. Romain*, 266 A.2d 144 (N.J. Super. 1970), (modified on other grounds by 58 N.J. 522
23 (N.J. 1971)(emphasis added). In *Kugier*, the principal argued that he did not authorize his agents

1 to engage in fraudulent practices; however, the court found this argument to be irrelevant since
2 the principal later became aware of the fraud but took no affirmative action against the agents.
3 *Id.* at 149. In attempting to define the scope of the agent's authority, the court noted, "All
4 authority must be traced to the principal and may be found in his adoption of, or acquiescence in,
5 similar acts done on other occasions." *Id.* Although Zimmer claims to have prohibited his
6 committee from using the information relating to Pappas, the Pillar of Fire and the KKK in his
7 primary campaign and claims to have been "upset" and "angry" at learning of Blakely's
8 participation in the NJCTR advertisements, he took no affirmative action against Blakely.²³ See
9 Zimmer Tr. at 65, 114.

10 2. Fox Media's Connections to Jamestown

11 Respondents contend that Fox Media and Jamestown operated as separate limited
12 liability companies and that Sheridan hired Fox Media and Blakely for the anti-Pappas
13 advertising campaign with the understanding that Fox Media was an entirely distinct entity
14 whose operations were separate from those of Jamestown. RB at 15. The evidence, though,
15 shows a very different relationship. Specifically Fox Media operated more as a front
16 organization, working out of Jamestown's offices and using Jamestown's resources to perform
17 certain activities. Although he initially agreed to provide Fox Media's client list, which would
18 have shown that Fox Media maintained a client base independent of Jamestown, Blakely later
19 refused to divulge it.²⁴ See Blakely Tr. at 13, 131, 143, 144, 160; letter from Patton Boggs, dated

²³ Even if Blakely did not work on the Zimmer primary campaign as respondents assert, Zimmer subsequently allowed him to join his campaign during the general election period and for the recount.

²⁴ Respondents have been reluctant to provide this Office with access to relevant information relating to the activities engaged in by Jamestown and Fox Media throughout this investigation. That respondents initially produced copies of the NJCTR checks to Fox Media with NJCTR's account numbers intentionally whited out certainly underscores this attitude. Fox Media's redacted bank statement, which reflects activity from May 1, 2000 through June 30, 2000, indicates that it made deposits and disbursements that appear to have been unconnected with

[Footnote continues on next page]

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1 May 2, 2005. When the refusal to provide the list is considered in conjunction with the evidence
2 outlined below, it is reasonable to infer that respondents withheld Fox Media's client list because
3 it could have shown that Fox Media operated as a branch of Jamestown providing covert
4 assistance to Jamestown's clients. *See International Union (UAW) v. NLRB*, 459 F.2d 1329,
5 1336 (D.C. Cir. 1972) (if evidence within a party's control is not introduced, it may be inferred
6 that the evidence is unfavorable to the party suppressing it); *see also, Arvin-Edison Water*
7 *Storage Dist. v. Hodel*, 610 F. Supp. 1206, 1218 n.41 (D.D.C. 1985) (when a party has relevant
8 evidence which he fails to produce, that failure gives rise to an inference that the evidence is
9 unfavorable or does not exist).

10 Respondents offer no support for their claim that Blakely did the majority of Fox Media's
11 work out of his "home office," that the majority of the mail went there, or that Fox Media even
12 had its own furniture or travel budget; in fact, as detailed in the GC Briefs, Fox Media functioned
13 by utilizing virtually all of Jamestown's facilities and resources. It operated out of the same
14 offices as Jamestown in two locations at different times during the 2000 election cycle and Fox
15 Media's most important financial documents such as its bank statements and invoices were
16 delivered to Blakely at Jamestown and its checks listed Jamestown's address as its own.²⁵ RB at
17 16.

the anti-Pappas advertisements. The fact that counsel refused to release unredacted copies of these documents or the client lists for Jamestown, Blakely or Fox Media makes it more likely than not that any work done by Fox Media during the 2000 election cycle, was probably done, as were the anti-Pappas advertisements, to assist Jamestown clients.

