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SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5181
DATE COMPLAINT FILED: March 8, 2001
DATE OF NOTIFICATION: March 15, 2001
DATE ACTIVATED: July 6, 2001
DATE OF TRANSFER: April 15, 2002

EXPIRATION OF STATUTE OF
LIMITATIONS: March 26, 2004

COMPLAINANTS: Alliance for Democracy¹
Common Cause
National Voting Rights Institute
Hedy Epstein
Ben Kjelshus

RESPONDENTS: Ashcroft 2000 and Garrett M. Lott, as treasurer
Spirit of America PAC and Garrett M. Lott, as treasurer²
Precision Marketing, Inc. ("PMI")
Precision List, Inc. ("PLI")

RELEVANT STATUTES AND REGULATIONS: 2 U.S.C. § 441a(a)(2)(A)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 434(b)
2 U.S.C. § 431(8)(A)(i)
2 U.S.C. § 432(e)(2)
11 C.F.R. § 100.7(a)(1)
11 C.F.R. § 100.7(a)(2)
11 C.F.R. § 104.13(a)(2)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: U.S. Postal Service

¹ On March 19, 2002, Alliance for Democracy, Hedy Epstein and Ben Kjelshus filed a Section 437g(a)(8) suit against the Commission in the U.S. District Court for the District of Columbia.

1 **I. GENERATION OF MATTER**

2 The complaint in this matter alleges that Spirit of America PAC ("the PAC") made an
3 excessive in-kind contribution in the form of a fundraising list to Ashcroft 2000, the principal
4 campaign committee for John Ashcroft for the 2000 Senate election. The complaint alleges
5 that Ashcroft 2000 received over \$116,000 for renting out the fundraiser list to other
6 fundraisers. In addition, the complaint alleges that the two committees failed to report the
7 making and receipt of a contribution.

8 **II. FACTUAL BACKGROUND**

9
10 As noted above, Ashcroft 2000 is the principal campaign committee for
11 John Ashcroft for the 2000 Senate election. The PAC, according to public information
12 sources, was formed in 1996 by then-Senator John Ashcroft as a "leadership" PAC. See
13 Edward Zuckerman, *The Almanac of Federal PACs 2000-01*, pages 390, 396; *Congressional*
14 *Quarterly's Federal PACs Directory 1998-1999*, page 393. The PAC filed its initial
15 Statement of Organization with the Commission on June 17, 1996. The PAC filed a
16 Notification of Multicandidate Status on October 7, 1998, identifying five candidates to
17 which the PAC had contributed and certifying that the PAC had received contributions from
18 more than 50 persons. See 2 U.S.C. § 441a(a)(4). Thus, at the time of the activity in this
19 matter, the PAC's contribution limit to candidates and their candidate committees was \$5,000
20 per election. See 2 U.S.C. § 441a(a)(2)(A). The PAC disclosed making, and Ashcroft 2000
21 disclosed receiving, two \$5,000 contributions on June 30, 1999: one in connection with the
22 2000 primary election and one in connection with the 2000 general election. Thus, any

² At the time of the complaint, Marise Stewart was treasurer of Spirit of America PAC. The PAC filed an amended Statement of Organization on July 23, 2001 naming Garrett M. Lott as treasurer.

1 additional contribution from the PAC to Ashcroft 2000 in connection with a 2000 election
2 would have been excessive.

3 **III. COMPLAINT**

4
5 On March 8, 2001, the Alliance for Democracy, Common Cause, the National Voting
6 Rights Institute, Hedy Epstein and Ben Kjelshus filed a complaint against Spirit of America
7 PAC and Ashcroft 2000. The complaint, based on a press article, alleges that the PAC
8 contributed to Ashcroft 2000 a fundraising list of 100,000 donors and that Ashcroft 2000 in
9 turn generated earnings in 2000 by renting out the list to a fundraiser, Precision Marketing,
10 Inc. ("PMI").³ See "Possible Ashcroft Campaign Violation," *The Washington Post*,
11 February 1, 2001, at page A4. Attachment 1.⁴ Specifically, the complaint notes that Ashcroft
12 2000 received payments throughout the year 2000 totaling \$116,922 for rental of the list.

