BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	)	
	)	MUR 5181
Spirit of America PAC and Garrett Lott, as treasurer	)	
Ashcroft 2000 and Garrett Lott, as treasurer	)	
Precision Marketing, Inc.	)	
Precision List, Inc.	)	

GENERAL COUNSEL'S REPORT #4

I. ACTIONS RECOMMENDED: (1) Find probable cause to believe that Ashcroft 2000 and Garrett Lott, as treasurer, and Spirit of America PAC ("the PAC") and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), 433(b) and 434(b), and approve the attached conciliation agreement; or find probable cause to believe that the PAC and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b), and approve the attached conciliation agreement; (2) take no further action against Precision Marketing, Inc. ("PMI") and Precision List, Inc. ("PLI") and close the file in regard to PMI and PLI; and (3) take no further action regarding Ashcroft 2000 and Garrett Lott, as treasurer, in connection with the reason to believe finding with respect to 2 U.S.C. § 441b(a).[1]

II. BACKGROUND

MUR 5181 arose from a complaint filed by the Alliance for Democracy, Common Cause, the National Voting Rights Institute, Hedy Epstein and Ben Kjelshus alleging that the PAC made an excessive in-kind contribution in the form of a mailing list to Ashcroft 2000, the principal

[1] The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended, ("the Act"), and the regulations in effect during the pertinent time period, which precedes the effective date of the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Report exclude the changes made by BCRA.

campaign committee for John Ashcroft for the 2000 Senate election; that the two committees failed to report the in-kind contribution; and that Ashcroft 2000 received $116,000 for rental of the mailing list.

The investigation revealed an extensive and significant relationship between Ashcroft 2000 and the PAC. Specifically, the two committees were commonly established, financed, maintained and controlled: Mr. Ashcroft had a significant role in establishing both committees; the committees had common officers, employees and volunteers; Mr. Ashcroft exercised control over each committee analogous to that of an officer; the PAC provided mailing lists to Ashcroft 2000 at no charge; and list rental income was redirected by Mr. Ashcroft from the PAC to Ashcroft 2000. Significant, unique and valuable PAC assets -- specifically, mailing lists containing the names and addresses of those individuals who responded to the PAC's prospecting solicitations -- were provided free-of-charge and were used by Ashcroft 2000 in 1999 and 2000. Ashcroft 2000 was given valuable, proven lists of names -- the agreements purporting to give the candidate ownership of the mailing lists and Ashcroft 2000 a right to use of the lists merely facilitated the making of an excessive contribution. Thus, an examination of the overall relationship of the committees reveals that they were affiliated.

However, if the Commission does not deem these two committees to be affiliated, the evidence still shows that the PAC made and Ashcroft 2000 received an excessive in-kind contribution in the form of mailing lists developed by the PAC. Not only did Ashcroft 2000 use the PAC's lists to target its own fundraising appeals, but list rental income earned by the PAC that was deposited into Ashcroft 2000 accounts also constituted an excessive contribution.

On April 23, 2003, this Office mailed to counsel jointly representing the committees the General Counsel's Brief ("GC's Brief"), incorporated herein by reference, setting forth the

factual and legal basis upon which this Office is prepared to recommend the Commission find probable cause to believe that Respondents violated the Act.[2] On June 6, 2003, after this Office granted a request for an extension of time totaling 29 days after receiving a commensurate tolling of the statute of limitations, Respondents submitted a 13-page Joint Reply Brief ("Reply Brief").[3]

III. ANALYSIS

In their Reply Brief, Respondents do not dispute the central facts in this matter – the connections, interrelations and overlap between the PAC and Ashcroft 2000 and the development of the mailing lists by the PAC and their transfer to Ashcroft 2000. Rather, Respondents essentially argue that affiliation rules do not apply to authorized committees and leadership PACs. Although they claim that the proper legal analysis should center on the purpose of the committees, Respondents also do not rebut the showing that the PAC's activities substantially benefited Mr. Ashcroft's re-election campaign. Finally, Respondents argue that the exchange of Mr. Ashcroft's signature for ownership of the PAC's mailing lists constituted an exchange of equal value and, consequently, the PAC made no contribution at all to Ashcroft 2000.