Blakely has also refused to provide a list of clients he serviced as an individual independent contractor, as opposed to the principal of Fox Media. *See supra* fn. 7.

²⁵ Even though Blakely testified that his "home office" for Fox Media was equipped with a separate telephone and fax line, neither number was listed in any directory. Blakely Tr. at 125, 126. Jamestown's contact information, on the other hand, was publicly available

1 Jamestown and Fox Media shared the services of an attorney, an accountant and a
2 bookkeeper, and Fox Media's essential administrative services were all provided by members of
3 Jamestown's staff. Specifically, Jamestown's comptroller and sole employee, Bridget Capasso,
4 also tracked Fox Media's deposits and disbursements on an Excel spreadsheet, paid bills, made
5 bank deposits, and wrote checks for Blakely's signature.²⁶ As noted in the GC Briefs, Capasso
6 told us that Jamestown seemed aware that she was providing these services for Blakely/Fox
7 Media. Further, Jamestown's media buyer (Jencik) made deposits into Fox Media's bank
8 account and wrote checks for Blakely's signature.²⁷

9 Contrary to what respondents assert, neither Capasso nor Jencik performed these services
10 for Fox Media as independent hires of Fox Media. RB at 17. Both engaged in these activities
11 while working at Jamestown and both received a one-time-only payment from Fox Media that
12 bore no relationship to the time or effort spent on these tasks. Capasso described the \$3,500
13 check she received from Fox Media as a "bonus."

²⁶ Respondents provide an affidavit signed by Capasso that attempts to cast doubt on information she provided to us regarding the relationship between Fox Media and Jamestown. RB at Ex. 3. In part, the affidavit states that Capasso was under the influence of pain medication during her interview with this Office and that the "investigators" twisted her words to the point that she felt compelled to threaten to terminate the interview and contact an attorney. Neither of these claims has merit. Capasso willingly agreed to be interviewed by this Office on two occasions. During the first interview, which Capasso cut short because she had to attend a real estate closing, she described her position with Jamestown, listed who else worked for that entity and detailed Jamestown's operations during the relevant time period. It was also during this interview that she discussed some of her work for and her knowledge of Fox Media's activities. At the start of our second scheduled interview, Capasso stated that she had had minor surgery three days prior and was not feeling very well. Capasso insisted, however, that she felt well enough to continue the interview and did not mention having taken pain medication or indicate that her ability to answer questions was in any way impaired. The second interview went forward and at no time did Capasso state that she thought that any information she provided was being miscontrued by staff, nor did she threaten to end the interview in order to obtain counsel. In fact, Capasso agreed that we could contact her again if we had any follow-up questions.

²⁷ The fact that Capasso and Jencik were performing these specific duties for Fox Media directly contradicts respondents' claim that no member of the Jamestown staff had access to Fox Media's confidential financial documents. RB at 16

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1 While at Jamestown, Jencik was often given assignments by Weitzner, who asked her to
2 serve as a temporary "consultant" for Zimmer 2000, and by Blakely, who directed the media
3 buys she made on behalf of Fox Media for CTR. The uncontested information provided by
4 Jencik indicates that she purchased the airtime for the NJCTR advertisements as she did for
5 every other client of Jamestown. According to Jencik, Blakely was "in authority over her" at
6 Jamestown and she placed the anti-Pappas radio advertisements at his direction. Jencik was paid
7 semi-monthly by Jamestown and clearly did not expect to be separately compensated for the
8 work involved with the NJCTR media buy. Jencik stated she was "surprised" to receive the
9 \$2,500 check from Fox Media. Even Blakely himself admitted that the Fox Media check he
10 gave Jencik was in response to all the "heartache" and trouble Jencik experienced over placing
11 the anti-Pappas advertisements. See Blakely Tr. at 218.