13 The complaint also states that the PAC developed the fundraising list between 1997
14 and 1999 at a cost of more than \$2 million. Further, the complaint states that the PAC had
15 already given the maximum contribution to Ashcroft 2000 regarding the 2000 election cycle,
16 \$5,000 for the primary and \$5,000 for the general. The complaint alleges that the PAC's
17 fundraising list constituted an in-kind excessive contribution of "substantial market value" to

³ According to publicly-available information, PMI was incorporated in Virginia in 1994, performs direct mail advertising services and has active corporate status. PMI's president and registered agent is Arthur L. Speck, Jr.

The figure of \$116,922.49 appears on Ashcroft 2000's October Quarterly Report as the aggregate 2000 year to date receipts from PMI. During 1999-2000, Ashcroft 2000 also disclosed disbursements totaling \$7,342.00 for "list rental" from a company that appears to be related to PMI, Precision List, Inc., ("PLI"). PLI was incorporated in Virginia in 1997 and its registered agent, Arthur L. Speck, Jr., is also the president of PMI. Additionally, from October 1999 through February 2002, a list titled "Spirit of America" was advertised in the *SRDS Direct Marketing List Source* with its list manager as "Precision List Company." Precision List Company has the same address and same president, Rosann Garber, as PLI.

⁴ The article was not included with the complaint.

1 Ashcroft 2000. In addition, the complaint notes that the PAC and Ashcroft 2000 failed to
2 report the making and receipt of this contribution.

3 **IV. RESPONSES**

4 The PAC and Ashcroft 2000 filed similar, brief responses on March 16, 2001 and
5 April 2, 2001, respectively.⁵ The PAC stated that it did not make any direct or in-kind
6 contributions to Ashcroft 2000 except as reported on the PAC's disclosure reports. Ashcroft
7 2000 stated that it did not accept any direct or in-kind contributions from the PAC except as
8 reported on Ashcroft 2000's disclosure reports.

9 Both committees stated that they conducted all their fundraising activity "through
10 outside, professional vendors."⁶ Ashcroft 2000 Response, page 1; PAC Response, page 2.
11 Ashcroft 2000 asserted that the vendors themselves developed the lists. The PAC elaborated
12 that the vendors selected fundraising prospects based on proprietary lists owned by the
13 vendors, and that all such prospect data was proprietary to the vendor as a matter of vendor
14 policy and was not available to the PAC. The PAC concluded that "[t]herefore, no
15 prospecting information related to the [PAC's] fundraising efforts was ever owned,
16 controlled, disclosed to, or made available to the [PAC]." PAC Response, page 2.

17 Both responses then briefly described the role of candidate John Ashcroft. Ashcroft
18 2000 stated:

19 John Ashcroft granted to [Ashcroft 2000] a license to use certain information owned
20 by him, including the authority to rent from vendors mailing lists developed for [the
21 PAC]. [Ashcroft 2000] subsequently sub-licensed all or a portion of the licensed data

⁵ Both the PAC and Ashcroft 2000 identified themselves as multi-candidate committees, although the latter is in fact a candidate committee. See PAC Response at page 1 and Ashcroft 2000 Response at page 1.

⁶ A review of the PAC's disclosure reports reveals that the PAC rented its list to 30 organizations and received over \$130,000 in rental receipts from 1998-2000.

1 to others, along with other intellectual property owned by [Ashcroft 2000], all in full
2 compliance with [the Act] and applicable FEC regulations.
3

4 Ashcroft 2000 Response, page 1. The PAC stated:
5

6 Because the [PAC] from time to time used the name of then-Senator John Ashcroft, it
7 was mutually agreed in writing that Senator Ashcroft would own any "work product"
8 derived from such use, including lists of contributors and potential contributors.
9 Senator Ashcroft supported the [PAC's] efforts by serving as "Honorary Chairman."
10 Because this position was honorary only, it did not confer on him any authority,
11 express or implied, to bind or direct the [PAC], and he did not control or direct its
12 efforts.
13

