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May 22, 1998

General Counsel Office  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463  
Attn: Alva E. Smith

Re: MUR 4736 - Citizens For Reform  
Triad Management Services, Inc.

Dear Ms. Smith:

I am writing in response to the materials received from the Federal Election Commission ("Commission") which include a complaint alleging that Citizens For Reform ("CFR") and Triad Management Services, Inc. ("Triad") may have violated the Federal Election Campaign Act of 1971, as amended (the "Act").

This matter should be resolved in an expedient manner by the Commission. The attached affidavits clearly demonstrate that no action should be taken against CFR or Triad in this matter because neither made contributions or expenditures in Montana in 1996 as defined by the Act.

The letter from the Chairman of the Democratic Party of Montana contends that there were four "specific violations" of campaign law:

- (1) CFR illegally coordinated and participated in a "third party's independent expenditures campaign" to defeat Bill Yellowtail;
- (2) CFR failed to file as a political committee with the Federal Election Commission because of expenditures in Montana;
- (3) CFR failed to report in-kind contributions to the Hill campaign; and

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- (4) CFR violated federal election laws that prohibit corporations from expending resources for the election or defeat of federal candidates in Montana.<sup>1</sup>

Neither CFR nor Triad made any expenditure expressly advocating the election or defeat of any candidate for federal office. The affidavits enclosed with this letter unequivocally confirm this statement. The Montana Democratic Party's allegations are totally without merit. The letter is not a legal complaint, but simply a political polemic directed at speech with which the Chairman of the Democratic Party of Montana disagrees.

#### **Citizens For Reform**

CFR is a non-profit Virginia corporation created to foster greater public participation in national debates on public policy and government. CFR was not formed by or for Triad. After its creation, CFR did retain Triad to conduct some of the organization's fundraising and to develop part of its message efforts.

The Montana Democratic Party failed to provide to the Commission a single example of a communication sponsored by CFR that expressly advocated the election or defeat of any candidate.<sup>2</sup> CFR sponsored two Montana television communications that contained the name of Bill Yellowtail. However, these communications did not use phrases such as "vote for," "reelect," "support," "cast your ballot for," "Yellowtail for Congress," "Hill for Congress," "vote pro-life," "vote pro-choice," "vote against Hill," or "vote against Yellowtail." These advertisements did not use the words "defeat" or "reject" or any words which, in the context, could have no other meaning than the urging of the "election" or "defeat" of any candidate.<sup>3</sup>

The communications paid for by CFR making reference to Mr. Yellowtail made unambiguous suggestions to individuals who received the messages to call Bill Yellowtail to express their views to him on issues of public interest. These messages did not unambiguously communicate a request that anyone vote for or against anyone. Neither television communications made reference to Rick Hill or to Congress, campaigns, candidacy or any election.

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<sup>1</sup> Letter from Bob Ream, Chairman of the Montana Democratic Party, dated March 31, 1998 (the "Montana Democratic Party Complaint"), page 2.

<sup>2</sup> See Buckley v. Valeo, 424 U.S. 1, 64-65 (1976).

<sup>3</sup> 11 C.F.R. § 100.22.

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CFR made no contributions or expenditures of funds or services to the Rick Hill or Bill Yellowtail campaigns or to any other candidate for federal office in 1996. CFR made no contributions or expenditures of funds or services to any political committee in 1996. Since CFR made no such contributions or expenditures, it is not a political committee as defined by the Act.<sup>4</sup> Accordingly, CFR did not violate the ban contained in the Act regarding corporate contributions.<sup>5</sup>

Coordination and cooperation between CFR and the Hill campaign might be relevant to the Commission's consideration of this complaint if CFR had made independent expenditures expressly advocating the election or defeat of a candidate for federal office.<sup>6</sup> Since CFR made no expenditures, independent or not, advocating the election or defeat of any candidate, the Montana Democratic Party complaint is without legal merit for it alleges no facts which could constitute a violation of the Act.

There is no provision of the Act or any Commission regulation that prohibits an organization from discussing or coordinating its plans for any communication or speech with a candidate for federal office if that communication or speech does not expressly advocate the election or defeat of a candidate. This is not an issue which needs discussion in the Commission's analysis of this M.U.R. because CFR did not discuss or coordinate its communications with any campaign. The messages that were produced and paid for by CFR in 1996 in Montana were run without any coordination with or cooperation from either the Rick Hill campaign or the Bill Yellowtail campaign. No one in either the Hill or Yellowtail campaign had any role in the creation, design, production or placement of these advertisements. There was no arrangement or direction from any candidate or candidate's agent prior to distribution or broadcast of CFR's communications. No information was provided to CFR or its agent, Triad from any campaign source with any understanding that any mass communication would be undertaken.