12 It is also not true that no one at Jamestown knew any details about Fox Media's projects
13 or that such information was "kept private as confidential client information."²⁸ RB at 18.
14 Capasso and Jencik unquestionably were aware of many details related to Fox Media's activities
15 as a result of their making deposits and writing checks for Blakely's signature. Capasso told us
16 she knew that Fox Media work was political and connected with "special interest groups." She
17 specifically recalled that CTR was one of these groups.²⁹

²⁸ This statement is inconsistent with Blakely's testimony regarding his maintenance of Fox Media's client files. Blakely testified, "You know, it could be anywhere. It could be with me. They could be in my car. They could be, you know - I could have left them at my desk at Jamestown. I don't know. It could be anywhere. My bank statements, my bank statements were usually close." See Blakely Tr. at 196, 197. Blakely also stated that there was no particular spot where such allegedly "confidential" materials were stored once he had completed a client project. *Id.*

²⁹ Contrary to the statements made in her affidavit, Capasso told us definitively that the Sheridan who contacted Blakely at Jamestown was connected with CTR. It was specifically within the context of discussing CTR, that Capasso recalled Sheridan and his calls to Jamestown for Blakely. Given these facts, Capasso's statements in her affidavit that she cannot recall which "of two individuals with the name John Sheridan" may have called or that she was "unclear" on the time frame is less credible than her initial statements to us. RB at Ex. 3.

3. Respondents had the Motive to Generate the Anti-Pappas Advertisements

Respondents assert that they had no reason to engage in the coordinated activity against Pappas, whom they did not view as a "legitimate" primary candidate and therefore there is no factual basis upon which to find probable cause to believe that they violated the Act. RB at 11. According to respondents, the anti-Pappas advertisements were of no value to Zimmer because he was already the presumptive winner of the 2000 Republican primary election. *Id.* Thus, our theory that the Zimmer Committee and its consultants were responsible for the anti-Pappas radio advertisements and direct mail advertisements is illogical.

Respondents' arguments, however, ignore the prominent support Pappas enjoyed and the gains his campaign made as the primary date approached. For example, House Majority Leader Dick Arney raised money for the Pappas campaign and he, Majority Whip Tom DeLay, and former Presidential candidate Steve Forbes all endorsed Pappas. Susan K. Livio, *12th District Foes Locked in Struggle to Find an Issue – Zimmer and Pappas Both Coming Off Default*, The Star-Ledger, June 4, 2000; *A House Divided Against Itself Cannot Stand*, House Race Hotline, Mar. 10, 2000. In addition, several conservative groups supported Pappas.³⁰ The press also gave prominent play to Pappas's March 2000 internal polling indicating that he was gaining on Zimmer and that he, rather than Zimmer, was the Republican candidate more likely to beat Holt. *Pappas Poll Shows Him Beating Holt*, House Race Hotline, Mar. 30, 2000; Politicsnj / Torricelli

with the name John Sheridan" may have called or that she was "unclear" on the time frame is less credible than her initial statements to us. RB at Ex. 3.

³⁰ One of these organizations was the 60 Plus Association, a national conservative senior citizens group advocating free enterprise and less government, which gave Pappas its "Guardian of Seniors' Rights" award and encouraged voters to support him in the primary. Susan K. Livio, *12th District Foes Locked in Struggle to Find an Issue – Zimmer and Pappas Both Coming Off Default*, The Star-Ledger, June 4, 2000. And the Eagle Forum's Phyllis Schlafly endorsed Pappas on "Tax Freedom Day," stating that "Mike is a true hero on these important issues. It is vital that people come out for him in this primary." *Fresh (19R – 23D) New Jersey 12. Dueling Press Conferences on Tax Freedom Day*, House Race Hotline, May 11, 2000.

1 *for Governor Seems an Unlikely Scenario*, Mar. 7, 2000, at

2 <http://www.politicsnj.com/March72000>.

