



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

E. Mark Braden, Esq.
Baker & Hostetler
1050 Connecticut Ave, N.W.
Washington, D.C. 20036

RE: MUR 4736
(includes allegations previously part of MUR 4783)
MUR 4783
Citizens for Reform

Dear Mr. Braden:

On April 13, 1998, the Federal Election Commission ("the Commission") notified Citizens for Reform of a complaint designated as Matter Under Review ("MUR") 4736, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). On August 10, 1998, the Commission notified Citizens for Reform of a complaint designated as MUR 4783, also alleging violations of the Act.

In considering MUR 4783, the Commission found reason to believe that Citizens for Reform violated 2 U.S.C. § 441b and § 441f, and decided to sever all allegations against Citizens for Reform from MUR 4783 and to consolidate those allegations with related allegations in MUR 4736. Following the severance of the allegations which have been consolidated into MUR 4736, Citizens for Reform is no longer a respondent in MUR 4783.

In considering MUR 4736, the Commission has found reason to believe that Citizens for Reform violated 2 U.S.C. § 433, § 434, § 441a(a)(1) and § 441b, which are provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's findings in MUR 4736 (including those consolidated from MUR 4783) is attached for your information.

The facts underlying the Commission's findings in MUR 4736 (including the allegations that previously were part of MUR 4783) are substantially similar, and in many respects identical, to the factual basis for the Commission's June 1998 findings against Citizens for Reform in MURs 4568, 4633 and 4634. Due to the related nature of these MURs, the Commission has decided to investigate MUR 4736 concurrently with its investigation in MURs 4568, 4633 and

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4634. Future communications regarding this MUR will refer to MURs 4568, 4633, 4634 and 4736 as being part of a single investigation.

This Office has considered and will treat Citizens for Reform's responses and submissions in MURs 4568, 4633 and 4634, as if they also had been filed in MUR 4736. You also may submit additional factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such additional materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Shonkwiler, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosures:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Citizens for Reform MUR: 4736¹

I. GENERATION OF THE MATTERS

MUR 4736 originated with a complaint filed by Bob Ream, as chairman of the Montana Democratic Committee ("MDC"). The complaint focuses primarily on the activities of Triad Management Services, Inc. ("Triad") and two non-profit corporations, Citizens for Reform ("CR") and Citizens for the Republic Education Fund ("CREF"), which are managed by Triad.

MUR 4783 was generated by a complaint filed by Peter Cloeren. *See* 2 U.S.C. § 437g(a)(1). Part of this complaint focuses on the activities of Triad and CR. The Federal Election Commission ("Commission") subsequently determined that it would sever the allegations involving the respondent listed above from MUR 4783 and consolidate those allegations with similar allegations in MUR 4736.

The Commission currently is investigating similar allegations as part of an ongoing investigation in MURs 4568, 4633 and 4634. The Commission has determined that it will investigate MUR 4736 jointly with MURs 4568, 4633 and MUR 4634.

¹ This MUR includes certain allegations that previously were part of MUR 4783.

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II. FACTUAL AND LEGAL ANALYSIS

During the latter part of 1996 and throughout 1997, there were a number of press accounts concerning the activities of Triad and two non-profit groups, CR and CREF, with which it appears that Triad worked in connection with the 1996 federal elections. In summary, it was reported that during both the primary and general elections, Triad, CR and CREF came to the aid of a substantial number of Republican congressional campaigns (more than twenty-five) after learning of their needs through a process it referred to as a "political audit."

The assistance that was reportedly provided by Triad, CR and CREF came in several different forms. Specifically, Triad is reported to have controlled the efforts of CR and CREF in raising funds for, as well as producing and broadcasting, over \$3 million worth of political advertising during the weeks prior to the 1996 federal elections in what appears to have been an effort to influence the outcome of certain elections. It has been reported that at least some of these advertisements were coordinated with particular congressional campaigns.

In sum, the press reports state that Triad, CR and CREF received several million dollars in contributions and made several million dollars in expenditures/in-kind contributions for the purpose of influencing various 1996 federal congressional elections. If true, the allegations summarized above suggest that there may have been a pattern of activity on the part of Triad, CR and CREF which may have had the effect of circumventing the registration and reporting requirements, as well as the contribution prohibitions and contribution limitations, established by the Federal Election Campaign Act of 1971, as amended, ("the Act").