14 PAC Response, pages 2-3.

15 **V. RELEVANT LAW**

16 The Federal Election Campaign Act of 1971, as amended, ("the Act") provides that
17 no person shall make contributions to any candidate and his or her authorized political
18 committees with respect to any election for federal office which in the aggregate exceed
19 \$1,000. 2 U.S.C. § 441a(a)(1)(A). Multi-candidate political committees may contribute an
20 aggregate of \$5,000 per election to any federal candidate and his or her authorized political
21 committee.⁷ 2 U.S.C. § 441a(a)(2)(A). Candidates and political committees may not accept
22 contributions which exceed the statutory limitations of section 441a. 2 U.S.C. § 441a(f).

23 A "contribution" includes "any gift, subscription, loan, advance, or deposit of money
24 or anything of value made by any person for the purpose of influencing any election for
25 Federal office." 2 U.S.C. § 431(8)(A)(i). The Commission's regulations provide that
26 "anything of value" includes all in-kind contributions, including the provision of goods or
27 services without charge or at a charge which is less than the usual and normal charge for such
28 goods or services. 11 C.F.R. § 100.7(a)(1)(iii)(A). For purposes of 11 C.F.R.

1 § 100.7(a)(1)(iii)(A), usual and normal charge for goods means the price of those goods in
2 the market from which they ordinarily would have been purchased at the time of the
3 contribution. 11 C.F.R. § 100.7(a)(1)(iii)(B). The regulations specifically include mailing
4 lists as an example of such goods or services. *Id.* See also 11 C.F.R. § 100.8(a)(1)(iv)(A).
5 The entire amount paid as the purchase price for a fundraising item sold by a political
6 committee is a contribution. 11 C.F.R. § 100.7(a)(2).

7 It is unlawful for any corporation to make a contribution or expenditure in connection
8 with any federal election. 2 U.S.C. § 441b. It is also unlawful for any officer or director of a
9 corporation to consent to any corporate expenditures which may be prohibited contributions
10 to candidates or committees. *Id.* It is unlawful for any candidate or political committee to
11 accept or receive any contribution from a corporation. *Id.* For purposes of Section 441b, the
12 term "contribution" includes any direct or indirect payment, distribution, loan (other than
13 from a national or State bank made in accordance with the applicable banking laws and
14 regulations in the ordinary course of business), advance, deposit, or gift of money, or any
15 services, or anything of value to any candidate or campaign committee in connection with a
16 Federal election. 2 U.S.C. § 441b(b)(2).

17 A candidate who receives a contribution, or any loan for use in connection with the
18 campaign, or makes a disbursement in connection with such campaign, is considered, for
19 purposes of the Act, to have received the contribution or loan, or made the disbursement as
20 an agent of the authorized committee or committees of such candidate. 2 U.S.C. § 432(e)(2).

7 The Act defines "multi-candidate political committees" as those political committees which have been registered with the Commission for at least six months, have received contributions from more than 50 persons, and have made contributions to at least five federal candidates. 2 U.S.C. § 441a(a)(4).

1 Finally, all political committees are required to file reports of their receipts and
2 disbursements. 2 U.S.C. § 434(a). Each report filed by a committee not authorized by a
3 candidate must disclose all contributions made to candidates and their committees. 2 U.S.C.
4 § 434(b)(6)(B)(i). All political committees must report the identification of each political
5 committee which has made a contribution to the reporting committee, together with the date
6 and amount of any such contribution. 2 U.S.C. § 434(b)(3)(B). In-kind contributions must
7 be reported as both contributions received and expenditures made. 11 C.F.R. § 104.13(a)(2).

8 VI. ANALYSIS

9 There are two issues in this matter. The first is whether the exchange of the PAC
10 mailing list for the signature of then-Senator John Ashcroft on the PAC's fundraising letters
11 was a bargained-for exchange of equal value. If Senator Ashcroft received an asset of greater
12 value than the use of his name, then his acceptance of that asset as agent of his authorized
13 committee -- no other purpose for accepting the asset is apparent -- would mean that Ashcroft
14 2000 received and the PAC made an in-kind contribution of the mailing list. The second
15 issue is whether the transactions between Ashcroft 2000 and PMI, Inc. and PLI, Inc. qualify
16 for the narrow exception that allows for the sale or rental of certain campaign assets without
17 the transaction resulting in a contribution. If the transactions between Ashcroft 2000 and
18 PMI, Inc. and PLI, Inc. do not qualify for the narrow exception, Ashcroft 2000 received and
19 PMI, Inc. and PLI, Inc. made prohibited corporate contributions. The following is a detailed
20 discussion of these two issues.