Neither Rick Hill, Bill Yellowtail, their campaigns or agents were aware of the plans of CFR to run these advertisements prior to their airing in Montana. No one from either campaign had any knowledge of or input on any communications of CFR in Montana. No communications to the general public in Montana by CFR were made in cooperation with or consultation with any federal candidate, or any authorized committee of a federal candidate or any agent of such candidate. No voter lists were provided to CFR by Hill or Yellowtail

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<sup>4</sup> 11 C.F.R. §100.5.

<sup>5</sup> 2 U.S.C. § 441b.

<sup>6</sup> 11 C.F.R. § 100.16.

or their agents. No communications paid for by CFR in Montana were made in concert with or at the request or suggestion of any candidate or authorized committee or agent of any candidate.

The document<sup>7</sup> which is the alleged "proof" of coordination in the Montana Democratic Party complaint makes no reference to CFR or any plan for any communication or advertisement by this organization. The affidavits of the principals of these organizations and the individual who drafted the "secret" memorandum expressly states that no such communication or coordination occurred with Rick Hill or his campaign. The assertion in Chairman Ream's letter -- that the television messages paid for by CFR were based on secret consultation with the Hill campaign and the Hill campaign polling data -- is false. The issues discussed in these broadcast messages -- Mr. Yellowtail's conduct and his positions on property tax -- were not secret but had been very extensively reported in the Montana media. This fact is absent from Chairman Ream's letter.

**Triad Management Services, Inc.**

Triad does not exist for the purpose of influencing federal elections. Triad is a for-profit business founded by Carolyn S. Malenick. It provides services to its clients, which it bills with invoices for these services. It has specific fee schedules for these services. Triad provides a number of services to its clients. It provides a fax newsletter service that discusses public policy, political issues and campaigns. Additionally, it provides advice to its clients on the use of their after-tax discretionary funds. Triad advises its clients on donations to charitable, non-profit and political organizations. Triad seeks to match the interest of its clients, with recipient organizations that best reflect their values and provide the best choice for their donations and contributions. The business had no political committees as clients in 1996.

Triad employed the services of the consulting firm, Rodriguez & Company ("Rodriguez") to assist in the development of information on which to advise its clients on political campaigns in 1996. Rodriguez was retained in part to conduct political audits of campaigns in 1996 so that Triad could provide its advisory services to its clients, based on direct information unfiltered by traditional press sources. Triad did not retain Rodriguez to provide any services to any candidate or political committee.

Triad was retained by CFR to fundraise for the organization and to develop a public communication and message program for CFR. The inspiration for CFR's message

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<sup>7</sup> Exhibit 2 to the Montana Democratic Party complaint.

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campaign was the AFL-CIO's 1996 issue advertisement campaign. These communication efforts were constructed to be identical in form and legal description with the AFL-CIO campaign, but with a different philosophical view. Triad did not produce any form of communication to the general public expressly advocating the election or defeat of any candidate for federal office. Triad did not create for CFR or for any other organization any form of communication to the general public expressly advocating the election or defeat of any candidate for federal office. Triad did not inform any candidate for federal office or any agent of any candidate for federal office of CFR plans to sponsor communications in Montana in 1996. No candidate requested that Triad make any public communication in Montana in 1996 or candidate's agent.

The communications sponsored by CFR in Montana were prepared and produced under the direction of Triad. No Montana candidate or campaign agent of their campaign had any input or advance knowledge of CFR's plans to have Triad produce these communications for CFR in Montana in 1996.

Every consultant and employee of Triad was specifically directed to have no communications with any candidate, candidate's representative or candidate's agent regarding Triad's agreement to develop communication programs for CFR. Triad directed its consultants and employees to have no contact regarding CFR communications with any candidate, candidate's agent or party official.

### CONCLUSION

The sole basis for the Montana Democratic Party's allegations appears to be the Democratic Minority report from the Senate Committee on Governmental Affairs (the "Senate Committee"). The Montana Democratic Party failed to provide the Commission with the actual report of the Senate Committee, which concluded that there is no evidence that CFR or Triad violated any provision of the Act. CFR and Triad provided the Senate Committee with virtually all of their records, of any type, relating to 1996. Thousands of pages of documents were provided to the Senate Committee at great cost to these organizations.<sup>8</sup> There are no 1996 records of any substance relating to Triad's or CFR's activities in Montana that were not provided to the Senate Committee. Based upon the Democratic National Committee's ("DNC") past actions during the Senate Committee's hearings, it should be clear to the Commission that if there was any document showing any

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<sup>8</sup> This is in stark contrast to the AFL-CIO whose program provided the inspiration and model for CFR's communications. The AFL-CIO simply refused to respond to the Senate Committee's subpoenas.