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A. THE APPLICABLE LAW

1. Political Committee Status

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The Federal Election Campaign Act of 1971, as amended ("the Act"), defines a political committee as any committee, club, association, or other group of persons which receives "contributions" or makes "expenditures" aggregating in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A). For the purposes of the Act, the term "person" is defined as including "an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons . . . " 2 U.S.C. § 431(11).

For the purpose of triggering political committee status, the Act defines the terms "contributions" and "expenditures " as including "anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i) and § 431(9)(A)(i). The Commission has defined "anything of value" to include, among other things, all in-kind contributions, i.e., the provision of any goods and services without charge or at a charge which is less than the usual and normal charge for such goods and services . . . " 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

In Buckley v. Valeo, 424 U.S. 1 (1976) ("Buckley"), the Supreme Court, in order to avoid overbreadth, construed the Act's references to "political committee" in such a manner as to prevent their "reach [to] groups engaged purely in issue discussion." The Court recognized that "[t]o fulfill the purpose of the Act [the designation 'political committee'] should encompass organizations that are under the control of a candidate or

the major purpose of which is the nomination or election of a candidate." 424 U.S. at p. 79.²

In FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986) ("MCFL"), the Supreme Court affirmed its reasoning in this aspect of Buckley. In analyzing whether a non-profit, non-stock, incorporated advocacy organization that had made more than \$1000 in independent expenditures to influence federal elections was a political committee, the Court noted that the "central organizational purpose" of MCFL, which it found to be issue advocacy, did not meet the Buckley definition of a political committee, i.e., that it was not controlled by a candidate and did not have as a major purpose the nomination or election of a candidate. 479 U.S. 252, n.6. The MCFL Court also noted, however, that if the defendant organization's expenditures on behalf of a candidate or candidates should "become so extensive" that campaign activity became its "major purpose," then the organization would be deemed a political committee. 479 U.S. at 262. *But see Akins v. FEC*, 101 F.3d 731 (D.C. Cir. 1996); *cert. granted*, FEC v. Akins, 117 S.Ct. 2451 (1997), *vacated and remanded on other grounds*, 118 S.Ct. 1777 (1998) (D.C. Circuit concluded that the "major purpose" test for political committees should only apply to independent expenditures, and that with regard to contributions, political

² In addition to the quintessential example of a political committee as an organization whose major purpose is to nominate or elect a particular candidate for federal office, "[a]lso reasonably included in the definition of 'political committee' is an organization whose major purpose is to elect a slate of named federal candidates." FEC v. GOPAC, 871 F.Supp. 1466, 1469-70 (D.D.C. 1994). The "major purpose" of an organization may be shown by public statements of its purpose or by other means "such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates for federal office. FEC v. GOPAC, 917 F.Supp. 851, 859 (D.D.C. 1996).

committee status would be triggered whenever any organization made contributions in excess of \$1,000).

2. Reporting Requirements

The Act requires any organization which qualifies as a political committee to register with the Commission and file periodic reports of all receipts and disbursements. 2 U.S.C. § 433 and 434. In upholding the Act, the Supreme Court noted that “disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributors to the light of publicity. This exposure may discourage those who would use money for improper purposes.” Buckley v. Valeo, 426 U.S. 1, 9 (1976).

The Act also requires that, when registering with the Commission, a political committee include in its statement of organization “the name, address, relationship and type of any connected organization or affiliated committee.” 2 U.S.C. § 433(b)(2).

All contributions made or received by more than one affiliated committee, regardless of whether they are “political committees” under 11 C.F.R. § 100.5, shall be considered to have been made or received by a single political committee. 11 C.F.R. § 110.3(a)(1). Affiliated committees sharing a single contribution limitation include all of the committees established, maintained or controlled by: (i) a single corporation and/or its subsidiaries, (ii) a single national or international union and/or its local unions or other subordinate organizations, (iii) An organization of national or international unions and/or all its State and local central bodies, (iv) a membership organization including trade or professional associations and/or related State and local entities of that organization or group; or (v) the same person or group of persons. 11 C.F.R. § 110.3(a)(2).

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The Commission may examine the relationship between organizations that sponsor committees, between the committees themselves, or between one sponsoring organization and a committee sponsored by another organization to determine whether committees are affiliated. 11 C.F.R. § 110.3(a)(3).