3 ~~-----~~ Respondents admit that they were responsible for a direct prelude to the anti-Pappas

4 advertisements – the Bennett letter by which they attempted to force Pappas to withdraw from

5 the primary. Pappas's withdrawal from the primary would have conserved Committee resources

6 for what the Zimmer Committee believed would be an expensive general election campaign

7 against the unopposed Democratic candidate, incumbent Rush Holt. *See Weitzner Tr.* at 150,

8 151. This was certainly a valid concern as Holt had no primary opposition and reported cash on

9 hand at the end of the April Reporting period (1/1/00 – 3/31/00) of \$793,269.54 and cash on

10 hand at the close of the of Pre-Primary reporting report (4/1/00 – 5/17/00) of \$857,980, while

11 ~~Zimmer 2000 had much less cash in hand – \$555,473 at the close of the former reporting period,~~

12 and \$354,568 at the close of the latter reporting period. With Holt on a trajectory to raise \$2.5 -

13 \$3 million, Zimmer reportedly stated that he had “to be as aggressive” as he could. Susan K.

14 Livio, *12th District Foes Locked in Struggle to Find an Issue – Zimmer and Pappas Both Coming*

15 *Off Default*,” THE STAR-LEDGER, June 4, 2000.

16 4. The Link Between the Pillar of Fire Where Pappas Worked and its Historical
17 Connection to the Ku Klux Klan

18
19 Respondents claim that Pappas's connection with the Pillar of Fire and its association

20 with the KKK was widely reported in the national and local press and that the use of this

21 information to convince Pappas to exit the race was a “completely standard strategy.” RB at 11.

22 So even if respondents wanted Pappas to withdraw, they argue, the Bennett letter added nothing

23 new to what they claim was an ongoing public discussion of Pappas's association with a church

24 connected to the KKK. However, contrary to respondents' assertions, the connection between

25 the Pillar of Fire and the KKK was *not* “widely reported and discussed.” at least not before

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1 respondents made sure that New Jersey political insiders knew about it through the Bennett letter
2 and the voters were informed through the anti-Pappas advertisements. RB at 12.
3 ~~The five newspaper articles cited by respondents do not support their claims that~~
4 Pappas's connection with the Pillar of Fire *and* its historic connection to the KKK was widely
5 ~~reported, known or discussed. The articles appearing in the New York Times, the Associated~~
6 Press, and the Courier News (Pappas's wedding announcement) mention only that Pappas
7 ~~worked at the Pillar of Fire and say nothing about Pillar of Fire founder Alma White's~~
8 connections with the KKK. See James Doa, *On Politics: Is this Seat Reserved? Not in the 12th*
9 *District*, NEW YORK TIMES, Feb. 14, 1999; Laurence Arnold, THE ASSOCIATED PRESS STATE AND
10 LOCAL WIRE, Feb. 13, 2000; Weddings, COURIER NEWS, July 1, 1999. The article in *the New*
11 ~~Jersey Jewish News~~ discusses in part Pillar of Fire founder Alma White's association with the
12 KKK during the early part of the last century, but also prominently mentions the modern
13 church's repudiation of that connection. The article mentions Pappas's work with the church as
14 a fundraiser and states that he rejected the Pillar of Fire's historic association with the KKK, an
15 association he did not find out about until after he had graduated from the church's high school.
16 At no point does this article link the modern day Pillar of Fire with the KKK. See Enid
17 Weiss, *Pappas Retains Ties to Pillar of Fire Church*, NEW JERSEY JEWISH NEWS, March 30,
18 2000. *The House Race Hotline* in turn cites this article, stating that Pappas belonged to the Pillar
19 of Fire church, which was founded in 1901 by a KKK sympathizer. *House Race Hotline*,
20 NATIONAL JOURNAL, March 29, 2000. None of the five articles cited by respondents report that
21 the Pillar of Fire or Pappas were then connected to the KKK or its tenets.

22 For the historical connection between the Pillar of Fire and the KKK to have an impact
23 on party support and on the electorate, the information had to be presented in such a way as to

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1 imply a current connection, which only occurred when respondents issued the Bennett letter and
2 then ran the anti-Pappas advertisements. For example, the Bennett letter noted “the recent news
3 article detailing [Pappas’s] employment with the Pillar of Fire Church *and its association* with
4 the KKK.” (emphasis added.) The anti-Pappas advertisements stated, also in pertinent part,
5 “There is no room in America for hatred and intolerance. Tell Mike Pappas to resign from the
6 Pillar of Fire, and never work for that type of organization again.”