21 A. Exchange of Mailing List for Signature on Fundraising Letters

22 In determining whether a transaction involving the exchange of mailing lists between
23 a candidate committee and another entity results in a contribution, the Commission has

1 examined whether the transaction involved a bargained-for exchange of equal value.
2 Specifically, the Commission analyzes whether the committee has paid for the use of another
3 organization's mailing list in a commercially acceptable manner, either by the user of the list
4 paying the list owner a fee equal to the market value of the list or alternatively, by the user of
5 the list exchanging names of corresponding value with the list owner. See, e.g., Advisory
6 Opinion 1981-46.

7 In Advisory Opinion 1981-46, a Congressional candidate committee contracted with a
8 fundraising vendor to develop a direct mail program to raise funds for the committee and to
9 act as a broker of the committee's contributor list. As part of the package provided by the
10 vendor to the committee, the vendor would negotiate with other organizations for use of their
11 mailing lists to increase the list of names from which the client committee could solicit
12 contributions. In its request for this advisory opinion, the committee asked the Commission
13 whether the committee's exchange of names from its contributor list for the use of names of
14 corresponding value from the list of another political committee is considered "usual and
15 normal charge" for goods within the meaning of 11 C.F.R § 100.7(a)(1)(iii)(B). The
16 Commission concluded that if the exchange of names on a contributor list is an exchange of
17 names of equal value according to accepted industry practice, the exchange is considered full
18 consideration for services rendered and therefore, no contribution results.

19 The Commission also has considered the impact of a three-way exchange of mailing
20 lists. See Advisory Opinion 1982-41. The proposed exchange in Advisory Opinion 1982-41
21 involved a Congressional committee allowing an organization called Jubilee Housing
22 ("Jubilee") to use 5,000 names from its mailing list in exchange for Jubilee making
23 arrangements for the committee to use 5,000 names from a mailing list belonging to a third

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1 organization. In return, the third organization would use 5,000 names from Jubilee's mailing
2 list. The committee asserted that the use of a list of value is the consideration for which each
3 party bargained and that a multi-party exchange is a routine and usual method of arranging
4 such transactions. The committee asked the Commission whether the described exchange of
5 lists or any similar arrangement within the general practice of the trade was an acceptable
6 means of paying for the use of the mailing list and further, whether the exchange would result
7 in a contribution that would be limited or prohibited. The Commission noted that it has
8 recognized that if an exchange of names on a contributor list is an exchange of names of
9 equal value as determined by industry practice, the exchange would be considered full
10 consideration for services rendered. The Commission concluded that assuming such multi-
11 party exchanges are routine and usual in the list brokering industry and the three-way
12 exchange is an exchange of equal value, the exchange of lists between the committee and the
13 two organizations was permissible under the Act and did not result in a contribution being
14 made by these organizations to the committee, but was instead a bargained-for exchange of
15 consideration in a commercial transaction.

16 Additionally, the Commission has considered a transaction similar to the one
17 involved in the Ashcroft matter in MURs 4382/4401 and 4826 (Dole for President). In the
18 Dole matters, then-Senator Bob Dole signed fundraising letters on behalf of two incorporated
19 entities, The Heritage Foundation ("Heritage") and Citizens Against Government Waste
20 ("CAGW"), in exchange for the lists of persons responding to the solicitations.⁸ While the
21 complaint in MUR 4382 alleged that the corporations made contributions when they provided

⁸ MUR 4826 was generated by severing from MURs 4382/4401 the mailing list issue involving Dole for President and Heritage.