3. Limits on Contributions

Under the Act, no person, including a political committee, may contribute more than \$1,000 per election to any candidate for federal office or his authorized committee. 2 U.S.C. § 441a(a)(1). In addition, no person may contribute more than \$5,000 per calendar year to any other political committee that is not the authorized political committee of any candidate. 2 U.S.C. § 441a(a)(1)(c). Finally, the Act places a \$25,000 cap on the total amount of political contributions that an individual can make in any calendar year. This statutory provision also limits to \$5,000 the amount that a qualified multicandidate committee may contribute to a candidate or their authorized committee.³

For the purposes of the Act, “expenditures made by any person in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered a contribution to such candidate.” 2 U.S.C. § 441a(a)(7). The Commission has ruled that expenditures for communications which favorably discuss candidates in an election-related context and are coordinated with such candidates constitute in-kind contributions to the candidates. See Advisory Opinion 1988-22.

³ A multicandidate committee is a committee which has been registered with the Commission for at least six months, has received contributions from more than 50 persons, and has made contributions to five or more candidates for federal office. 2 U.S.C. § 441a(a)(4).

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4. **Prohibition Against Corporate Contributions**

Notwithstanding certain narrow exceptions, the Act prohibits corporations from making contributions in connection with any election. 2 U.S.C. § 441b(a). Similarly, candidates and political committees are prohibited from accepting corporate contributions, including expenditures attributable as in-kind contributions, in connection with any election. 2 U.S.C. § 441b(a).

Corporations are prohibited from making “any direct or indirect payment, distribution, loan advance, deposit, or gift of money or any services, or anything of value (except a loan of money by a bank in accordance with applicable laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any federal election.” 2 U.S.C. § 441b(b)(2).

B. **FACTS**

1. **Triad, CR and CREF**

Triad, CR and CREF all appear to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fund-raiser for various political groups and campaigns, including, *inter alia*, Oliver North’s 1994 bid for the US Senate. At different times, Ms. Malenick reportedly has described herself as the President and Chief Executive Officer of Triad; the Director of Triad; and the Chief Operating Officer of Triad. *See, e.g.*, 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News and Undated Triad Advertisement.

Triad advertises itself as a political consulting firm that provides services to donors interested in making political contributions to conservative candidates, campaigns,

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issues and projects. *See* Undated Triad Advertisement. Triad attempts to distinguish itself from other political consulting firms by claiming that it only works for donors, not for candidates or campaigns. *Id.*

Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors, providing research and analysis of upcoming elections, and dispensing advice on how to maximize the impact of political contributions. *See* 9/28/96 National Journal article. In sum, Triad reportedly seeks to give wealthy contributors advice on how to get the "biggest bang for the buck" with their contributions by telling them which conservative candidates look like winners and which ones need help. *Id.*

A newspaper article in The Hill stated that at an October 1997 press conference, Ms. Malenick represented that Triad makes money in three basic ways: a \$500 per year subscription for a fax service that keeps donors up-to-date on issues and candidates; management fees charged to nonprofit groups (which include CR and CREF); and an unspecified commission on the contributions that donors made as a result of Triad's advice. *See* 10/8/97 The Hill article.

CR and CREF reportedly were founded in mid-1996. *See* 10/29/97 Minneapolis Star-Tribune article. Both groups are reported to initially have represented themselves as non-profit corporations formed under the social welfare organization provisions of 26 U.S.C. § 501(c)(4). *See* 10/24/97 Denver Post article. A newspaper article stated that CR's application for non-profit tax status was granted, but that CREF never made the necessary filings with the IRS. *Id.* In late 1997, both groups reportedly took action to change their tax status to that of political organizations under 26 U.S.C. § 527. *Id.*

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Although CR and CREF purport to have been founded by Peter Flaherty and Lyn Nofziger respectively, it has been widely reported that CR and CREF are run by Triad. *See, e.g.,* 10/29/97 Minneapolis Star-Tribune article; and 10/8/97 The Hill article. Indeed, Ms. Malenick responded to news reports regarding Triad's alleged control of CR and CREF by acknowledging that Triad had "management contracts" to run various CR and CREF projects. *See* November 19, 1997 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Further indications of Triad's apparent control of CR and CREF can be found in documents attached as exhibits to the Final Report on Investigation of Illegal or Improper Activities in Connection with 1996 Federal Election Campaigns by the Senate Committee on Governmental Affairs ("Senate Report"). The exhibits include what appear to be the "management contracts" to which Ms. Malenick referred. These contracts appear to reflect complete control by Triad over the execution of the CR and CREF "public education program[s]." *See* 9/26/96 Triad Consulting Agreements with CR and CREF (stating that "TRIAD shall be free to decide the means by which it will provide the Services").