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[2] As noted in the General Counsel's Report #2 ("GC's Report #2") dated February 4, 2003, this Office sought to procure the services of a consultant experienced in the political direct mail industry to provide expert advice and analysis in this matter. *See* GC's Report #2 at 11. This Office was unable to locate any consultant with political experience who was not identified with one of the major political parties. We then focused the search on individuals with general direct mail industry experience, and ultimately, retained the services of Ryan Lake, who has worked in the direct mail industry for 10 years and serves as Chief Executive Officer of Lake Group Media. That firm provides list management and broker services to a variety of organizations. On March 18, 2003, staff from this Office met with Mr. Lake. He provided us with a useful grounding in the operation of the direct mail industry in general, including list rentals and list exchanges. However, because his experience was entirely outside of the political arena, he was not able to offer an expert opinion as to the transactions at issue in this matter. Thus, neither the GC's Brief nor this Report relies on any statements made by Mr. Lake.

[3] Prior to Respondents replying to the GC's Brief, this Office made arrangements for Respondents' counsel to obtain copies of the deposition transcripts of Garrett Lott, Jack Oliver, Bruce Eberle, Arthur Speck and Rosann Garber. The Reply Brief and accompanying 1-page affidavit were circulated to the Commission on June 16, 2003.

A. The PAC and Ashcroft 2000 Are Affiliated Committees

As fully set forth in the GC's Brief, the PAC and Ashcroft 2000 are affiliated committees that received and made contributions in excess of their shared limits. *See* 2 U.S.C. §§ 441a(a)(1) and 441a(a)(5); and 11 C.F.R. §§ 100.5(g) and 110.3(a)(1); *see also* GC's Brief at 8-18. Not only do the traditional affiliation criteria show common establishment, financing, maintenance and control, *see* 11 C.F.R. §§ 100.5(g)(4)(ii) and 110.3(a)(3)(ii), but the PAC was used for campaign-related purposes as manifested by the transfer and use of some of its most significant, unique and valuable assets -- its mailing lists -- to Ashcroft 2000. *See* GC's Brief at 8-18.

1. Relationship of the PAC and Ashcroft 2000

Respondents' argument that the two committees are not affiliated boils down to the proposition that not only has the Commission ignored its own regulations in the past, but that it should continue to do so, and instead look only to the purpose of the PAC. Respondents look to the particular enforcement matters and advisory opinions described in the Commission's Notice of Proposed Rulemaking on Leadership PACs, 67 Fed. Reg. 78753, 78754 (Dec. 26, 2002), stating that in each case the Commission's affiliation factors were ignored. Reply Brief at 8. Because of this, Respondents assert, "[t]he use of the traditional affiliation criteria is misplaced" in this matter. *Id.* These assertions reveal a misunderstanding of both the very cases Respondents cite and the pending and prior rulemakings.

As recounted in the December 2002 NPRM, in 1986, the Commission began a rulemaking to address affiliation in general, including leadership PACs. *See* Notice of Proposed Rulemaking: Contribution and Expenditure Limitations and Prohibitions, 51 Fed. Reg. 27183 (July 30, 1986). After receiving public comments and holding a hearing, the Commission decided not to adopt the final rules drafted by the Office of General Counsel. The Commission

later explained that although it had considered including revised language that would focus specifically on affiliation between authorized committees and candidate PACs or leadership committees, "*the Commission decided instead to continue to rely on the factors set out at 11 C.F.R. § 110.3(a)(3)(ii).*" Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34098, 34101 (Aug. 17, 1989) (emphasis added) (cited in December 2002 NPRM, 67 Fed. Reg. at 78755). The Commission further explained that "after evaluating the comments and testimony on this issue, as well as the situations presented in the previous advisory opinions and compliance matters, the Commission has concluded that this complex area is better addressed on a case-by-case basis." *Id.* The Commission stated that "in an appropriate case, the Commission will examine the relationship between the authorized and unauthorized committees to determine whether they are commonly established, financed, maintained or controlled." *Id.* This is that case.

The ties between the two committees in this matter are far more extensive than any documented in the cases cited by Respondents. Ashcroft 2000 was "financed" by the PAC within the meaning of 2 U.S.C. § 441a(a)(5). Ashcroft 2000 had unlimited use of the PAC's mailing lists, which were uniquely valuable and entirely developed by the PAC at great cost, for its own fundraising. Garrett Lott and Jack Oliver participated in the day-to-day control of both committees, and at times Mr. Lott performed the same role for both committees simultaneously. The candidate himself, Mr. Ashcroft, had and exercised ultimate control over the actions of both committees. No enforcement matter on "leadership PACs" cited by Respondents or in the December 2002 NPRM presented indicia of affiliation that were remotely as compelling.