7 5. Respondents’ Attempts to Disavow Actions They Took After the Release of the
8 Anti-Pappas Advertisements Indicate They Acted Knowingly and Willfully
9

10 In their Reply Brief, respondents address two factual issues that we assert indicate
11 Weitzner and Blakely’s violations were knowing and willful. First, while respondents do not
12 explicitly deny that Jamestown had a website during the relevant time period, they reject the
13 assertion that if such a website existed it was taken off-line by anyone associated with
14 Jamestown in order to hide Jencik’s association with the company. RB at 26, fn. 35. Second,
15 respondents assert that Zimmer 2000 was “entirely accurate” in stating that Jencik had stopped
16 working for the Zimmer Committee and “had left any employment at Jamestown.” *Id.* at 25.
17 Both the removal of the website and the Zimmer Committee’s inaccurate press statements
18 represent a deliberate effort on the part of respondents to maintain the fiction that the anti-Pappas
19 advertisements were not coordinated with Jamestown and the Zimmer campaign.

20 With respect to the first issue, respondents point to Weitzner’s lack of memory whether
21 Jamestown had a website in 2000 and claim that even if the company did have a website, it
22 retained an outside vendor as webmaster.³¹ Respondents deny that Weitzner or anyone at

³¹ In and of itself, having a webmaster would not limit Jamestown’s control over the website or its ability to order its webmaster to take down the website or amend its contents

1 Jamestown deliberately took the website off-line, noting that websites often experience technical
2 difficulties and go off-line occasionally. RB at 26, fn. 35.

3 The evidence, however, confirms that Jamestown had a website and that it was taken
4 off-line after the press learned that Jencik, who placed the anti-Pappas advertisements, also
5 worked as Jamestown's media buyer. The National Information Center website states that
6 Jamestown registered its website on May 19, 1998. See www.sunny.nic.com/cgi-bin/whois.
7 Capasso, listed as the website's administrative contact, confirmed to us that Jamestown had a
8 website.³² *Id.*

9
10
11 the Pappas campaign was alerted to the existence of the radio
12 advertisements on June 1, 2000 by Pappas's consultant David Millner. Because Millner worked
13 on the second floor of the small building where Jamestown and Zimmer 2000 were located for at
14 least part of the primary campaign, it is likely he knew that Jencik was Jamestown's media
15 buyer. the general manager of one of the radio stations running the anti-
16 Pappas advertisements faxed documents connecting Jencik to the advertisements, which in
17 turn led to check Jamestown's website where saw Jencik's name listed.

18 Given the

³² The first historical website for Jamestown as found on archive.org, lists a date of August 23, 2000. Based on the information contained therein this is likely not the same version viewed during the relevant time period, but is more likely than not an updated or written-over version of the original site. See web.archive.org/web/200000920075508/www.jamestownassociates.com. According to archive.org, a website owner can easily exclude its site from being accessed or exclude any historical pages it chooses from archive.org's "Wayback Machine." See <http://archive.org/about.faqs>.

1 lengths to which Zimmer 2000 and Jamestown went in an effort to distance themselves from the
2 subject advertisements, it is reasonable to infer that Jamestown took its website off-line at this
3 time.