The press reports and other information received by the Commission in connection with these matters reflect only minimal activity by CR and CREF other than the advertising aired by these two organizations during the last few weeks prior to the 1996 federal elections. One newspaper account reported that a Triad spokesman stated that the CR and CREF ad campaigns were intended as a direct response to the AFL-CIO's "issue ad" campaigns in the districts of vulnerable Republican candidates. *See* 10/29/97 Minneapolis Star-Tribune article. The Triad spokesman also is reported to

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have said that “[i]f there had been no AFL-CIO campaign, there would have been no Citizens for the Republic Education Fund issue campaign.” *Id.*

According to news reports, Triad raised more than \$3 million for the CR and CREF political advertising campaigns by soliciting contributions from a handful of wealthy conservative donors. The sources of these contributions, many of which reportedly exceeded \$5000, were not disclosed to the public prior to the 1996 elections.⁴

2. Triad's Political Audits

At least one news account has reported that Triad personnel and consultants performed what Triad labeled as “political audits” on approximately 250 campaigns during the 1996 election cycle. *See* 10/29/97 Minneapolis Star-Tribune article. This news account also reported that a Triad spokesperson described the purpose of these political audits, many of which reportedly included meetings with the candidate or senior campaign officials, as the identification of “races where donors could support candidates who shared their ideological views and had a viable campaign.” *Id.*

The political audit reports released as exhibits to the Senate reports suggest that Triad conducted a standardized review of congressional campaigns. The first point

⁴ It has been reported, based on documents that the Senate Governmental Affairs Committee released to the press, that the list of contributors to CR and CREF included: Robert Cone and Edward Cone of Pennsylvania (\$1.2 million); the Economic Education Trust, reportedly controlled by the Koch family of Kansas (\$1.3 million); California developer Fred R. Sacher (\$200,000); Minneapolis entrepreneur Robert Cummins (\$100,000); Foster and Lynette Friess (\$25,000), Bruce D. Benson (\$25,000); Cracker Barrel Old Country Store (\$18,000); and Walt Disney Co. (\$10,000). *See* 10/30/97 Washington Post article; and 10/29/97 Wall Street Journal article. Other CR and CREF donors reportedly include: Dan Garawn (\$100,000), Peter and Patricia Cloeren (\$20,000), KCI (\$50,000), and Firecheck (\$10,000). *See* October 29, 1997 Minneapolis-St. Paul Star-Tribune article, and 11/1/97 Houston Chronicle article.

reflected in many of these audit reports was a date on which a Triad representative met with someone from the campaign to obtain the information contained in the audit. Most of the audit reports included as Exhibits to the Senate Report follow a standard format discussing some or all of the topics listed below.

FORMAT OF TRIAD "POLITICAL AUDIT" REPORT

- I. Finances - (assessment of planned expenditures, current cash-on-hand and possible fundraising shortfalls)
- II. Polling - (review of polling trends in race)
- III. Key Issues - (list of issues considered critical to the campaign's success)
- IV. Needs - (campaign's self-identification of specific nonmonetary needs; e.g., big name speaker to attract supporters to rally)

<u>General Observations</u>	(Comments on campaign organizations)
<u>Good Points about Campaign</u> -	(Subjective analysis of strengths)
<u>Bad Points about Campaign</u> -	(Subjective analysis of weaknesses)
<u>Prospect for Victory</u> -	(Assessment of Candidate's Chance to Win)
<u>Action</u> -	(Follow-up Actions for Triad personnel)
<u>Conclusion</u>	(Recommendation on support for campaign)

See, e.g., Triad political audit reports attached to Senate Report.

Typically, it appears that a Triad representative personally met with the candidate and/or staff to discuss the specific strengths and weaknesses of their campaign, and to learn what help the campaign needed to successfully compete in the upcoming election.

See, e.g., Triad Audit Reports. The audit reports suggest that in some instances, after

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completing an audit, Triad may have had ongoing contacts with some campaigns to assess the developing prospects and needs of particular campaigns.

Triad's political audit of the 1996 Montana congressional campaign involving Rick Hill, which is the focus of MUR 4736, was performed by Carlos Rodriguez on September 24, 1996.⁵ With the election only weeks away, Rick Hill's own polling showed him to be trailing his Democratic opponent. The audit memorandum was apparently based on a single meeting of unknown duration between the Triad consultant and the Hill campaign staff took place at the campaign's headquarters in Helena, Montana. See 11/25/97 Associated Press Political Service article.