Even if the Commission accepted Respondents' invitation to apply as a rule of law the December 2002 NPRM's summary of prior cases, which stated that "committees formed or used

by a candidate or officeholder to further his or her campaign are affiliated; those formed or used for other purposes are not," Respondents would fail that test. *See* NPRM, 67 Fed. Reg. at 78755. The key fact in this matter is, very simply, that the PAC's most valuable assets -- its mailing lists and the accompanying rights to income from rental of the mailing lists -- were used exclusively for campaign purposes from the end of 1999 through 2000.

The differences between the prior "leadership PAC" matters cited in the December 2002 NPRM and this matter are significant. For example, in MUR 1870 (Congressman Waxman Campaign Committee and the 24th Congressional District of California PAC), the PAC was identified with the officeholder, several individuals performed services for both committees, and a number of persons received expense reimbursement from both committees. However, there was no indication that any of the PAC's assets were used to benefit the authorized committee. In MUR 2987 (Dick Armey Campaign and Policy Innovation PAC), there appeared to be no transactions between the two committees and the activities of the committees appeared to be entirely separate. And, in MUR 3740 (Rostenkowski for Congress and America's Leaders' Fund), the officeholder admitted establishing the leadership PAC, and a check written on the leadership PAC's non-federal account contained the officeholder's signature, thus providing some evidence that the officeholder controlled both committees. But again, there was no other evidence of any relationship between the committees.[4]

In this matter, whether one applies the traditional affiliation criteria or the purpose test suggested by Respondents, the result is the same -- the PAC and Ashcroft 2000 are affiliated. Not only do the affiliation criteria show common establishment, financing, maintenance and

[4] Although Respondents cite Advisory Opinions 1990-16 and 1991-12, in these opinions, the Commission actually found the committees to be affiliated because they were commonly controlled and used for campaign purposes.

control, *see* GC's Brief at 8-18, but the PAC was used to further Mr. Ashcroft's campaign, particularly when in 1999, he redirected the PAC's mailing lists and the rental income from those lists to Ashcroft 2000. *See* GC's Brief at 15-18. Ashcroft 2000 continued to receive list rental income until June 2001. *Id.* at 18. Respondents have not claimed and the evidence does not show that the lists were used for any purpose other than Ashcroft 2000 fundraising during late 1999 and 2000. *See* GC's Brief at 27.

2. Consequences of Affiliation

As a result of their affiliation, the PAC and Ashcroft 2000 share contribution limits for contributions made and received, *see* 2 U.S.C. § 441a(a)(5) and 11 C.F.R. §§ 100.5(g) and 110.3(a)(1), and were limited to receiving $1,000 per election from individuals and $5,000 per election from multicandidate committees. 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(2)(A) and 441a(f). Also sharing the limits for contributions made to candidate committees, the committees were limited to making contributions of $1,000 per election. 2 U.S.C. § 441a(a)(1)(A). The PAC and Ashcroft 2000 made $30,697 in excessive contributions to other committees and received $65,890 in excessive contributions from individuals and $19,900 in excessive contributions from multicandidate committees.

The Committees also failed to disclose each other as affiliated committees in their Statements of Organization. *See* 2 U.S.C. § 433(b). In addition, the Committees failed to report the transfer of the lists between affiliated committees when transferred from the PAC to Ashcroft 2000. *See* 2 U.S.C. § 434(b). Therefore, the Office of General Counsel recommends that the Commission find probable cause to believe that Ashcroft 2000 and Garrett Lott, as treasurer, and Spirit of America PAC and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), 433(b) and 434(b).

B. The Transactions Did Not Constitute An Exchange of Equal Value

The central assertion of Respondents' brief is that "[b]oth the affiliation and excessive contribution theories . . . turn entirely on the view that equivalent value was not exchanged between former Senator Ashcroft and SOA." Reply Brief at 2 (emphasis in original). Most of the rest of the reply brief is devoted to supporting their argument that "each of the parties received equivalent consideration," Reply Brief at 3, or attacking this Office's conclusion that they did not. Their attack on this Office's principal argument for why equal value was not exchanged rests largely on one witness's assertion of an "oral understanding" between the PAC and Mr. Ashcroft, even though the same witness equivocated as to whether Mr. Ashcroft was even involved in such an understanding. They fail to discuss the redirection of list rental income from the PAC to Ashcroft 2000. They argue that the question of arm's-length bargaining is irrelevant, and that the only test should be whether there was an exchange of equal value, without perceiving that the absence of arm's-length bargaining is itself important evidence that equal value was not exchanged. And finally, they argue that their position is somehow supported by a prior enforcement matter in which the Commission found reason to believe a committee received a contribution, even though it received much less value for the candidate's signature than Mr. Ashcroft did.