4 The Reply Brief asserts that respondents' public statements that Jencik had "ceased
5 working for the Zimmer 2000 campaign or that she had left any employment at Jamestown were
6 entirely accurate." RB at 25. However, they were not accurate. According to the press
7 accounts, the campaign, without identifying Jencik as a Jamestown employee, actually said
8 "Megan Jencik has not done work for the campaign in weeks" and that she had "left the
9 consulting firm Zimmer employs." Aron Pilhofer, *12th District: Ex-Aide of Zimmer Linked to*
10 *Ads*, HOME NEWS TRIBUNE, June 3, 2000; Susan K. Livio, *Democrats File Charges Against*
11 *Zimmer Over Radio Ad Campaign*, THE STAR-LEDGER, June 9, 2000. At the time the Zimmer
12 Committee and Weitzner formulated the original press response, they knew Jencik had not "left"
13 Jamestown and was continuing to place media for Jamestown, including media for Zimmer
14 2000. See Weitzner Tr. at 186, 189; see also Zimmer Tr. at 66, 67. In fact, Jamestown's
15 redacted Quicken file shows that Jencik continued to receive her semi-monthly retainer through
16 this time.³⁴ And, as Jamestown's only media buyer, Jencik purchased airtime for the Zimmer
17 Committee during and after the time period respondents alleged she severed connections with
18 both Zimmer 2000 and Jamestown, as confirmed by documents produced by WCBS, WOR and
19 WCTC.³⁵

³⁴ Jamestown's redacted Quicken documents were limited in time to reflect semi-monthly payments for Jencik from February 2000 through the primary period. Jencik worked for Jamestown until some point in 2002. See GC Brief (Weitzner and Jamestown) at Ex. 1.

³⁵ These documents reflect media placements Jencik made on behalf of Zimmer 2000 from May 24, 2000 through May 29, 2000.

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1 **C. The Evidence Establishes that Respondents Requested that NJCTR Serve as**
2 **Sponsor of the Anti-Pappas Advertisements and Controlled the Coordinated**
3 **Activity**

4
5 Respondents assert that we have not established that the anti-Pappas advertisements were
6 coordinated under the standards set forth in *FEC v. Christian Coalition*, 52 F. Supp. 2d 45
7 (D.D.C. 1999) ("*Christian Coalition*") because, they argue, we have failed to prove a request or
8 suggestion from Zimmer 2000 or the requisite substantial discussion or negotiation between
9 Blakely and Zimmer 2000 regarding the subject advertisements.³⁶ RB at 35.

10 On the contrary, however, the evidence reflects coordination as follows: (1) Blakely, as
11 an agent of the Zimmer committee, requested or suggested that NJCTR sponsor the anti-Pappas
12 advertisements during the primary; and (2) Zimmer Committee agents Weitzner and Blakely
13 controlled the content, timing, intended audience and volume of the advertisements.
14 Respondents' activities in this matter represent the most "pernicious" form of coordination
15 because Zimmer 2000 and its consultants "launched coordinated attack advertisements" at
16 corporate expense in order to spread a negative message about Zimmer's opponent "without
17 being held accountable for negative campaigning." *Christian Coalition* at 88. As the *Christian*
18 *Coalition* court noted, coordinated expenditures for such communications are much more
19 valuable than dollar-equivalent contributions because they come with an "anonymity premium"
20 of great value to a candidate running a positive campaign." *Id.*

21 Respondents used a third-party vehicle – in this case NJCTR – to bring the information
22 linking Pappas to the Pillar of Fire and the KKK directly to the primary voters. They did so in

³⁶ Under the standards set forth in *Christian Coalition*, coordination can occur in two general ways. *Christian Coalition* at 92. In the first way, "expressive coordinated expenditures made at the request or the suggestion of the candidate or an authorized agent" are considered coordinated. *Id.* Otherwise, an expressive expenditure becomes "coordinated" where the candidate or her agents can exercise control over, or where there has been substantial