During the meeting, the Hill staffers reportedly gave the Triad consultant access to news clippings which contained stories about Mr. Yellowtail admitting to slapping his wife 20 years earlier, having once fallen behind on child support payments, and having burglarized a camera store while a college student. See 11/25/97 Associated Press Political Service article. These topics are prominently listed in the Triad audit report under the heading of "Key Issues" - "Anti-Yellowtail". The document also states that, in addition to a direct mail campaign and \$15,000 for a phone bank, the number one item on the list of the Hill campaign's "Needs" was a "3rd Party to 'expose' Yellowtail." *Id.* As discussed below, the information discussed in the audit report was later the subject of a CR advertising campaign.

⁵ Certain Triad generated documents identify Mr. Rodriguez as Triad's Political Director. Reportedly in addition to serving as Rodriguez and Company's owner and Chief Operating Officer, Mr. Rodriguez was also on the Board of Directors of CREF. See The MDC Complaint at Exhibit No. 6.

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Similarly, Triad's political audit of the 1996 Texas 2nd congressional district campaign involving Brian Babin, which is the focus of MUR 4873, was performed by Carlos Rodriguez on September 4, 1996. The political audit report that Mr. Rodriguez prepared after his meeting with representatives of the Babin Committee reflects the same themes that CR later used in its advertising campaign criticizing Mr. Turner.

The relevant portion of the Triad audit report states:

Another good point about this [Babin's] campaign is that the Democratic opponent, State Senator Jim Turner, is a career politician who has been in elected office for the last 14 years and who has a number votes that could be used effectively against him in the general election this year.

Senator Turner sponsored legislation that grants automatic probation to first time felony offenders for such crimes as grand theft, burglary and even drug dealing. In addition, he has voted for homosexual rights, . . .

See Triad Inc. political audit report on Brian Babin.

After completing its political audit on a campaign, Triad reportedly provided the results of its research and analysis to prospective political donors. It appears that rather than waiting for donors to make specific requests for information about a particular campaign, Triad periodically sent general "Fax Alerts" to prospective donors which extolled the virtues of various campaigns and provided Triad's recommendations for political contributions. Based on documents attached as exhibits to the Senate reports, it appears that Triad sent no fewer than sixty (60) separate fax alerts between February and December 1996. *See* Triad Fax Alert Index. Further, while the Commission currently lacks information as to how many potential contributors received each Triad Fax Alert, one of the fax alerts in the middle of the known range (No. 28 out of 60) notes that "over

160 businessmen and women have been added to the Fax Alert in the last 18 months.”

See 10/10/96 Triad Fax Alert titled “Countdown to Election Day: 27 Days.”

As discussed below, Triad appears to have used the information derived from its “political audits” in a number of different ways.

3. **Advertising Campaigns**

It appears that, on at least some occasions, Triad used the knowledge of the needs of specific congressional campaigns gained through its political audits in managing a number of political advertising campaigns sponsored by CR and CREF. Indeed, documents attached to the Senate report suggest that Triad solicited donors to provide financial support for the CR and CREF campaigns with explicit representations that such advertisements would help re-elect candidates whose needs had been reviewed in a Triad audit report. Further, it appears that Triad may have used information obtained in the political audits to select some, if not all, of the congressional districts in which advertisements were run; and to select some, if not all, of the issues raised in CR and CREF advertisements.

During the latter half of 1996, Triad began to solicit prospective contributors for money to fund the advertising campaigns by what it described as 501(c)(4) social welfare organizations for the stated purpose of countering organized labor's efforts to defeat various Republican candidates. See 9/27/96 and 10/24/96 Triad Fax Alerts. Specifically, Triad sent Fax Alerts to an unidentified number of potential contributors informing them of the opportunity to fund last minute CR and CREF advertising campaigns designed to

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help Republican candidates whose election or re-election was purportedly endangered by organized labor spending.⁶

For example, in one of its Fax Alerts, Triad states that the "the left has wasted their resources by buying Christmas cards in July" while Triad has conserved its resources so that CR and CREF "can begin the fall harvest." Triad Fax Alert, dated 9/27/96. (emphasis in original). As part of an effort to convince contributors that it is not too late for the CR and CREF efforts to effectively counter union-sponsored advertisements, Triad reminds readers of the Fax Alert that "[p]eople do not start focusing attention on the General Elections until the political season begins following Labor Day which has come and gone." *Id.* (emphasis added).

