



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

4 The investigation revealed an extensive and significant relationship between Ashcroft  
5 2000 and the PAC. Specifically, the two committees were commonly established, financed,  
6 maintained and controlled: Mr. Ashcroft had a significant role in establishing both committees;  
7 the committees had common officers, employees and volunteers; Mr. Ashcroft exercised control  
8 over each committee analogous to that of an officer; the PAC provided mailing lists to Ashcroft  
9 2000 at no charge; and list rental income was redirected by Mr. Ashcroft from the PAC to  
10 Ashcroft 2000. Significant, unique and valuable PAC assets -- specifically, mailing lists  
11 containing the names and addresses of those individuals who responded to the PAC's  
12 prospecting solicitations -- were provided free-of-charge and were used by Ashcroft 2000 in  
13 1999 and 2000. Ashcroft 2000 was given valuable, proven lists of names -- the agreements  
14 purporting to give the candidate ownership of the mailing lists and Ashcroft 2000 a right to use  
15 of the lists merely facilitated the making of an excessive contribution. Thus, an examination of  
16 the overall relationship of the committees reveals that they were affiliated.

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

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

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

6 **III. ANALYSIS**

7 In their Reply Brief, Respondents do not dispute the central facts in this matter – the  
8 connections, interrelations and overlap between the PAC and Ashcroft 2000 and the  
9 development of the mailing lists by the PAC and their transfer to Ashcroft 2000. Rather,  
10 Respondents essentially argue that affiliation rules do not apply to authorized committees and  
11 leadership PACs. Although they claim that the proper legal analysis should center on the  
12 purpose of the committees, Respondents also do not rebut the showing that the PAC's activities  
13 substantially benefited Mr. Ashcroft's re-election campaign. Finally, Respondents argue that the  
14 exchange of Mr. Ashcroft's signature for ownership of the PAC's mailing lists constituted an  
15 exchange of equal value and, consequently, the PAC made no contribution at all to Ashcroft  
16 2000.

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<sup>2</sup> 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.

<sup>3</sup> 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.

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1           **A.     The PAC and Ashcroft 2000 Are Affiliated Committees**

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3           As fully set forth in the GC's Brief, the PAC and Ashcroft 2000 are affiliated committees  
4 that received and made contributions in excess of their shared limits. *See* 2 U.S.C. §§ 441a(a)(1)  
5 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  
6 only do the traditional affiliation criteria show common establishment, financing, maintenance  
7 and control, *see* 11 C.F.R. §§ 100.5(g)(4)(ii) and 110.3(a)(3)(ii), but the PAC was used for  
8 campaign-related purposes as manifested by the transfer and use of some of its most significant,  
9 unique and valuable assets -- its mailing lists -- to Ashcroft 2000. *See* GC's Brief at 8-18.

10                   1.     Relationship of the PAC and Ashcroft 2000

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

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

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1 later explained that although it had considered including revised language that would focus  
2 specifically on affiliation between authorized committees and candidate PACs or leadership  
3 committees, "*the Commission decided instead to continue to rely on the factors set out at*  
4 *11 C.F.R. § 110.3(a)(3)(ii).*" *Affiliated Committees, Transfers, Prohibited Contributions, Annual*  
5 *Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34098, 34101 (Aug. 17,*  
6 *1989) (emphasis added) (cited in December 2002 NPRM, 67 Fed. Reg. at 78755).* The  
7 Commission further explained that "after evaluating the comments and testimony on this issue,  
8 as well as the situations presented in the previous advisory opinions and compliance matters, the  
9 Commission has concluded that this complex area is better addressed on a case-by-case basis."  
10 *Id.* The Commission stated that "in an appropriate case, the Commission will examine the  
11 relationship between the authorized and unauthorized committees to determine whether they are  
12 commonly established, financed, maintained or controlled." *Id.* This is that case.

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

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

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

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

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

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<sup>4</sup> 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.

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1 control, *see* GC's Brief at 8-18, but the PAC was used to further Mr. Ashcroft's campaign,  
2 particularly when in 1999, he redirected the PAC's mailing lists and the rental income from those  
3 lists to Ashcroft 2000. *See* GC's Brief at 15-18. Ashcroft 2000 continued to receive list rental  
4 income until June 2001. *Id.* at 18. Respondents have not claimed and the evidence does not  
5 show that the lists were used for any purpose other than Ashcroft 2000 fundraising during late  
6 1999 and 2000. *See* GC's Brief at 27.