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improper activity of CFR or Triad, it would have appeared already on the DNC web page. The DNC appeared to be a regular recipient of documents, which had been provided by CFR and Triad to the Senate Committee pursuant to a confidentiality agreement.<sup>9</sup>

Triad's private financial records were provided to the Democratic Party by the Democratic Minority of the Senate Committee. These records show no contributions to any federal political committee. Given the foregoing, it would be unconscionable for the Commission to subject these organizations again to another costly inquisition and hamper these organizations's legitimate exercise of their free speech rights. There is nothing in the Montana Democratic Party complaint or in the voluminous records produced to the Senate Committee and transferred to the Democratic Party that shows that Triad or CFR made a contribution to or expenditure for any candidate. There are no public communications expressly advocating the election or defeat of any candidate by CFR or Triad cited in the complaint. Absent these factors, the Commission has no right to investigate the activities of CFR and further chill its free exercise of speech or cause further harm to Triad's business.

Sincerely yours,



E. Mark Braden

EMB/rvn

Enclosures

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<sup>9</sup> This fact shows the disingenuous nature of the request from the Montana Democratic Party Chairman to Triad for a memorandum already in the possession of the DNC and the misleading nature of the references to it in the Party letter to the Commission.

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Affidavit of Peter Flaherty

**AFFIDAVIT  
FEDERAL ELECTION COMMISSION  
MUR 4736**

**Citizens for Reform**

I, Peter Flaherty, am the President and Founder of Citizens for Reform ("CFR"). As President, I am the Chief Executive Officer of CFR.

1. CFR is a non-profit Virginia corporation, created to foster the development of greater public participation in national debates concerning the size, scope, growth and responsibility of government and its impact on the community, private sectors and citizens of all walks of life.

2. CFR was not formed or created by Triad Management Services, Inc. ("Triad"). Carolyn Malenick or any individual working with or for Triad.

3. CFR did retain Triad to fundraise for the organization and also contracted with Triad to develop public communication and message programs for CFR. The inspiration for CFR message campaign was the AFL-CIO's 1996 issue advertisement campaign. These communication efforts were constructed to be identical in form and legal description with the AFL-CIO's campaign, but with a different philosophical view.

3. CFR sponsored no form of communication to the general public which expressly advocate the election or defeat of any candidate for federal office. CFR did not inform any candidate for federal office or any agent of any candidate for federal office of its plans to sponsor communications in Montana in 1996. No Montana candidates or their agents requested CFR to make any communications in Montana in 1996. The communications sponsored by CFR in Montana were prepared and produced under the direction of our consultant, Triad. No candidates or their agents were permitted to have any input or advance knowledge of our plans to have Triad produce these communications for CFR in Montana in 1996.

Sworn to

By:

  
Peter Flaherty

Date:

5/22/98

**Affidavit of Carlos Rodriguez****AFFIDAVIT  
FEDERAL ELECTION COMMISSION  
MUR 4736****Rodriguez & Company**

1. I, Carlos Rodriguez, am the owner and Chief Operating Officer of a California-based public affairs consulting firm, Rodriguez & Company.
2. In 1996, Rodriguez and Company was retained as a consultant to Triad Management Services, Inc. ("Triad").
3. One of the principal services of Triad is to advise its clients on their donations in various political, social and other non-profit causes. To assist Triad in discerning which political campaigns to recommend to its clients, Triad retained the services of my firm to conduct audits of campaigns to provide the basis on which to advise its clients. The audits were to determine the positions of candidates on various issues and the quality and viability of their campaigns.
4. I am the author of the "memorandum" which appears as Exhibit 2 in the Montana Democratic Party complaint dated March 31, 1998. This memorandum was an internal document of Triad. It was the result of my research on behalf of Triad on the Rick Hill campaign and was part of the basis on which Triad could provide information and advice to its clients on whether to contribute to this campaign. This document was never seen by any individual in Montana prior to its leak from the Senate Committee on Government Affairs. The Hill campaign never received a copy of this document prior to its leak from the Senate Committee. This document is similar in format to that done by my firm on behalf of Triad in auditing numerous races across the country. This audit memorandum was based upon a single visit to the Rick Hill campaign.
5. At no time did I ever discuss with Rick Hill, his spouse or any agent of his campaign, any activity of Citizens for Reform ("CFR"). I have no reason to believe that Rick Hill or any individual associated with his campaign or any agent of his campaign even knew of the existence of CFR prior to its Montana television message campaign in 1996. I never discussed with Rick Hill, his spouse or any agent of his campaign any plan of any organization or individual to conduct any issue advertising campaign anywhere in 1996.
6. Triad had a management contract with CFR, which provided in part for Triad to assist in the development and placement of part of their television messages and communication programs in 1996. As a consultant to Triad, I did work with and direct individuals involved in the production of these advertisements. The inspiration for the CFR's message campaign was the AFL-CIO's 1996 issue advertisement campaign. CFR's communication efforts were constructed to be identical in form and legal description with the

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AFL-CIO's campaign, but with a different philosophical view. Every individual involved in these communications was directed to not contact or discuss these communications with anyone associated with any Montana campaign. I did not communicate with anyone associated with the Rick Hill campaign regarding these issue messages. I reviewed and approved all final copy of these television messages.