1 the contributor lists to Dole for President, respondents argued that there was no corporate
2 contribution in these matters but rather that there was a fair exchange of value: the
3 candidate's name was used as a fundraising tool in exchange for the resulting list of
4 responding solicitees. Citing Advisory Opinions 1981-46 and 1982-41, respondents asserted
5 that this exchange was similar to the exchange of mailing lists of equal value, which the
6 Commission had approved.

7 Nevertheless, the Commission found reason to believe that Dole for President and the
8 two corporations each violated 2 U.S.C. § 441b(a) and that Dole for President violated
9 2 U.S.C. § 434(b). The Commission's Factual and Legal Analyses associated with those
10 reason to believe findings viewed the corporations as providing a benefit to the Dole
11 campaign that could constitute a contribution. The Factual and Legal Analysis for the Dole
12 for President Committee also stated that if the Committee paid for this benefit in a bargained-
13 for exchange of equal value, then no contribution would have resulted. See MURs
14 4382/4401 Factual and Legal Analysis for Dole for President at 27-28. The Factual and
15 Legal Analysis also noted that the issue of whether the bargained-for exchange involved
16 items of equal value was complicated by the difficulty of determining the worth of an
17 individual's endorsement of a cause. *Id.* at 28. Further, payment (in the form of a mailing
18 list) to a candidate and committee for the candidate's endorsement raises questions as to
19 whether such arrangements could serve as a subterfuge for a variety of prohibited in-kind
20 benefits. *Id.* at 28. The Factual and Legal Analysis concluded that respondents had not
21 demonstrated that the mailing list provided to Dole for President was of equal value to the

1 signature provided by then-Senator Dole; in addition, it had not been established that such an
2 exchange was usual and customary in the direct mail industry.⁹ *Id.*

3 Donor list transactions possibly constituting contributions were also at issue in the
4 audit of Bauer for President 2000, Inc. See 26 U.S.C. § 9038(a). That matter includes the
5 exchange of donor lists between Bauer for President and the Campaign for Working Families
6 PAC ("CWF"), a multi-candidate committee formed by the candidate. See May 28, 2002,
7 Final Audit Report on Bauer for President 2000, Inc. (FAR) at pages 5-8. The FAR notes
8 that the lists and their respective usages by the committees did not appear to be of equal value
9 in that Bauer for President appeared to have received more from CWF than Bauer for
10 President gave to CWF. Thus, it appeared that CWF made an in-kind contribution to Bauer
11 for President.¹⁰ See FAR at pages 6-8.

12 Like in the Dole matters, the items exchanged in the Ashcroft matter were a mailing
13 list and the signature of a U.S. Senator on fundraising letters. However, neither the PAC nor
14 Ashcroft 2000 provide any information regarding the value of the mailing list and the use of
15 then-Senator Ashcroft's signature or an explanation as to how the items exchanged can be
16 considered items of equal value. There is an implication in the responses that the Senator
17 acquired unlimited use and unlimited ability to rent, license and/or resell the list in exchange

⁹ After an investigation, this Office recommended that the Commission enter into pre-probable cause conciliation with Dole for President and Heritage. MUR 4826 General Counsel's Report dated August 2, 2000. This recommendation failed by a 3-2 vote on September 12, 2000, and the Commission closed MUR 4826 on September 19, 2000. No Statement of Reasons explaining the Commission's decision was issued. Based on the small size of the apparent corporate contribution, this Office also recommended that the Commission take no further action against CAGW and Dole for President in regard to the mailing list transaction. MUR 4382/4401. General Counsel's Report dated August 2, 2000, pages 12-18. The Commission approved this recommendation on September 19, 2000.

¹⁰ The Commission approved the revision to the Final Audit Report on Bauer for President 2000, Inc. on May 31, 2002. See Certification dated May 31, 2002.