7           2.       Consequences of Affiliation

8           As a result of their affiliation, the PAC and Ashcroft 2000 share contribution limits for  
9 contributions made and received, *see* 2 U.S.C. § 441a(a)(5) and 11 C.F.R. §§ 100.5(g) and  
10 110.3(a)(1), and were limited to receiving \$1,000 per election from individuals and \$5,000 per  
11 election from multicandidate committees. 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(2)(A) and 441a(f).  
12 Also sharing the limits for contributions made to candidate committees, the committees were  
13 limited to making contributions of \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). The PAC and  
14 Ashcroft 2000 made \$30,697 in excessive contributions to other committees and received  
15 \$65,890 in excessive contributions from individuals and \$19,900 in excessive contributions from  
16 multicandidate committees.

17           The Committees also failed to disclose each other as affiliated committees in their  
18 Statements of Organization. *See* 2 U.S.C. § 433(b). In addition, the Committees failed to report  
19 the transfer of the lists between affiliated committees when transferred from the PAC to Ashcroft  
20 2000. *See* 2 U.S.C. § 434(b). Therefore, the Office of General Counsel recommends that the  
21 Commission find probable cause to believe that Ashcroft 2000 and Garrett Lott, as treasurer, and  
22 Spirit of America PAC and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A),  
23 441a(f), 433(b) and 434(b).

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

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

13  
14 Deposition of Jack Oliver at pages 61-62. Thus, Mr. Oliver’s testimony casts doubt on the  
15 contention that the WPA merely “memorialized” an existing agreement. Respondents have  
16 failed to provide any additional information supporting the existence of an “oral understanding.”  
17 Moreover, there is no reference within the WPA to its memorializing a preexisting agreement.  
18 By its terms, it applies to activity going forward.<sup>6</sup> GC’s Brief at 32.

19 2. The Redirection of List Rental Income Is Further Evidence  
20 That The WPA Was Not An Exchange of Equal Value  
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22 Not once does the Reply Brief address the evidence presented in the GC’s Brief  
23 concerning the redirection of list rental income to Ashcroft 2000. To recap, checks for income  
24 from rental of the PAC’s lists *that had already been sent to the PAC* were returned to one of the  
25 PAC’s list management vendors with instructions that they be reissued to Ashcroft 2000, and  
26 additional payments that had not yet been disbursed were also directed to be issued to Ashcroft

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<sup>5</sup> 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.

<sup>6</sup> 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.*

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1 2000. GC's Brief at 29. Garrett Lott, who was acting as "Finance Coordinator" of both the PAC  
2 and Ashcroft 2000, took these actions despite vendor concerns about possible FECA violations  
3 that were so strong the vendor demanded and received a "hold harmless" letter. *Id.* On at least  
4 one other occasion, Ashcroft 2000 sold list rental accounts receivable generated from the PAC's  
5 lists. *Id.* at 30. And between December 1999 and May 2001, all of the income attributable to  
6 rental of the PAC's lists, or new lists that were formed in part by the PAC's lists, was paid to  
7 Ashcroft 2000, not the PAC. *See id.*

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

21 3. The "Exchange" Was Neither Bargained-For At Arm's-Length Nor  
22 Commercially Reasonable  
23

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

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

6 When a transaction involves the exchange of goods or services for cash, it is usually easy  
7 to determine whether the consideration equals the "usual and normal charge." It is not as easy to  
8 do so with a non-cash transaction like that at issue here. The consideration in non-cash  
9 transactions must be of equal value or else a contribution results. See, e.g., AOs 2002-14;  
10 1982-41; 1981-46. In a number of Advisory Opinions dealing with mailing lists – most recently  
11 AO 2002-14, which Respondents also cite – and in a number of other contexts in its regulations,  
12 the Commission has relied on several signposts for ensuring that an arrangement between a  
13 political committee and another person constitutes a *bona fide* transaction, rather than serving as  
14 a vehicle for making a contribution to the committee.

15 One of the most important of these signposts is whether the transaction represented a  
16 bargained-for exchange negotiated at arm's-length. The list rentals at issue in part of AO  
17 2002-14 were approved precisely on condition that the lists be "leased at the usual and normal  
18 charge in a *bona fide*, arm's-length transaction." The very concept of "fair market value," which  
19 is virtually identical to the concept of "usual and normal charge" as defined in the Commission's  
20 regulations, is defined by Black's Law Dictionary as "[t]he price that a seller is willing to accept

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<sup>7</sup> 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).