1. There Is No Support Or Proof That The WPA Memorialized An Earlier Understanding

The PAC gave Mr. Ashcroft exclusive rights to lists it spent a total of $1.7 million developing in "exchange" for something – his signature – that the PAC already had been using for free for six months. *See* GC's Brief at 25-28. Respondents imply that the six months of free use demonstrates nothing. Based on the testimony of Jack Oliver, the PAC's Executive Director at the time of the WPA, they assert that the WPA merely memorialized a preexisting "oral

understanding" between the PAC and Mr. Ashcroft. Reply Brief at 3. Later, they repeat the assertion, and call it "uncontradicted." *Id.* at 7. However, Mr. Oliver could not even remember whether Mr. Ashcroft had any involvement at all in the supposed "understanding." The key portion of Mr. Oliver's testimony bears repeating.[5] When asked whether Mr. Ashcroft (a party to the WPA) was involved in the "oral understanding," Mr. Oliver said:

> I can't remember if I told John or not or I just assumed. I think -- I think -- I don't remember whether I told him or not. I think he may have asked me. If he had them, too, if he owned the names, too, and [the PAC] owned the names and how we were doing all this, I said, look, we're going to use standard industry practice, but I don't know when or if that conversation occurred. I just don't remember. I mean, it's a standard operating procedure, so I may have mentioned it to him. I don't remember what his response was.

Deposition of Jack Oliver at pages 61-62. Thus, Mr. Oliver's testimony casts doubt on the contention that the WPA merely "memorialized" an existing agreement. Respondents have failed to provide any additional information supporting the existence of an "oral understanding." Moreover, there is no reference within the WPA to its memorializing a preexisting agreement. By its terms, it applies to activity going forward.[6] GC's Brief at 32.

2. The Redirection of List Rental Income Is Further Evidence That The WPA Was Not An Exchange of Equal Value

Not once does the Reply Brief address the evidence presented in the GC's Brief concerning the redirection of list rental income to Ashcroft 2000. To recap, checks for income from rental of the PAC's lists *that had already been sent to the PAC* were returned to one of the PAC's list management vendors with instructions that they be reissued to Ashcroft 2000, and additional payments that had not yet been disbursed were also directed to be issued to Ashcroft

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[5] Mr. Oliver's testimony is cited in the GC's Brief at page 26, n.38 but not cited at all in the Reply Brief.

[6] Thus, it could not have transferred to Mr. Ashcroft ownership of names on the PAC's mailing list that pre-date the WPA. GC's Brief at 32-33. These names, then, constitute an excessive contribution from the PAC to Ashcroft 2000. *Id.*

2000. GC's Brief at 29. Garrett Lott, who was acting as "Finance Coordinator" of both the PAC and Ashcroft 2000, took these actions despite vendor concerns about possible FECA violations that were so strong the vendor demanded and received a "hold harmless" letter. *Id.* On at least one other occasion, Ashcroft 2000 sold list rental accounts receivable generated from the PAC's lists. *Id.* at 30. And between December 1999 and May 2001, all of the income attributable to rental of the PAC's lists, or new lists that were formed in part by the PAC's lists, was paid to Ashcroft 2000, not the PAC. *See id.*

The redirection of rental income further demonstrates that the WPA did not represent an exchange of equal value. Supposedly, the PAC received "significant value" and "added value" from the rights to use Mr. Ashcroft's signature and likeness, because Mr. Ashcroft was "well-known and respected in the conservative Republican community, which . . . was the target [of] SOA's fundraising efforts." Reply Brief at 4. Part of that value would be that Mr. Ashcroft's signature would help the PAC build a better performing and therefore more marketable list. But at least in the area of rental income, the agreement did not work entirely that way. It may well have permitted the building of a more marketable list, but the benefit from the enhanced marketability ultimately inured to Ashcroft 2000, not the PAC. In the end, the agreement deprived the PAC of nearly $200,000 in list rental income it would have otherwise received. *See* GC's Brief at 27. With respect to list rental income, the majority of the WPA's burdens rested on the PAC while the majority of its benefits went to Ashcroft 2000. By definition, that is not an exchange of equal value.