1 for the use of his signature; however, it is unclear exactly what the Senator acquired.¹¹
2 Neither the PAC nor Ashcroft 2000 describes the purported agreement between the two in
3 any detail; nor does either respondent provide a copy of the referenced agreement, license or
4 sub-license, which should clarify the nature of the agreement and the relationships among
5 the parties involved. Respondents also fail to provide information that indicates that the
6 exchange of a mailing list for a signature on fundraising letters is routine and usual in the
7 direct mail industry. See Advisory Opinion 1982-41. If the exchange is not routine and
8 normal in the industry or if the value of the list exceeds the value of the use of the Senator's
9 signature in the PAC's fundraising appeals, a contribution may have resulted. See 2 U.S.C.
10 § 431(8)(A)(i) and 11 C.F.R. §§ 100.7(a)(1)(iii)(A) and 100.7(a)(2).

11 As noted above, very limited information is available regarding the exchange
12 transaction and only through an investigation will the Commission be able to determine
13 exactly what then-Senator Ashcroft acquired from the PAC, define the relationships and roles
14 of the parties, clear up conflicting statements concerning the candidate's involvement in and
15 ability to direct and control the activities of the PAC, and obtain information helpful to
16 determining the value of the mailing list and the use of the Senator's signature.¹²
17 Nevertheless, the available information in this matter supports the same conclusion made at

¹¹ It appears that the Senator received significantly more for the use of his signature on the PAC's fundraising letters than the standard industry practice of one-time use of the mailing list that Senator Dole received from Heritage for use of his signature in the fundraising letters involved in MUR 4826. See ED BURNETT, THE COMPLETE DIRECT MAIL LIST HANDBOOK 672 (1988).

¹² The PAC states that the Senator's support of the PAC was "honorary" only, conferring no authority to bind or direct the PAC. PAC Response, page 3. However, according to press reports, when asked during his confirmation as Attorney General about the PAC's rental of the list to other entities, Senator Ashcroft stated, "These donor lists were rented without my knowledge or approval. Once I became aware that the list had been rented to these organizations, I directed that the lists no longer be rented to these organizations." Attachment 1.

1 the reason-to-believe stage in the Dole matters: the mailing list exchange may not have been
2 a bargained-for exchange of equal value or an exchange that was usual and customary in the
3 direct mail industry and, therefore, may have resulted in a contribution from the PAC to the
4 campaign committee. *Id.*

5 In addition, there is no assertion by the PAC or Ashcroft 2000 that the Senator
6 anticipated making any use of the list other than for the benefit of his campaign. Similar to
7 candidate Dole, it appears that candidate Ashcroft neither obtained the mailing list from the
8 PAC for his own personal use nor had any other use for the mailing list except for use in
9 connection with his campaign. Thus, then-Senator Ashcroft acted as an agent of his
10 authorized committee, Ashcroft 2000, when he received a contribution from the PAC in the
11 form of a mailing list for use in connection with his campaign. See 2 U.S.C. § 432(e)(2).

12 Furthermore, pursuant to 2 U.S.C. § 434(b), because committees must report all
13 contributions made and received by the committee and candidate and neither the PAC nor
14 Ashcroft 2000 disclosed the transaction on its FEC Reports, the PAC and campaign
15 committee may have also failed to meet the reporting requirements relative to the possible
16 contribution from the PAC.

17 In light of the above discussion, this Office recommends that the Commission find
18 reason to believe that Spirit of America PAC and Garrett M. Lott, as treasurer, violated
19 2 U.S.C. §§ 441a(a)(2)(A) and 434(b), and that Ashcroft 2000 and Garrett M. Lott, as
20 treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).

21 **B. Sale/Rental of List by Ashcroft 2000 to Third Parties**

22 The Commission has historically considered the exchange of fundraising lists, usually
23 called mailing lists, as potential contributions, both as items of value given to a political

1 committee and as items that are sold or rented out by committees, and therefore, the payment
2 for the property or use of the property must not be from a prohibited source and must not
3 exceed the contribution limit. See 2 U.S.C. §§ 431(8)(A)(i), 441a(a), 441b and 11 C.F.R.
4 §§ 100.7(a)(1)(iii)(A) and 100.7(a)(2). The Commission has specifically advised that when a
5 committee asset is sold or used to produce revenue for a committee, the proceeds are
6 considered contributions to the committee. See Advisory Opinions 1992-40 (committee's
7 receipt of funds raised in a phone service marketing project would constitute contributions);
8 1991-34 (committee's receipts from ongoing enterprise involving sale of data from a leased
9 database of registered voters would constitute contributions); 1983-2 (committee's receipt of
10 funds from "fee-for-services" use of its computer would constitute contributions).