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1 and a buyer is willing to pay on the open market and in an arm's-length transaction." BLACK'S  
2 LAW DICTIONARY 1549 (7<sup>th</sup> ed. 1999). A lack of arm's-length bargaining is all the more  
3 likely to reflect an exchange of unequal value where a party stands on both sides of a transaction,  
4 as is the case with Mr. Ashcroft and the WPA. *Cf. Ryback v. Commissioner*, 91 T.C. 524, 536-  
5 37 (U.S. Tax Court 1988) (in tax law, where transactions are frequently examined for whether  
6 they should be disregarded for lack of economic substance, "[t]he absence of arm's-length  
7 negotiations is a key indicator that a transaction lacks economic substance.") Here, the  
8 Respondents do not contest that the WPA was neither bargained for nor an arm's-length  
9 transaction.

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

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

<sup>9</sup> 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.

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

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

13 Thus, the factors the Commission has relied on in the past to identify *bona fide*  
14 transactions are not present here. The WPA was not a bargained-for, arm's-length transaction.  
15 There is no evidence of its commercial reasonableness. These factors, combined with other facts  
16 described in the GC's Brief at 26-28 and above, demonstrate that the WPA was not an exchange  
17 of equal value – or, in other words, that Mr. Ashcroft did not pay the “usual and normal charge  
18 . . . in the [relevant] market” for the rights the WPA gave him (and by extension Ashcroft  
19 2000).<sup>10</sup> As with their affiliation argument, Respondents again fail the very test they set forth.

20 4. The Dole Matters (MURs 4382/4401)

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

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<sup>10</sup> See 2 U.S.C. § 432(e)(2).

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

14 5. Neither the PAC Nor Ashcroft 2000 Reported Making or Receiving the  
15 Contribution Described Above  
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17 Neither the PAC nor Ashcroft 2000 disclosed the making and receiving of the  
18 contribution in the form of the mailing lists and so failed to meet the Act's reporting  
19 requirements. See GC's Brief at 33-34; 2 U.S.C. § 434(b). The Reply Brief made no mention of  
20 this issue.

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<sup>11</sup> 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.

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1 committees in their Statements of Organization and their failure to report the transfer of the  
2 mailing lists from the PAC to Ashcroft 2000. In addition, the  
3 proposed conciliation agreement recounts Ashcroft 2000's misreporting of the receipts from PLI  
4 totaling \$106,495. These misreported receipts are set forth on Exhibit D to  
5 the proposed agreement. Finally the proposed agreement provides for admissions of the  
6 violations and contains a prohibition on future violations of the provisions at issue.

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17 In addition to requiring the payment of a civil penalty, the proposed agreement requires  
18 Respondents to amend their statements of organizations to reflect their affiliated status as of July  
19 17, 1998, the date of the WPA. Further, Respondents would be required to  
20 amend their disclosure reports to reflect the transfer of the mailing list from the PAC to Ashcroft  
21 2000 on July 17, 1998. The dollar amount of this transfer would be  
22 \$255,000.

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2           2.     Ashcroft 2000's Use of PAC List Names in Ashcroft 2000 Mailings

3           Through its vendor PMI, Ashcroft 2000 used the PAC's list in connection with its  
4 938,709 "housefile" mailings. By extrapolating from Eberle & Associates' use of the PAC and  
5 CHL lists for the mailings it did for Ashcroft 2000, this Office estimates that 96,281 pieces were  
6 mailed to names on the PAC list and 65,105 pieces were mailed to names on the CHL list. The  
7 breakdown of Eberle & Associates' use of the two lists is thus approximately 60% PAC and 40%  
8 CHL. Applying this percentage to the 938,709 Ashcroft 2000 "housefile" mailings equals  
9 563,225 mailings by PMI for Ashcroft 2000 using the PAC's list (938,709 X 60%). Finally, the  
10 cost of these 563,225 mailings, at a list price of \$110 per thousand names for which the PAC's  
11 list was being rented during this time (late 1999 through late 2000),<sup>12</sup> totals \$61,955.

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<sup>12</sup> This rental price is taken from the PAC's list as advertised in the publication *SRDS Direct Marketing List Source* during this time. The advertisement offers the PAC's "Total list" for rental at \$110 per thousand names and a portion of the PAC's list, i.e., names less than 18 months old where donors had given at least \$5.00, at \$125 per thousand names. This Office is using the lower dollar figure that applies to the entire list.

<sup>13</sup> This Office notes that the valuation of the in-kind contribution of the PAC's mailing lists excludes the significant additional and unique value of the lists to Ashcroft 2000, given that the lists consisted of individuals who

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1 In addition to requiring the payment of a civil penalty, the proposed agreement requires  
2 Respondents to amend their disclosure reports to reflect the in-kind contribution of the mailing  
3 lists from the PAC to Ashcroft 2000 on July 17, 1998. The value of this in-kind contribution,  
4 from the calculations above, is \$192,962 in the form of list rental income earned by the PAC lists  
5 that was provided to Ashcroft 2000 plus \$61,955 in the form of Ashcroft 2000's use of PAC list  
6 names in Ashcroft 2000 mailings, for a total of \$254,917, which is then rounded off to \$255,000.