3. The "Exchange" Was Neither Bargained-For At Arm's-Length Nor Commercially Reasonable

Notably, the Reply Brief does not contest the evidence in the GC's Brief demonstrating that the WPA was not a bargained-for, arm's-length transaction. GC's Brief at 25-26. All

Respondents assert is that the lack of arm's-length bargaining is irrelevant. Reply Brief at 9. In the very next sentence, Respondents correctly cite the standard in the Commission's regulations for determining whether an in-kind contribution was made.[7] What Respondents do not seem to understand is that whether a transaction is at arm's-length or not, while not dispositive, is highly relevant to determining whether an exchange is equal to the "usual or normal charge."

When a transaction involves the exchange of goods or services for cash, it is usually easy to determine whether the consideration equals the "usual and normal charge." It is not as easy to do so with a non-cash transaction like that at issue here. The consideration in non-cash transactions must be of equal value or else a contribution results. *See, e.g.,* AOs 2002-14; 1982-41; 1981-46. In a number of Advisory Opinions dealing with mailing lists – most recently AO 2002-14, which Respondents also cite – and in a number of other contexts in its regulations, the Commission has relied on several signposts for ensuring that an arrangement between a political committee and another person constitutes a *bona fide* transaction, rather than serving as a vehicle for making a contribution to the committee.

One of the most important of these signposts is whether the transaction represented a bargained-for exchange negotiated at arm's-length. The list rentals at issue in part of AO 2002-14 were approved precisely on condition that the lists be "leased at the usual and normal charge in a *bona fide*, arm's-length transaction." The very concept of "fair market value," which is virtually identical to the concept of "usual and normal charge" as defined in the Commission's regulations, is defined by Black's Law Dictionary as "[t]he price that a seller is willing to accept

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[7] An in-kind contribution is made by a person who provides any goods or services to a political committee without charge or at a charge that is less than the usual and normal charge for such goods or services. *See* 2 U.S.C. § 431(8)(A)(i); 11 C.F.R. § 100.7(a)(1)(iii)(A); GC's Brief at 20-21. The "usual and normal charge for such goods or services" is defined as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." 11 C.F.R. § 100.7(a)(1)(iii)(B).

and a buyer is willing to pay on the open market and in an arm's-length transaction." BLACK'S LAW DICTIONARY 1549 (7th ed. 1999). A lack of arm's-length bargaining is all the more likely to reflect an exchange of unequal value where a party stands on both sides of a transaction, as is the case with Mr. Ashcroft and the WPA. *Cf. Ryback v. Commissioner,* 91 T.C. 524, 536-37 (U.S. Tax Court 1988) (in tax law, where transactions are frequently examined for whether they should be disregarded for lack of economic substance, "[t]he absence of arm's-length negotiations is a key indicator that a transaction lacks economic substance.") Here, the Respondents do not contest that the WPA was neither bargained for nor an arm's-length transaction.

Another of the signposts is whether the transaction was "commercially reasonable," as demonstrated by the customary practice in the relevant industry. In Advisory Opinions 1982-41 and 1981-46, for example, the Commission approved list-related transactions based on the requestor's assertion that the proposed transactions were "accepted practice in the field of direct mail fundraising" (1981-46) or "routine and usual in the list brokering industry" (1982-41). But the WPA was not commercially reasonable. Bruce Eberle, one of the PAC's own vendors in this matter and a 30-year veteran of the direct mail industry who literally "wrote the book" on how direct mail fundraising is done,[8] testified that he had not seen a provision like that reflected in the WPA where the work product became the exclusive property of the signatory.[9] Deposition of Bruce Eberle, March 28, 2003, at 70-71. *See* GC's Brief at 26, n.36. Indeed, it worried him

[8] BRUCE W. EBERLE, POLITICAL DIRECT MAIL FUND RAISING (Kaleidoscope Publishing, Ltd., revised ed. 1996). *See* GC's Brief at 31, n.48.

[9] Respondents generally take issue with the motives behind Mr. Eberle's testimony, Reply Brief at 6-7, but do not counter either his testimony that he had never seen an agreement like the WPA or his specific descriptions of the transactions at issue in this matter.

enough that he demanded a hold-harmless letter before redirecting the list rental income to Ashcroft 2000. *See supra* at 10.