Based on documents attached to the Senate reports, it appears that CR and CREF spent approximately \$3 million on political advertising campaigns that may have been intended to influence what has been reported as somewhere between twenty-six (26) and thirty-four (34) House and Senate races. See 10/29/97 Minneapolis Star-Tribune article; 10/29/97 Wall Street Journal article; and 10/30/97 Washington Post article. See also undated Exhibit to Senate Report listing congressional races in which CR and CREF reportedly sponsored political advertising. In different congressional districts, the CR and CREF advertising campaigns reportedly included (in order of frequency) television, radio, direct mail and phone bank efforts. *Id.*

⁶ A 10/7/96 Triad Fax Alert states that corporate contributions are accepted and welcome; and that there is no limit on the amount that an individual or corporation can contribute to a 501c(4) organization. See 10/7/96 Triad Fax Alert.

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One example of the Triad-managed political advertising that was sponsored by CR is detailed by the complaints in MURs 4568 and 4736, which describes a television advertisement that CR ran on Montana television stations shortly before the 1996 congressional election between Republican Rick Hill and Democrat Bill Yellowtail. The text of the CR-sponsored advertisement was reported as follows:⁷

Television Ad Transcript

Who is Bill Yellowtail ?

He preaches family values, but he took a swing at his wife.

Yellowtail's explanation ? He only slapped her, but her nose was not broken.

He talks law and order, but is himself a convicted criminal.

And though he talks about protecting children, Yellowtail failed to make his own child support payments, and then voted against child support enforcement.

Tell Bill Yellowtail you don't approve of his wrongful behavior.

See Complaints in MUR 4568 and 4736.⁸

⁷ The MUR 4736 complainant asserts that while the disclaimer on the television ads stated that they were paid for by Citizens for Reform, the ads may in fact have been financed in whole, or in part, by Citizens for the Republic Education Fund. The basis for this assertion is that one of the television stations that carried at least one of the ads has identified the Citizens for the Republic Education Fund as the sponsoring entity.

⁸ The CR ad refers to historical facts whose truth apparently are not contested by Mr. Yellowtail, and are a matter of public record. CR's last minute efforts to inform the public of these unfavorable facts about Mr. Yellowtail may have had a significant impact on the election. Mr. Yellowtail reportedly was leading Mr. Hill in the polls prior to the CR advertising campaign, but eventually lost the election. Mr. Hill won with 50% of the vote, as opposed to 46% for Mr. Yellowtail and 4% for a third party candidate.

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As discussed above, Triad performed one of its political audits on the Rick Hill campaign just a few weeks before CR began its anti-Yellowtail campaign. The audit report also states that the number one item on the list of the Hill campaign's "Needs" was "1) 3rd Party to 'expose' Yellowtail." *Id.* CR appears to have initiated its anti-Bill Yellowtail advertising campaign, which reportedly cost more than \$100,000, shortly after the date on which Ms. Malenick received the political audit memorandum regarding the Hill Committee's needs. *See* Spreadsheet on cost of different Triad-managed advertising campaign attached to Senate Report.

The reason why the campaign needed a "3rd party to expose Yellowtail" may stem from the pledge that Hill made during the spring of 1996 when the information relating to Bill Yellowtail's past indiscretions first became public. Newspaper reports at that time quoted Hill as saying "I don't think it will be appropriate for these issues to be rehashed in the fall campaign." *See* The MDC Complaint at Exhibit No. 3. Yet despite this promise, it appears that once the general election campaign got underway, the Hill committee devoted its resources to analyzing voter reaction and response to these very same issues as indicated by the survey and polling done in August of 1996.⁹ Although the Hill campaign used polling information to confirm the issues of spousal abuse and shop lifting as potentially valuable tools in setting their candidate apart from Mr. Yellowtail, there is no indication that the Committee itself sponsored any ads that mentioned these topics.

⁹ The audit report indicates that the campaign was facing a \$15,000 shortfall.

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The available information has raised questions as to whether the respondents may have provided the Rick Hill campaign with additional support beyond producing advertisements, namely the sponsorship of anti-Yellowtail phone banks. Materials in the possession of the Commission indicate that at least five Montana residents were contacted in the final weeks of the campaign by a phone bank operation apparently sponsored by CR. See The MDC Complaint at Exhibit No. 15. These voters reported that these telephone calls focused on Bill Yellowtail and the allegations of spousal abuse in his past. CR's sponsorship of such a phone bank raises questions as to whether this may have been the means by which Triad fulfilled the Hill committee's stated need for "15k for phone banks" as articulated in the audit report.