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13 **V. RECOMMENDATIONS TO TAKE NO FURTHER ACTION**

14 On July 23, 2002, the Commission found reason to believe that Ashcroft 2000 and  
15 Garrett Lott, as treasurer, violated 2 U.S.C. § 441b(a) and PMI, a vendor to the Committee, also  
16 violated 2 U.S.C. § 441b(a). The Commission's reason-to-believe finding that Ashcroft 2000  
17 may have received and PMI may have made corporate contributions in violation of 2 U.S.C.  
18 § 441b(a) was based on the following considerations: it appeared, from information available at  
19 the time, that PMI, a Virginia corporation, had rented or sub-licensed mailing lists or portions of  
20 mailing lists from Ashcroft 2000 for an amount totaling over \$116,922; and the mailing lists  
21 were developed for or by the PAC for its own use and, therefore, Ashcroft 2000 did not appear to  
22 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.

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

7 The overall information developed during the investigation indicates that neither PMI nor  
8 PLI rented, sub-licensed or purchased any mailing lists or portions of mailing lists from Ashcroft  
9 2000. The factual record indicates that PMI acted as a direct mail fundraising counsel to  
10 Ashcroft 2000 and PLI acted as a list manager and list broker for Ashcroft 2000. Arthur Speck,  
11 president of PMI, testified that PMI wrote copy, managed production and analyzed the results of  
12 the direct mail program for Ashcroft 2000,<sup>14</sup> but never rented or purchased any mailing lists from  
13 Ashcroft 2000.<sup>15</sup> Rosann Garber, the president of PLI, testified that PLI never rented any  
14 mailing lists from Ashcroft 2000.<sup>16</sup> Included in PLI's response to the Commission's reason-to-  
15 believe finding is an affidavit from Ms. Garber in which she avers that PLI did not rent, license  
16 or sub-license any mailing lists from Ashcroft 2000. The testimony of Mr. Speck and Ms.  
17 Garber is consistent with the testimony of Garrett Lott, treasurer of Ashcroft 2000; Mr. Lott  
18 testified that neither PMI nor PLI ever rented mailing lists from Ashcroft 2000 or received a  
19 license from Ashcroft 2000 to use the lists.<sup>17</sup>

<sup>14</sup> Deposition of Arthur Speck at page 133.

<sup>15</sup> Deposition of Arthur Speck at page 232.

<sup>16</sup> Deposition of Rosann Garber at page 124.

<sup>17</sup> 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

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1           Based on the aforementioned, this Office recommends that the Commission take no  
2 further action with respect to the Commission's reason-to-believe findings that Precision  
3 Marketing, Inc., Precision List, Inc. and Ashcroft 2000 and Garrett Lott, as treasurer, violated  
4 2 U.S.C. § 441b(a) and close the file in regard to Precision Marketing, Inc. and Precision List,  
5 Inc.<sup>18</sup>

6 **VI. RECOMMENDATIONS**

- 7 1. Find probable cause to believe that Ashcroft 2000 and Garrett Lott, as treasurer, and  
8 Spirit of America PAC and Garrett Lott, as treasurer, violated 2 U.S.C. §§ 441a(a)(1)(A),  
9 441a(f), 433(b) and 434(b), and approve the attached conciliation agreement.  
10  
11 2. Find probable cause to believe that Spirit of America PAC and Garrett Lott, as treasurer,  
12 violated 2 U.S.C. §§ 441a(a)(2)(A) and 434(b) and Ashcroft 2000 and Garrett Lott, as treasurer,  
13 violated 2 U.S.C. §§ 441a(f) and 434(b), and approve the attached conciliation agreement.  
14  
15 3. Take no further action and close the file regarding Precision Marketing, Inc. and  
16 Precision List, Inc.  
17  
18 4. Take no further action regarding Ashcroft 2000 and Garrett Lott, as treasurer, in  
19 connection with the reason to believe finding with respect to 2 U.S.C. § 441b(a).  
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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.

<sup>18</sup> 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.

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5. Approve the appropriate letters.

12/30/03  
Date

Lawrence H. Norton by *[Signature]*  
Lawrence H. Norton  
General Counsel

Rhonda J. Vosdingh  
Rhonda J. Vosdingh  
Associate General Counsel for Enforcement

Cynthia E. Tompkins  
Cynthia E. Tompkins  
Assistant General Counsel

Mark Allen  
Mark Allen  
Attorney

Mary L. Taksar  
Mary L. Taksar  
Attorney

Attachments:

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