11 The Commission has also permitted isolated sales of committee assets without
12 inherent contribution consequences in circumstances where the assets had been purchased or
13 developed for the committee's own particular use rather than for sale in fundraising activity
14 and such assets had ascertainable market value. See Advisory Opinions 1989-4, 1986-14,
15 and 1981-53. Specifically, the sale or rental of a mailing list does not result in a purchaser or
16 renter making a contribution when two criteria are met: the mailing list must be developed
17 by the campaign committee in the normal course of its operations and for its own use rather
18 than as an item to be sold or rented to third parties; and the list must be sold or rented at the
19 "usual and normal" charge. See Advisory Opinions 1989-4 (a committee's sale of its mailing
20 lists and other assets to a state committee at the usual and normal charge would not result in a
21 contribution); 1988-12 (a committee providing membership lists for reimbursement from a
22 federally chartered savings bank in the form of an unspecified portion of the annual
23 membership fee on each credit card issued is not bargained-for consideration in a commercial

1 transaction and results in a prohibited contribution); 1981-53 (a committee's sale of a mailing
2 list it had developed to a commercial list vendor for usual and normal charge for such a list
3 would not constitute a contribution).

4 For example, in Advisory Opinion 1981-53, the Commission examined whether a
5 committee's sale of its computer tape mailing list to a corporation would constitute a
6 contribution prohibited by 2 U.S.C. § 441b. The committee stated that it had developed its
7 mailing list by compiling names from publicly available voter registration lists in Indiana and
8 that the \$4,216 in expenses that were incurred relative to the list included travel expenses,
9 supplies, copying, labor, and equipment. The committee proposed selling the list to a
10 corporation for \$4,000. The Commission determined that the Act would permit the
11 committee to sell its computer tape mailing list to the corporation provided that: the
12 committee developed the mailing list in the normal course of its operations and primarily for
13 its own use rather than for sale as a fundraising item; and the price the committee charged
14 represented the usual and normal charge for such tapes under 11 C.F.R. § 100.7(a)(1)(iii),
15 which indicates that "the usual and normal charge" for goods means the price of the goods in
16 the market from which they ordinarily would have been purchased at the time of the
17 contribution.

18 The Commission also recently considered a transaction similar to the rental list
19 transactions in this MUR in the Final Audit Report for the Bauer for President 2000, Inc.
20 That transaction involved the rental of the Bauer Committee's donor file to the Lukens Cook
21 Company, Inc. See May 28, 2002, FAR. According to the FAR, the rental of the
22 committee's donor file to Lukens does not appear to fall under the narrow limited exception
23 relative to the sale or rental of a committee asset and it is questionable that the donor file was

1 developed by the committee in the normal course of its operations. FAR at page 8.
2 Moreover, the FAR states that the rental transaction fails to meet the criterion that the donor
3 file be developed primarily for the Committee's own use rather than as an item to be sold to
4 others as part of a campaign fundraising activity. FAR at page 9. The Audit Division
5 concluded that the Committee has not demonstrated that it did not receive and Lukens did not
6 make a prohibited contribution of \$70,000 in regard to the rental of the donor list.¹³ FAR at
7 page 10.

8 Similar to the rental transaction involving a corporate entity in Bauer for President
9 2000, Inc., Ashcroft 2000 apparently rented or "sub-licensed all or a portion of the licensed
10 data" to corporate entities, PMI, Inc. and PLI, Inc. Ashcroft 2000 Response, page 1.
11 Ashcroft 2000's disclosure reports disclose receipts totaling over \$116,922 from PMI, Inc. in
12 2000 and \$7,342 from PLI, Inc. in 1999 and 2000 for rental of the list that was developed by
13 the PAC.