Another example of Triad-managed political advertising following a political audit of a campaign is described by portions of the Complaint in MUR 4783 which have been consolidated with MUR 4736. According to the MUR 4783 Complaint, Peter and Patricia Cloeren each contributed \$10,000, for a total contribution of \$20,000, to CR with the understanding that CR would broadcast advertising designed to help the Babin Committee.¹⁰ The Complaint refers to a March, 1998 Minority Report issued by the

¹⁰ The MUR 4783 complaint alleges that the complainant, Mr. Peter Cloeren received a series of telephone calls from Texas congressional candidate Brian Babin ("Dr. Babin"), Brian Babin for Congress Committee consultant Walter Whetsell, and Triad President Carolyn Malenick in which Mr. Cloeren and his wife, Patricia, were solicited to make a \$20,000 contribution to CR for the purpose of funding advertising expenditures whose described purpose was to help the Babin Committee in the election. According to the complaint, Dr. Babin, Mr. Whetsell and Ms. Malenick each "confirmed that the money would be used by Citizens for Reform to support the Babin Campaign." Complaint at 3. In one of the later telephone calls, Mr. Whetsell is alleged to have pressed Mr. Cloeren to make the contributions by saying that CR, as well as other persons and organizations, "had already made the pre-agreed-upon contributions to Babin." Id.

Senate Governmental Affairs Committee ("Senate Report") which states that "Citizens for Reform spent an unknown amount on television commercials attacking . . . [Babin opponent] Jim Turner" during the final weeks of the 1996 congressional campaign as evidence that CR itself made an in-kind contribution to the Babin Committee in exchange for the \$20,000 contribution from Mr. and Mrs. Cloeren. The Complaint alleges that during a conversation with Walter Whetsell in early 1998 which was tape-recorded by the FBI, Mr. Whetsell confirmed Dr. Babin's knowledge of the schemes to make indirect contributions through Triad and Citizens for Reform.

The Commission obtained a copy of a television advertisement entitled "Left" that Citizens for Reform sponsored in the media market which is substantially similar to the congressional district in which Dr. Babin and Mr. Turner were candidates in 1996. This advertisement, which was reportedly run during the last week in October and the first week in November of 1996, identifies Mr. Turner by name, and harshly criticizes his purported positions on the issues of criminal rights and gay rights, positions that the earlier Triad audit report had characterized as a vulnerability for Turner and a possible good point for the Babin campaign.

C. ANALYSIS

The Commission has made reason-to-believe findings under two alternative theories regarding the status of CR; one as a political committee which failed to register and report, and which also may have made excessive contributions and/or allowed its name to be used for contributions made in the name of another, in violation of 2 U.S.C.

§§ 433, 434, 441a(a)(1) and 441f; and the other as a corporation which made prohibited expenditures and contributions in violation of 2 U.S.C. § 441b.

**1. Theory One: Triad, CR and CREF Operate as
Unregistered and Nonreporting Political Committees**

a. The Political Committee Status of Triad, CR and CREF

The available information suggests that the reported activities of CR, either acting separately or acting together with Triad and/or CREF, may satisfy both the Supreme Court's "major purpose" test for, and the statutory definition of, a political committee.

(i) The "Major Purpose" Test

The Commission believes that the information currently available raises questions as to whether CR, either acting separately or acting together with Triad and/or CREF, constitutes a political committee. The only activities of Triad, CR and CREF of which the Commission is currently aware, appear to be designed to influence the election of candidates to public office. As discussed above, the available information suggests that Triad, CR and CREF select candidates to support, on the basis of both ideological criteria and chances of success, and then, either individually or collectively, engage in activities intended to assist in the election of those candidates to federal office. Specifically, the information currently available suggests that Triad selects candidates through its "political audits" and then proceeds to furnish their campaigns with what appears to be uncompensated fundraising and campaign management assistance and, through CR and CREF, advertising assistance.

Reports of statements by Triad leadership and documents discussing Triad's goals that appear as exhibits to the Senate Report further suggest that Triad's and, by virtue of

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the control established by its management contract, CR's major purpose may be to influence federal elections. For example, in an interview shortly before the 1996 election, Ms. Malenick reportedly stated that one Triad goal is to help re-elect specific conservative candidates. See 9/28/96 National Journal article (quoting Ms. Malenick as stating "[o]ne of our goals is to help Republican freshman."). In addition, numerous Triad Fax Alerts request that prospective contributors support various candidates being recommended by Triad.

