



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via Facsimile and Federal Express

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August 25, 2003

Via Facsimile

Benjamin L. Ginsberg, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, DC 20037
(202) 457-6315

RE: MUR 5181
Spirit of America PAC and
Garrett M. Lott, as Treasurer
Ashcroft 2000 and
Garrett M. Lott, as Treasurer

Dear Messrs. Trimble and Ginsberg:

The General Counsel issued a brief in this matter dated April 23, 2003 to your clients, Spirit of America PAC ("PAC") and Garrett Lott, as Treasurer, and Ashcroft 2000 and Garrett Lott, as Treasurer, (collectively, "Respondents") containing recommendations regarding probable cause to believe. You filed a reply brief dated June 5, 2003 on behalf of Respondents. The Commission, upon consideration of the General Counsel's brief and the reply brief, directed the Office of General Counsel to conduct limited additional discovery. A supplemental brief highlighting the resulting additional information is enclosed.

After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that violations have occurred.

Tony P. Trimble, Esq.
Benjamin L. Ginsberg, Esq.
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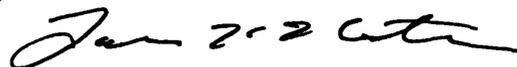
The Commission may or may not approve the General Counsel's recommendations. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a supplemental reply brief (ten copies if possible) stating your position on the issues and replying to the supplemental brief of the General Counsel. (Three copies of such supplemental reply brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and supplemental brief and the reply brief and any supplemental reply brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

Due to statute of limitations considerations, before granting any request for an extension of time to respond to the enclosed supplemental brief, this Office will request that your clients execute an agreement to extend the statute of limitations. In addition, any extension request must be submitted in writing five days prior to the due date, and good cause must be demonstrated.

A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Mary L. Taksar or Mark Allen, the attorneys assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence H. Norton
General Counsel

Enclosure
Supplemental Brief

1
2 **BEFORE THE FEDERAL ELECTION COMMISSION**
3

4 In the Matter of)
5) MUR 5181
6 Spirit of America PAC and Garrett Lott, as Treasurer)
7 Ashcroft 2000 and Garrett Lott, as Treasurer)
8

9 **GENERAL COUNSEL'S SUPPLEMENTAL BRIEF**
10

11 **I. BACKGROUND**
12

13 The General Counsel issued a brief in this matter dated April 23, 2003 ("GC's Brief") to
14 Spirit of America PAC ("PAC") and Garrett Lott, as Treasurer, and Ashcroft 2000 and Garrett
15 Lott, as Treasurer, (collectively, "Respondents") containing recommendations regarding
16 probable cause to believe based on two theories. First, the PAC and Ashcroft 2000 are affiliated
17 committees that received and made contributions in excess of their shared contribution limits.
18 See 2 U.S.C. §§ 441a(a) and 441a(f) and 11 C.F.R. §§ 100.5(g) and 110.3(a)(1). Second, even if
19 the committees are not deemed to be affiliated, the PAC made and Ashcroft 2000 received an
20 excessive in-kind contribution in the form of mailing lists developed by the PAC and provided to
21 Ashcroft 2000 through Mr. Ashcroft. See 2 U.S.C. §§ 441a(a)(2)(A) and 441a(f). Respondents
22 filed a Reply Brief dated June 5, 2003. The Commission, upon consideration of the GC's Brief
23 and the Reply Brief, directed the Office of General Counsel to conduct limited additional
24 discovery on the redirection of list rental income ("LRI") from the PAC to Ashcroft 2000. The
25 General Counsel now issues a Supplemental Brief highlighting the resulting additional
26 information. However, this information does not alter the legal theories set forth in the GC's
27 Brief or any of the recommendations therein.
28

1 **II. LIMITED ADDITIONAL DISCOVERY**

2 The limited additional discovery conducted in this matter focused on Respondents'
3 redirection of LRI from the PAC to Ashcroft 2000. See GC's Brief at 6, 16-18, 29-31.
4 Specifically, in December 1999, Garrett Lott sent two letters to Omega List Company
5 ("Omega") instructing the vendor to "attribute[]" the LRI to Ashcroft 2000, which would include
6 reissuing several checks already written by Omega to the PAC.¹ *Id.* at 16-17, 29. Mr. Lott
7 signed these two letters on behalf of both Ashcroft 2000 and the PAC. *Id.* at 10, 16-17, 29.

8 Mr. Lott testified that it was his understanding that the LRI redirection was permitted by
9 the Work Product Agreement ("WPA") and the List License Agreement ("LLA"). He believed
10 that under the WPA, Mr. Ashcroft owned the Spirit of America PAC's list of names, and that
11 pursuant to the LLA, Mr. Ashcroft could direct the LRI derived from the PAC's list to Ashcroft
12 2000. Deposition of Garrett Lott, August 7, 2003, at pages 26, 46, 77-78. See GC's Brief at 23-
13 25.

14 Mr. Lott also testified that it was his own idea to redirect LRI from the PAC to Ashcroft
15 2000. Deposition of Garrett Lott, August 7, 2003, at page 42. According to Mr. Lott, the LRI
16 had been used to retire the PAC's debt, and once the debt was retired the LRI was "shifted" to
17 Ashcroft 2000. *Id.* at 16.