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1 order to distance Zimmer 2000 and Jamestown from what would necessarily be considered
2 negative campaigning. The evidence indicates that Blakely as Zimmer 2000's agent first
3 contacted Sheridan and requested or suggested that NJCTR serve as the named sponsor for the
4 anti-Pappas advertisements.³⁷ GC Brief (Blakely and Fox Media) at 22, 23.
5 ~~The account now presented by respondents of how Sheridan developed and obtained~~
6 ~~funding for the anti-Pappas advertising is contradicted by some of Sheridan's statements to us as~~
7 ~~well as statements made by numerous witnesses, including members of NJCTR's board of~~
8 ~~trustees, Kirman, Ferguson, Marino, Hill and Detore. GC Brief (Blakely and Fox Media) at 22,~~
9 ~~23, 24. In particular, members of NJCTR's board of trustees stated that they did not approve and~~
10 ~~were not involved in any aspect of the anti-Pappas advertising campaign, and there is evidence~~
11 ~~demonstrating that the \$90,000 in donations was not raised via a written solicitation. Id.~~
12 Sheridan did not have the access necessary to raise money from Ferguson, nor did he know
13 Treffinger well enough to have asked him to undertake the solicitation of Marino, Hill and
14 Detore.
15 Respondents have not challenged the fact that NJCTR did not itself raise the funds used
16 to underwrite the anti-Pappas advertisements, nor have they explained how it is that the only
17 connection between the four donors and Sheridan/NJCTR was Weitzner and Blakely. Because
18 NJCTR had absolutely nothing to do with raising these funds and had no control over how the
19 radio and direct mail advertisements were produced and distributed, it is reasonable to infer that

discussion or negotiation between the campaign and the spender over, the content, timing, location, mode or
intended-audience, or volume of the communication. *Id*

³⁷ Because Blakely worked on the Zimmer primary campaign, he was privy to non-public information regarding Zimmer 2000's plans, needs and strategies. While Pappas's employment by the Pillar of Fire and the church's historic connections to the KKK was public information, Zimmer 2000's use of that information as part of a strategy to force Pappas's premature exit from the primary certainly was not.

1 someone else generated the anti-Pappas advertisements. The evidence indicates that the Zimmer
2 campaign through Blakely and Weitzner controlled the production and distribution of these
3 advertisements through Jamestown.³⁸ Blakely was at the epicenter of the coordinated activity.
4 Although NJCTR paid for the anti-Pappas advertisements, the evidence suggests that Sheridan
5 was only minimally involved in the mechanics of creating them.³⁹ For example, Blakely – not
6 Sheridan – controlled the script and the budget, and decided how long and where the radio
7 advertisements ran. *See* Blakely Tr. at 157, Sheridan Tr. at 172, 198, 200, 213. Sheridan did not
8 know how often the advertisements ran, had no idea what the radio advertisements cost, had no
9 idea how much NJCTR was paying Fox Media to handle the advertising campaign, and had no
10 idea what profit Blakely took for his participation in the project. *See* Sheridan Tr. at 167, 173,
11 175, 182, 183, 200, 214, 215.

12 The evidence demonstrates that these advertisements were produced and distributed using
13 Jamestown's facilities, resources and personnel, including but not limited to, the services of
14 Jencik in placing the radio advertisement.⁴⁰ Jencik purchased airtime for the NJCTR

³⁸ Respondents dispute the existence of a second CTR advertisement. RB at 23. The evidence demonstrates that CTR sponsored two anti-Pappas advertisements in the week prior to the primary. The advertisement alleging a link between Pappas and the KKK was run on WCBS, WWOR and WCTC during that week. Based on the uncontroverted statement of media buyer Jencik, which was confirmed by the radio station, WKXW (NJ101.5 FM) rejected the advertisement due to its inflammatory content and the station ran a CTR sponsored anti-tax advertisement instead. Records from WKXW confirm that a CTR – sponsored advertisement ran that week.

³⁹ That there is no direct evidence that the script for the advertisements was ever seen by anyone beyond Blakely and Sheridan (and perhaps by Jencik right before she placed the advertisements) is irrelevant. RB at 18. In the instant scenario, script sharing is irrelevant because the message in the anti-Pappas advertisement was virtually identical to that of the Zimmer committee generated Bennett letter, which was, at least in part, developed by Zimmer committee agent Weitzner himself.

⁴⁰ Blakely testified that the voice talent used in the anti-Pappas radio advertisement was a Jamestown vendor. Information provided by respondents indicates that at least four of the vendors associated with the anti-Pappas direct mail campaign had done work for Zimmer 2000.

