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October 2, 2002

ATTN: David M. Mason / Mary L. Taksar
General Counsel's Office
Central Enforcement Docket
Federal Election Commission
999 E Street N.W.
Washington, DC 20463

Re: MUR 5181
Spirit of America PAC and Garrett M. Lott, as Treasurer

Dear Mr. Mason:

The undersigned represents Spirit of America, a Federal Election Commission ("FEC") registered multi-candidate committee ("Committee") and Garrett M. Lott, as Treasurer of the Committee (collectively, "Respondents"). **This correspondence constitutes the response of the Respondents to the correspondence and subpoena dated July 29, 2002 from your office due October 3, 2002 pursuant to Mary Taksar's written correspondence dated August 30, 2002.**

Please contact either of the undersigned immediately with any further questions or requests in this in this matter.

Ownership of Mailing Lists / Work Product

Previously provided to the FEC in Respondent's First Set of Answers to Interrogatories and Requests for Production of Documents, and signed by the Committee's Treasurer, Garrett M. Lott, under oath, is the following document (as referenced in, but not attached to, the Committee's initial response to the Complaint dated March 29, 2001):

- Work Product Agreement effective July 17, 1998 between Spirit of America and John D. Ashcroft

The Work Product Agreement provides the chain of title regarding the work product resulting from the Committee's fundraising solicitations using John Ashcroft's name and likeness. The July 17,

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1998 Work Product Agreement (“Work Product Agreement”) indicates that John Ashcroft permitted the Committee to “use his name or likeness in conjunction with the Committee’s activities, including but not limited to endorsements, communications, solicitation of business, advertisements and publications.” As consideration for the permission to use John Ashcroft’s name and likeness, the Committee and John Ashcroft agreed that John Ashcroft personally owned all “Work Product”¹ derived from such use. No other consideration or thing of value was given to John Ashcroft for the use of his name and likeness by the Committee.

As set forth within Respondent’s enclosed Second Set of Responses to Interrogatories and Request for Product of Documents, the Committee owned the names and addresses of its contributors, some of which contributors made contributions through the Committee’s direct mail fundraising efforts, and some of which contributors made contributions through other fundraising efforts of the Committee (e.g., personal solicitation by Committee staff/fundraising consultants, attendance at fundraising events, telephone solicitations, website contributions, etc.). The Work Product available to John Ashcroft included a broader universe of information than just the Committee’s contributors (see footnote 1).

Because John Ashcroft personally, and not the Committee, owned the Work Product derived from the Committee’s direct mail vendors’ use of Senator Ashcroft’s name and likeness in the Committee’s fundraising efforts, the Committee itself did not own the Work Product. Accordingly, the Committee did not have actual or implied authority to sell, assign or license the Work Product (or any proceeds therefrom) to any third parties, including Ashcroft 2000 (the “Campaign”) unless such authority was granted by John Ashcroft².

The Committee, through its direct mail vendors, licensed the names and addresses of its contributors to third parties from time to time during mid-1998 until mid-1999. The enclosed Second Set of Responses to Interrogatories and Request for Product of Documents describes such rental. All such receipts were reported to the FEC as “Other Income” on the Committee’s required Periodic Reports of Receipts and Disbursements. However, during the course of this rental, the Committee at no time rented *any* contributor names to Ashcroft 2000, assigned any right to the proceeds from the rental therefrom to Ashcroft 2000, or otherwise granted to Ashcroft 2000 any license to use any of the Committee’s contributor names. Any such use by Ashcroft 2000 was pursuant to agreements between Ashcroft 2000 and John Ashcroft, without any participation of the Committee.

¹Work product is defined as “mailing lists, lists of supporters of and contributors to the Committee, lists of prospective contributors to the Committee, results of polling data, and any and all other data and documentation regarding the Committee or John Ashcroft.”

²The undersigned understands through discussions with Respondent Garrett Lott, who also serves as treasurer to Ashcroft 2000, that John Ashcroft did in fact grant a five (5) year license to Ashcroft 2000 to use certain data owned by John Ashcroft (which data included the Work Product), including the right to sub-license that data to other parties. The undersigned understands that the January 1, 1999 List License Agreement has been provided to the FEC by Mr. Lott as part of the discovery responses of Ashcroft 2000. The Committee had *no* role or participation whatsoever in this list license agreement.

Consideration for the Work Product Agreement

The Committee rejects any contention that no equivalent consideration existed for the Work Product Agreement. As stated above, the consideration for the Work Product Agreement between the Committee and John Ashcroft was mutual: John Ashcroft granted the Committee the right to use his name and likeness in the Committee's fundraising efforts, and in exchange, the Committee granted to John Ashcroft the Work Product (as defined in the agreement) resulting from the Committee's use of John Ashcroft's name and likeness.

This contractual arrangement between the Committee and John Ashcroft is a normal business practice that is commercially reasonable under the circumstances. Respondents submit that the practice of lending one's name or likeness to political fundraising solicitation is not uncommon and the consideration for such use is quite often access to, or direct ownership of, the work product resulting from such use of one's name and/or likeness. The transaction behind the Work Product Agreement is a normal business practice, and commercially reasonable equivalent consideration was therefore exchanged between the parties.

The FEC has recognized that the goodwill associated with one's names or likeness has value which cannot be ignored. At 11 C.F.R. § 114.9, FEC Regulations provide that a corporation's facilities or resources (such as a corporation's letterhead) may not be used in furtherance of any federal election campaign without compensation at the commercially reasonable rate for such facilities/resources. Correspondingly, 11 C.F.R. § 114.5 explicitly permits a separate segregated fund (SSF) organized by a corporation to use the corporation's name and logo in solicitations.

These regulatory provisions collectively demonstrate the FEC's awareness that a corporation's name or likeness has independent value. Similarly, the use of John Ashcroft's name and likeness has an independent value, for which the Committee provided adequate and commercially reasonable equivalent consideration – namely, the right of John Ashcroft to personally own the work product resulting from the Committee's use of his name and likeness.

Based on the foregoing, the Work Product Agreement constituted a commercially reasonable transaction not unlike a list exchange or other like-kind exchange deemed permissible by the FEC in Advisory Opinion 1981-46 as cited in the FEC's July 29, 2002 correspondence. The only difference between such a list exchange and the Work Product Agreement is the consideration offered by John Ashcroft; in this case, John Ashcroft permitted the Committee to use his name and likeness in furtherance of the Committee's fundraising efforts (rather than simply exchanging equivalent mailing lists). Commensurate with equivalent consideration is the lack of an impermissible in-kind contribution by the Committee to Ashcroft 2000 (or any other entity). The Committee unequivocally denies making any in-kind contribution of any nature to the Campaign.

Based on the foregoing, probable cause does not exist that the Committee violated federal law, and the Complaint should be dismissed in its entirety. Please direct all further correspondence in this matter to the undersigned at the address indicated on the first page of this letter. Thank you.

Very truly yours,

Tony P. Trimble

Tony P. Trimble
Matthew W. Haapoja

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cc: Garrett M. Lott (w/enc.)