Respondents assert that the WPA was a common type of transaction, Reply Brief at 10, but provide almost no support for their argument. They cite examples of two other agreements between a candidate and an organization wherein the candidate permitted the organization to use his name on solicitations and in exchange received ownership of the names of persons responding to the solicitations. Reply Brief at 5, 7. However, both examples involve Mr. Ashcroft as the candidate, and so hardly suffice to show that the WPA was a common type of transaction. And the affidavit submitted by Respondents from Joanna Boyce Warfield, a direct marketing practitioner for political and non-profit organizations, addresses neither the WPA nor the surrounding circumstances and so cannot support any interpretation of the facts in this matter.

Thus, the factors the Commission has relied on in the past to identify *bona fide* transactions are not present here. The WPA was not a bargained-for, arm's-length transaction. There is no evidence of its commercial reasonableness. These factors, combined with other facts described in the GC's Brief at 26-28 and above, demonstrate that the WPA was not an exchange of equal value – or, in other words, that Mr. Ashcroft did not pay the "usual and normal charge . . . in the [relevant] market" for the rights the WPA gave him (and by extension Ashcroft 2000).[10] As with their affiliation argument, Respondents again fail the very test they set forth.

4. The Dole Matters (MURs 4382/4401)

Although the argument is hard to follow, Respondents appear to claim that the list transaction in the Dole matters is similar to that in the present matter and that therefore

[10] *See* 2 U.S.C. § 432(e)(2).

Respondents in the instant matter did not violate the Act. *See* Reply Brief at 11-12. However, it is hard to see how the Dole matters offer Respondents any support. The major transaction at issue in the Dole matters granted Senator Dole *one-time use* of the names generated by his signature, while in this matter the WPA granted Mr. Ashcroft permanent ownership of the names. *See* GC's Brief at 23-24 and 26, n.36. The Commission found reason to believe that the transaction in the Dole matters resulted in an impermissible corporate contribution from Citizens Against Government Waste ("CAGW") to Dole for President, i.e., *not* a permissible exchange of equal value. *See* MURs 4382/4401 GC's Report #2 dated August 2, 2000 at 3.[11] If an exchange of one-time use of a list in exchange for a signature was potentially a contribution in the Dole matters, the size of the contribution would be much larger in this matter, where Mr. Ashcroft received rights to unlimited use of the PAC's mailing lists and income from the rental of such lists. Therefore, the Dole matters are distinguishable from the present matter and offer no support for a finding that Respondents did not violate the Act.

5. Neither the PAC Nor Ashcroft 2000 Reported Making or Receiving the Contribution Described Above

Neither the PAC nor Ashcroft 2000 disclosed the making and receiving of the contribution in the form of the mailing lists and so failed to meet the Act's reporting requirements. *See* GC's Brief at 33-34; 2 U.S.C. § 434(b). The Reply Brief made no mention of this issue.

[11] Specifically, the Commission found reason to believe that Dole for President and CAGW each violated 2 U.S.C. § 441b(a) and that Dole for President violated 2 U.S.C. § 434(b). The Commission viewed the corporation as providing a benefit to the Dole campaign that could constitute a contribution and noted that if the Committee paid for this benefit in a bargained-for exchange of equal value, then no contribution would have resulted. See MURs 4382/4401, Factual and Legal Analysis for Dole for President at 27-28.

6. Recommendations

In light of the above discussion, this Office recommends that the Commission find probable cause to believe that the PAC and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b), and that Ashcroft 2000 and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b).

C. Ashcroft 2000 Misreported List Rental Income

Ashcroft 2000 disclosed certain list rental income receipts from PMI that were in fact received from PLI. *See* GC's Brief at 34; 2 U.S.C. § 434(b)(3)(G). The Reply Brief made no mention of this issue. Therefore, the Office of General Counsel recommends that the Commission find probable cause to believe that Ashcroft 2000 and Garrett Lott, as treasurer, and Spirit of America PAC and Garrett Lott, as treasurer, violated 2 U.S.C. § 434(b).

IV. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

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V. RECOMMENDATIONS TO TAKE NO FURTHER ACTION

On July 23, 2002, the Commission found reason to believe that Ashcroft 2000 and Garrett Lott, as treasurer, violated 2 U.S.C. § 441b(a) and PMI, a vendor to the Committee, also violated 2 U.S.C. § 441b(a). The Commission's reason-to-believe finding that Ashcroft 2000 may have received and PMI may have made corporate contributions in violation of 2 U.S.C. § 441b(a) was based on the following considerations: it appeared, from information available at the time, that PMI, a Virginia corporation, had rented or sub-licensed mailing lists or portions of mailing lists from Ashcroft 2000 for an amount totaling over $116,922; and the mailing lists were developed for or by the PAC for its own use and, therefore, Ashcroft 2000 did not appear to develop the mailing lists in the normal course of its operation and for its own use.