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1 advertisements as Jamestown's media buyer, not because Blakely/Fox Media separately retained
2 her services.⁴¹ Jencik worked as Jamestown's media buyer throughout the 2000 primary.⁴² She
3 stated that she was very busy during that time period purchasing airtime for Jamestown's clients
4 and that she typically received her instructions from Weitzner, Blakely or Geller. According to
5 Jencik, her involvement with the anti-Pappas advertisements started when she complied with
6 Blakely's request that she find out what the broadcast rates were for that particular day. Other
7 than that, Jencik stated that she was unsure how she came to place the radio advertisements for
8 Fox Media - *except* that Blakely had authority over her at Jamestown.⁴³

9 As outlined above, the evidence demonstrates that with Zimmer's implied authorization,
10 the Zimmer committee's agents Weitzner and Blakely initiated and controlled a coordinated
11 effort to finance with corporate funds, produce and distribute radio and direct mail
12 advertisements attacking Zimmer's opponent.

13 **IV. REMAINING RESPONDENTS**

14 At the time of the reason to believe findings, the Commission voted to take no action as
15 to Dick Zimmer. Beyond providing his implied consent to coordinated activities engaged in by
16 respondents, this Office has uncovered no evidence that Zimmer personally participated in those
17 activities that would warrant making separate findings against him. New Jersey Citizens for Tax

⁴¹ Contrary to respondents' assertion, Jencik was not running an independent media placement business out of the Jamestown offices. As stated *supra* fn. 8, Jencik did not have other "clients" or other experience aside from her work for Jamestown and two instances of stuffing fundraising envelopes. She did not pay rent or utilities and did not provide her own equipment. See Weitzner Tr. at 56, 57.

⁴² While continuing to function as Jamestown's media buyer, Jencik also worked on the Zimmer campaign as a consultant from August 1999 through April 20, 2000. See Zimmer 2000: 1999 Mid-Year Report; 1999 Year-End Report; 2000 April Quarterly Report, and 2000 12-Day Pre-Primary Report.

⁴³ Jencik stated that the CTR advertisements were the only occasion on which she could recall purchasing airtime on behalf of Fox Media.

1 Reform ceased operations following the negative publicity about its role in this campaign. This
2 Office does not recommend pursuing NJCTR any further for these reasons as well as the fact that
3 the organization appears not to have been a particularly active participant in the coordinated
4 activity at issue.

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9 **V. CONCILIATION**

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VI. RECOMMENDATIONS

1. Find probable cause to believe that Jamestown Associates LLC and Larry Weitzner violated 2 U.S.C. § 441b by knowingly receiving in-kind corporate contributions on behalf of Zimmer 2000, Inc.
2. Find probable cause to believe that Jamestown Associates LLC and Larry Weitzner knowingly and willfully violated 2 U.S.C. § 441b by receiving in-kind corporate contributions on behalf of Zimmer 2000, Inc.
3. Find probable cause to believe that Fox Media Consulting LLC and Tom Blakely violated 2 U.S.C. § 441b by knowingly receiving in-kind corporate contributions on behalf of Zimmer 2000, Inc.
4. Find probable cause to believe that Fox Media Consulting LLC and Tom Blakely knowingly and willfully violated 2 U.S.C. § 441b by receiving in-kind corporate contributions on behalf of Zimmer 2000, Inc.

5. Find probable cause to believe that Zimmer 2000, Inc. and Maria Chappa, in her official capacity as treasurer, violated 2 U.S.C. §§ 434(b) and 441b by knowingly receiving in-kind corporate contributions and failing to report those contributions.
6. Approve the attached conciliation agreements.

9/26/05
Date

Lawrence H. Norton
General Counsel

BY: Rhonda J. Vosdingh
Rhonda J. Vosdingh
Associate General Counsel

Jonathan A. Bernstein
Jonathan A. Bernstein
Assistant General Counsel

Marianne Abely
Marianne Abely
Staff Attorney

Attachments:

1. Conciliation Agreement with Zimmer 2000, Inc. and Maria Chappa, in her official capacity as treasurer.
2. Conciliation Agreement with Jamestown Associates LLC and Larry Weitzner.
3. Conciliation Agreement with Fox Media Consulting LLC and Tom Blakely.