14 Because the mailing list was developed for or by the PAC and not developed by
15 Ashcroft 2000 for its own use, the transactions between Ashcroft 2000 and PMI, Inc. and
16 PLI, Inc. fail to meet the first criterion required for the narrow exception that allows the sale
17 of a campaign asset not to result in a contribution -- the sale or rental involves a mailing list
18 that has been developed by the campaign committee in the normal course of its operations
19 and for its own use. While the transactions at issue in this MUR fall outside of the narrow
20 exception for failing to meet the first criterion, additional information is required to
21 determine if the transactions meet the second criterion of the narrow exception, i.e., whether

¹³ On May 31, 2002, the Commission voted to receive this finding without any determination on the merits of the analysis of the facts or the interpretation of the law contained therein.

1 PMI, Inc. and PLI, Inc., the renters or sub-licensees, paid the usual and normal charge for the
2 mailing list. See Advisory Opinions 1989-4, 1988-12, and 1981-53. See also 11 C.F.R.
3 §§ 100.7(a)(1)(iii)(A) and (B) and 100.7(a)(2).

4 The rental, licensing or sub-licensing of the mailing list to the corporations therefore
5 appears to have resulted in the making and receipt of prohibited corporate contributions. See
6 2 U.S.C. § 441b and 11 C.F.R. § 100.7(a)(2). Consequently, this Office recommends that the
7 Commission find reason to believe that Ashcroft 2000 and Garrett M. Lott, as treasurer,
8 violated 2 U.S.C. § 441b(a) by receiving corporate contributions and Precision Marketing,
9 (PMI), Inc. and Precision List (PLI), Inc. violated 2 U.S.C. § 441b(a) by making corporate
10 contributions to Ashcroft 2000.

11 **VII. DISCOVERY**

12 This Office recommends that the Commission approve subpoenas to Spirit of
13 America PAC, Ashcroft 2000, PMI, Inc. and PLI, Inc. Attachment 2. These subpoenas were
14 drafted to elicit factual details regarding the agreement, license, and sub-license referenced in
15 the responses to the complaint and to obtain copies of the agreement, license, sub-license and
16 related documents. The subpoenas also cover the development of the mailing list at issue; the
17 transfers and rentals of the list among the Spirit of America PAC, Ashcroft 2000, and the
18 candidate; and Ashcroft 2000's use of the list, including the rental to PMI, Inc. and PLI, Inc.
19 Further, the subpoenas will attempt to ascertain the value of the mailing list and the use of
20 then-Senator Ashcroft's signature.

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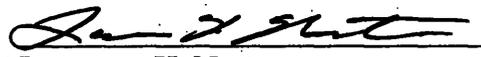
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VIII. RECOMMENDATIONS

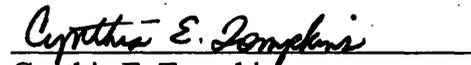
1. Find reason to believe that Spirit of America PAC and Garrett M. Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b).
2. Find reason to believe that Ashcroft 2000 and Garrett M. Lott, as treasurer, violated 2 U.S.C. §§ 441a(f), 434(b), and 441b(a).
3. Find reason to believe that Precision Marketing, Inc. violated 2 U.S.C. § 441b(a).
4. Find reason to believe that Precision List, Inc. violated 2 U.S.C. § 441b(a).
5. Approve the attached Subpoenas for the Production of Documents and Answers to Interrogatories to Spirit of America PAC and Garrett M. Lott, as treasurer; Ashcroft 2000 and Garrett M. Lott, as treasurer; Precision Marketing, Inc.; and Precision List, Inc.
6. Approve the attached Factual and Legal Analyses.
7. Approve the appropriate letters.

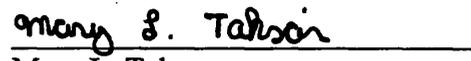
Date

7/10/02


Lawrence H. Norton
General Counsel


Rhonda J. Vosdigh
Associate General Counsel


Cynthia E. Tompkins
Assistant General Counsel


Mary L. Taksar
Attorney

23-04-406-247

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1 Previously Assigned Staff: Mark Allen

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4 Attachments:

5 1. "Possible Ashcroft Campaign Violation," *The Washington Post*, February 1, 2001

6 2. Subpoenas (4)

7 3. Factual and Legal Analyses (4)

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