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had already responded to letters from the PAC signed by Mr. Ashcroft. Further, an alternative valuation based on the PAC's costs of developing such lists would be much higher: $1.7 million.

During the course of the investigation, this Office discovered that certain payments that Ashcroft 2000 reported in its disclosure reports as received from PMI were not received from PMI. PMI provided copies of checks from Omega List Company for list rental income that were made payable to PLI. This information suggested that the payments at issue had been made to Ashcroft 2000 by PLI instead of PMI. Consequently, on February 11, 2003, the Commission found reason to believe that PLI violated 2 U.S.C. § 441b(a). *See* GC's Report #2 at 5-9.

The overall information developed during the investigation indicates that neither PMI nor PLI rented, sub-licensed or purchased any mailing lists or portions of mailing lists from Ashcroft 2000. The factual record indicates that PMI acted as a direct mail fundraising counsel to Ashcroft 2000 and PLI acted as a list manager and list broker for Ashcroft 2000. Arthur Speck, president of PMI, testified that PMI wrote copy, managed production and analyzed the results of the direct mail program for Ashcroft 2000,[14] but never rented or purchased any mailing lists from Ashcroft 2000.[15] Rosann Garber, the president of PLI, testified that PLI never rented any mailing lists from Ashcroft 2000.[16] Included in PLI's response to the Commission's reason-to-believe finding is an affidavit from Ms. Garber in which she avers that PLI did not rent, license or sub-license any mailing lists from Ashcroft 2000. The testimony of Mr. Speck and Ms. Garber is consistent with the testimony of Garrett Lott, treasurer of Ashcroft 2000; Mr. Lott testified that neither PMI nor PLI ever rented mailing lists from Ashcroft 2000 or received a license from Ashcroft 2000 to use the lists.[17]

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[14] Deposition of Arthur Speck at page 133.
[15] Deposition of Arthur Speck at page 232.
[16] Deposition of Rosann Garber at page 124.
[17] Deposition of Garrett Lott (11:25 session) at page 53. In addition, with respect to the reporting violations discussed above, Mr. Lott testified that certain receipts that Ashcroft 2000 had reported as received from PMI were actually received from PLI and, in error, Ashcroft 2000 had reported them as received from PMI. *Id.* at 94-97. These payments to Ashcroft 2000 from PLI comprised rental income that PLI as list manager received from

Based on the aforementioned, this Office recommends that the Commission take no further action with respect to the Commission's reason-to-believe findings that Precision Marketing, Inc., Precision List, Inc. and Ashcroft 2000 and Garrett Lott, as treasurer, violated 2 U.S.C. § 441b(a) and close the file in regard to Precision Marketing, Inc. and Precision List, Inc.[18]

VI. RECOMMENDATIONS

1. Find probable cause to believe that Ashcroft 2000 and Garrett Lott, as treasurer, and Spirit of America PAC and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A), 441a(f), 433(b) and 434(b), and approve the attached conciliation agreement.

2. Find probable cause to believe that Spirit of America PAC and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(f) and 434(b), and approve the attached conciliation agreement.

3. Take no further action and close the file regarding Precision Marketing, Inc. and Precision List, Inc.

4. Take no further action regarding Ashcroft 2000 and Garrett Lott, as treasurer, in connection with the reason to believe finding with respect to 2 U.S.C. § 441b(a).

organizations that rented the mailing lists, not payment by PLI for its own rental or use of the mailing lists. Deposition of Rosann Garber at pages 82-83.

[18] This Office is not making any recommendations regarding any renters of the mailing lists with respect to possible excessive and prohibited contributions. Instead, we are focusing on the main transaction between the PAC and Ashcroft 2000.

5. Approve the appropriate letters.

6/30/03
Date

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel for Enforcement

Cynthia E. Tompkins
Assistant General Counsel

Mark Allen
Attorney

Mary L. Taksar
Attorney

Attachments:
1. Conciliation Agreement relating to Recommendation 1
2. Conciliation Agreement relating to Recommendation 2