18 Mr. Lott further testified that he "needed to talk to" David Ayres, an agent of then-
19 Senator Ashcroft and the future campaign manager of Ashcroft 2000, in order to get his approval
20 to redirect the LRI.² *Id.* at 42; see also *id.* at 20, 58-59. Mr. Lott testified that Mr. Ayres

¹ One of these letters was dated December 10, 1999. Mr. Lott testified that he sent the other letter, which is undated, shortly after December 10, 1999. Deposition of Garrett Lott, August 7, 2003, at page 72.

² Mr. Ayres currently serves as chief of staff to Mr. Ashcroft in his position as United States Attorney General. According to Mr. Lott, at the time of this discussion with Mr. Ayres, the latter was serving as chief of staff to then-Senator Ashcroft. Mr. Lott testified that in that discussion Mr. Ayres was not acting in his capacity as chief

1 approved the redirection and also that he considered his discussion with Mr. Ayres to be
2 authority from Mr. Ashcroft. *Id.* at 42-43. Mr. Lott initially stated that he did not know whether
3 Mr. Ayres discussed the LRI redirection with Mr. Ashcroft, but later stated that he believed Mr.
4 Ayres had done so.³ *Id.* at 43-44, 59.

5 In response to the question, "To what extent was the directing of list rental income from
6 the PAC to Ashcroft 2000 commercially reasonable?", counsel first objected that the question
7 called for a legal conclusion and Mr. Lott questioned the meaning of "commercially reasonable."
8 *Id.* at 87-88. Eventually, Mr. Lott answered "yes" to the question, "[D]oes that kind of directing
9 of list rental income from one entity to another occur ... within fundraising, in general?" *Id.* at
10 88. When asked how he knew this, Mr. Lott testified, "Well, we did it here. I don't know, other
11 than this." *Id.* Mr. Lott suggested David Ayres and employees of Bruce Eberle & Associates
12 ("Eberle") would be knowledgeable about the redirection of LRI from the PAC to Ashcroft
13 2000. *Id.* at 88-89. This Office interviewed and obtained an affidavit from William Griffiths,
14 vice president of Eberle and Omega,⁴ with whom Mr. Lott discussed the LRI redirection.⁵
15 Attachment. Mr. Griffiths provided additional information concerning Omega's practices
16 regarding changes in the recorded "ownership" of lists and concerning the particular transfer of
17 LRI in this instance. Mr. Griffiths indicated that changes in "ownership" (i.e., in this context, the
18 entity to whom Omega records show LRI is to be paid) do happen; he averred that the Omega
19 policy is that "[a]ny change in list ownership should be documented in writing." Affidavit of

of staff but rather as an individual advising Mr. Lott as an agent of the Ashcroft 2000 campaign. Deposition of Garrett Lott, August 7, 2003, at pages 19, 42.

³ Mr. Lott's December 10, 1999 letter to Omega, *supra* n.1, represented that "[i]t is the intention of Senator Ashcroft that all list rental revenue assuming Spirit of America's debt has been paid off, be attributed to Ashcroft 2000." Mr. Lott testified that he had ascertained the intention of then-Senator Ashcroft by having spoken with David Ayres. Deposition of Garrett Lott, August 7, 2003, at page 58.

⁴ Mr. Griffiths has served as Eberle and Omega vice president since January 1995.

⁵ Deposition of Garrett Lott, August 7, 2003, at pages 67, 70-71.

1 William Griffiths, August 11, 2003, ¶ 4. By contrast, Mr. Griffiths averred that a redirection of
2 LRI checks already cut was, at least in his experience, unprecedented. He stated:

3 During my time at Eberle and Omega I personally do not recall seeing LRI
4 earned by one entity go to a different entity unless there had been a clerical
5 error or a check had been mis-cut, although this may have occurred. I also
6 personally do not recall seeing LRI reassigned from one client to another for
7 checks that had not yet been cut, but again this could have occurred.
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9 Affidavit of William Griffiths, August 11, 2003, ¶ 5.

10 **III. CONCLUSION**

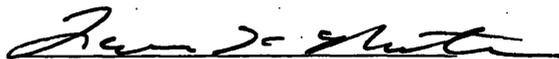
11 The information set forth above, while clarifying the role of Garrett Lott and others
12 regarding the LRI redirection, does not alter the legal theories or recommendations set forth in
13 the GC's Brief.

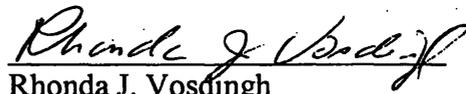
14 **IV. GENERAL COUNSEL'S RECOMMENDATIONS**

15 1. Find probable cause to believe that Ashcroft 2000 and Garrett Lott, as Treasurer, and
16 Spirit of America PAC and Garrett Lott, as Treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A),
17 441a(f), 433(b) and 434(b).
18

19 2. Find probable cause to believe that Spirit of America PAC and Garrett Lott, as Treasurer,
20 violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and Garrett Lott, as Treasurer,
21 violated 2 U.S.C. §§ 441a(f) and 434(b).
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23
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25 8/25/03
26
27 Date


Lawrence H. Norton
General Counsel


Rhonda J. Vosdingh
Associate General Counsel for Enforcement

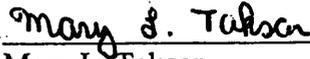

Cynthia E. Tompkins
Assistant General Counsel

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Mark Allen
Attorney



Mary L. Taksar
Attorney

Attachment
William Griffiths affidavit