As also discussed above, the CR advertising campaigns appear to have been intended to influence the nomination or election of candidates to federal office. The available information suggests that contributors to CR were solicited by Triad with the representation that 501(c)(4) "education" efforts were needed to counter organized labor's attacks on conservative candidates. It appears that most, if not all, of the CR advertisements either mentioned a Republican congressional candidate for the broadcast area in a favorable manner, or mentioned that Republican candidate's Democratic opponent in a negative manner. Further, the information available to the Commission at this time appears to indicate that most, if not all, of the advertisements ran within the sixty day period prior to the 1996 federal elections. Finally, the available information raises questions as to whether CR may have coordinated its political advertising with the beneficiary candidates and campaign committees through the "political audits" conducted by Triad.

(ii) Triad, CR and CREF Received "Contributions" and Made "Expenditures" in Excess of \$1000

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In addition to the possibility that the activities of CR satisfy the "major purpose" test, it appears that CR, either acting separately or acting together with Triad and/or CREF, satisfies the statutory definition of a "political committee" as a committee which receives more than \$1000 in contributions or makes more than \$1000 in expenditures for the purpose of influencing federal elections. 2 U.S.C. § 431(4)(A). CR may have qualified for political committee status either when it began to receive large contributions or when they actually began to make expenditures to prepare and broadcast political advertisements described above which appear to have been for the purpose of influencing federal elections in the Fall of 1996.

Based on the information discussed above, the Commission finds reason to believe that CR, acting either separately or acting together with Triad and/or CREF, constitutes a political committee which has failed to register and report as such, in violation of 2 U.S.C. § 433 and § 434.

b. Excessive Contributions

From the information the Commission has obtained to date, it appears that CR made numerous coordinated expenditures during the 1996 election cycle which constitute in-kind contributions to the beneficiary candidates and committees, and that many of these in-kind contributions exceeded the \$1000 per election limit imposed by the Act. 2 U.S.C. § 441a(a)(7) and § 441a(a)(1)(a).¹¹ Given what is known about the costs

¹¹ Because CR never registered with the Commission as political committees, they do not meet the requirements to qualify as a multicandidate committee which can make contributions of up to \$5000. 2 U.S.C. § 441a(a)(2).

associated with these efforts, the available information suggests that if CR is a political committee, it may have exceeded the \$1000 limit established by the Act with respect to several campaigns. 2 U.S.C. § 441a(a)(1).

For the reasons discussed above, the Commission finds reason to believe that CR, violated 2 U.S.C. § 441a(a)(1) by making excessive in-kind contributions to a number of candidates and campaign committees.

c. Contributions In the Name of Another

If the Cloerens made their contributions to CR with the understanding that the funds would be used to make expenditures which constituted an in-kind contribution to the Babin Committee, those contributions and expenditures could be viewed as a contribution made in the name of another person. See 2 U.S.C. § 441f. The Commission finds reason to believe that Citizens for Reform may have violated 2 U.S.C. § 441f by allowing its name to be used to make an in-kind contribution in the name of another to the Babin Committee in connection with its receipt of the \$20,000 contribution from Peter and Patricia Cloeren; and the advertising expenditures that apparently were coordinated with the Babin Committee.

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2. Theory Two: Corporate Contributions

In addition to finding that there is reason to believe that CR, either acting separately or acting together with Triad and/or CREF, is a political committee, with attendant registration and reporting responsibilities and contribution limitations, the available information suggests that CR violated 2 U.S.C. § 441b by making prohibited corporate contributions and expenditures in connection with a federal election.

The Commission believes that the information currently available raises questions as to whether CR made prohibited corporate contributions or expenditures in connection with the CR advertising programs.

As discussed above, the available information raises questions as to whether CR spent several million dollars on political advertising that was broadcast to the general public during the 1996 election cycle. Further, it has been reported that many, if not all, of the Triad-managed CR advertisements, including the anti-Bill Yellowtail and anti-Jim Turner advertisements mentioned a candidate for federal office in a favorable manner or the candidate's opponent in an unfavorable manner, and that these communications were made in an election-related context. Finally, based on documents attached to the Senate Report, it appears that some, if not all, of the CR advertising campaigns were coordinated with the beneficiary campaigns through Triad's political audit process.

Based on the evidence discussed above, the Commission finds reason to believe that CR violated 2 U.S.C. § 441b by making prohibited corporate contributions and expenditures in connection with various federal congressional elections.