7. Neither Rick Hill nor any agent of his campaign had any knowledge of any plan of CFR to run the communications referred to in the Montana Democratic Party complaint. Neither Rick Hill nor his campaign coordinated in any manner with Triad or CFR in the production of these messages.

8. CFR and Triad did not consult with any candidate or campaign in the production of any communication to the citizens of Montana in 1996. Neither Rick Hill nor any agent of his campaign had any input on the content of these messages. The issues discussed in these communications were drawn from newspaper accounts of Yellowtail available to any interested party. They were not based in any manner upon any polling data of the Hill campaign.

9. Neither Rick Hill nor any agent of his campaign requested that CFR or Triad produce and/or run any television communication or any communication whatsoever to the citizens of Montana.

10. CFR and Triad did not request any Montana voter phone list from Rick Hill or any agent of his campaign. CFR and Triad did not receive any voter phone list from Rick Hill or any agent of his campaign.

11. Rodriguez & Company did not provide services to the Hill campaign. Triad did not provide services to the Rick Hill campaign. Triad did make recommendations to its clients on which candidates and political committees were appropriate for their consideration on campaign donations.

12. Triad never employed Rodriguez & Company to perform any service for any candidate or political committee.

Sworn to

By:

  
Carlos Rodriguez

Date:

5/22/98

**AFFIDAVIT  
FEDERAL ELECTION COMMISSION  
MUR 4736**

**Triad Management Services, Inc.**

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1. I, Carolyn S. Malenick, am the President and Chief Executive Officer of Triad Management Services, Inc. ("Triad"). Triad is a for-profit corporation.

2. Triad does not exist for the purpose of influencing federal elections. Triad is a for-profit business. It provides services to its clients, which it bills with invoices for these services. It has specific fee schedules for these services.

3. Triad provides a number of services to its clients. It provides a fax newsletter service to its clients that discusses public policy issues, political issues and campaigns. Triad also advises its clients on the use of their after-tax discretionary funds for contributions to charitable, non-profit and political organizations. Triad seeks to match the interest of its clients with recipient organizations that best reflect their choice and provide the best value for their donations and contributions.

4. Triad had no political committees as clients in 1996.

5. Triad employed the services of the consultant firm, Rodriguez & Company ("Rodriguez") to assist in the development of information on which to advise its clients on political campaigns in 1996. Rodriguez was retained in part to conduct political audits of campaigns in 1996 so that Triad could provide its advisory services to its clients, based on direct information unfiltered by the traditional press.

6. Triad did not retain Rodriguez to provide any services to any candidate or political committee. Triad paid no firm or individual to provide services to any federal campaign. Triad retained no consultant or employee to provide services to any candidate or political committee.

7. Triad was retained by Citizens for Reform ("CFR") to fundraise for the organization and to develop a public communication and message program for CFR. The inspiration for CFR's message campaign was the AFL-CIO's 1996 issue advertisement campaign. These communication efforts were constructed to be identical in form and legal description with the AFL-CIO campaign, but with a different philosophical view.

8. Triad did not sponsor any form of communication to the general public expressly advocating the election or defeat of any candidate for federal office.

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9. Triad did not create for CFR any form of communication to the general public expressly advocating the election or defeat of any candidate for federal office.

10. Triad and CFR did not inform any candidate for federal office or any agent of any candidate for federal office of CFR plans to sponsor communications in Montana in 1996. No candidate or candidate's agent requested CFR or CFR's agent, Triad, to make any communications in Montana in 1996.

11. The communications sponsored by CFR in Montana were prepared and produced under the direction of Triad. No Montana candidate or campaign agent had any input or advance knowledge of CFR's plans to have Triad produce these communications for CFR in Montana in 1996.

12. Every consultant and employee of Triad was specifically directed to have no communications with any candidate, candidate's representative or agent regarding Triad's agreement to develop communication programs for CFR. Triad specifically directed its consultants and employees to have no contact in regards to these communications with any candidate, candidate's agents or party official.

Sworn to

By: Carolyn S. Malenick Date: 5/22/98  
Carolyn S. Malenick

*Subscribed and sworn to before  
me on May 22, 1998.*

*Luigi A. Annibale*

**My Commission Expires June 30, 2000**

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