

# COVINGTON & BURLING

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March 17, 2004

## BY HAND AND FACSIMILE

Kimberly Hart, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: MUR 5396 (Campaign for Working Families)

Dear Ms. Hart:

On behalf of our clients Campaign for Working Families ("CWF") and Amy Myers, Treasurer, we are submitting the enclosed Declaration of Walter Lukens to supplement our December 30, 2003 response to the Commission's reason to believe finding.

CWF has strong legal arguments, as outlined in our response, that there was no excessive in-kind contribution by CWF to the Bauer for President Committee. This declaration by Mr. Wirthlin, a well-known expert in the field of political direct mail, provides further support for those arguments. It underscores the usual and customary terms of the mailing list exchange between the two committees.

Sincerely,



Robert K. Kelner

Enclosure

250401001

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
2004 MAR 17 A 11:33

BEFORE THE FEDERAL ELECTION COMMISSION

In re Campaign for Working Families and  
Amy R. Myers, Treasurer  
(MUR 5396)

DECLARATION OF WALTER LUKENS

1. My name is Walter Lukens. I am the founder and president of The Lukens Company, formerly The Lukens Cook Company, a direct mail marketing firm. I have been involved in the direct mail marketing industry for twenty-one years. During the course of my career, I have provided advice and other services to hundreds of political and corporate clients engaged in fundraising or marketing through direct mail. I frequently advise clients regarding mailing list exchange agreements, and I have reviewed or negotiated numerous such agreements over the years. My curriculum vitae is attached hereto as Exhibit A. This declaration is based upon my personal knowledge and belief.

2. During the 2000 federal election cycle, The Lukens Cook Company provided consulting services to Bauer for President, Inc. ("BFP"), the authorized committee of Presidential candidate Gary L. Bauer.

3. In approximately January 1999, I helped to negotiate the terms of a list exchange agreement between BFP and Campaign for Working Families ("CWF"). The final terms of the agreement between BFP and CWF were memorialized in the attached January 22, 1999 memorandum from me to Peter Dickinson, the executive director of CWF at that time. See Exhibit A.

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4. Under the terms of that agreement, CWF agreed to provide its "house" mailing list to BFP for unlimited use during the course of the Bauer candidacy for President. BFP agreed that at the conclusion of the Bauer candidacy, BFP would provide to CWF a complete copy of BFP's augmented mailing list for unlimited use by CWF in perpetuity.

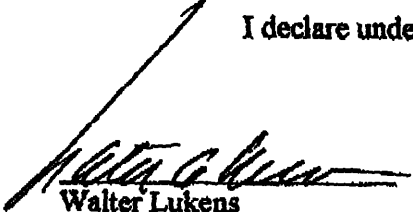
5. In exchanges of this sort, the party that initially turns over its mailing list is essentially purchasing the right to make future use of an enhanced list developed by the other party. In my experience, such a transaction makes good business sense if the party that turns over its pre-existing list reasonably anticipates that the other party will add substantial value to the list. In this case, in view of the likely affinity between donors to the Bauer campaign and donors to CWF, CWF appears to have made a reasonable business judgment that BFP was likely to add substantial value to the list.

6. As just two examples of the value enhancement, any names added to the list by BFP would be useable by CWF in perpetuity. While BFP mailed to the list numerous times during the 2000 primary campaign season, it could reasonably be expected that CWF would be able to mail to the added names several times a year for years to come. Moreover, use of the list by BFP had the effect of updating the list by confirming and updating addresses of donors and allowing deletion of invalid addresses. Coupled with the reasonable expectation that BFP would be able to add a substantial quantity of names to the list during the highly-publicized presidential primary campaign, the arrangement carried huge upside potential for CWF.

7. Based on my long experience in the industry, this type of list exchange is not unusual. Although more complex than the traditional simultaneous swap of mailing lists, this type of exchange is merely one of many different ways that sophisticated parties structure their list exchange transactions. The terms on which BFP and CWF exchanged lists were usual and

customary in the direct mail industry. Any suggestion that only simultaneous list exchanges are customary in the industry is outdated and simply incorrect.

I declare under penalty of perjury that the foregoing is true and correct.

  
Walter Lukens

Date: 2/3/04

25-04-410-1054



## The Lukens Company

Direct Response Marketing

Walter G. Lukens, III  
President

Walter Lukens is President of The Lukens Company (TLC). Founded in 1986, TLC is celebrating its eighteenth year as a full-service direct response marketing agency specializing in fundraising and membership development. His clients include the Baltimore Symphony Orchestra, the National Trust for Historic Preservation, the Numismatic Division of the U.S. Mint, the Republican National Committee, Students in Free Enterprise, Trout Unlimited, and numerous other non-profit and political organizations. Walter is also founder and Chairman of Board of Pinnacle List Company.

Walter's work with The Lukens Company has been featured in a number of direct response publications as well as in The New York Times Sunday Magazine and the Washington Post. He is a frequent speaker at regional direct marketing associations across the country and has been a guest lecturer at the George Washington University Graduate School of Political Management.

Prior to starting TLC, Walter served as a senior advisor to Senator Robert Dole's 1988 presidential campaign and was active in the senator's subsequent national efforts. His early development experience includes working as Director of Development for High Frontier, a non-profit organization that promotes the Strategic Defense Initiative, space exploration and the development of new space-based technologies and as Director of Marketing at Anne Stone and Associates. Walter began his career in direct response at the National Republican Senatorial Committee.

Walter lives in Alexandria, Virginia with his wife Joanne and their two children. He is active in his church and in his community.

A handwritten signature, likely of Walter G. Lukens, III, is written in ink.

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**The  
Lukens  
Cook**  
COMPANY

DIRECT RESPONSE  
MARKETING

January 22, 1999

**MEMORANDUM**

**TO:** Peter Dickinson

**FROM:** Walter Lukens 

**RE:** Exchanges between Campaign for Working Families and Bauer for President 2000 Exploratory Committee

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Peter, the following outlines the exchange process between Campaign for Working Families (CWF) and the Bauer for President 2000 Exploratory Committee, (BFP). It will also apply to any future committees created by Gary should he decide to become a candidate for President.

1. All exchanges between CWF and BFP of both CWF donor and non-donor data files will be coordinated through Pinnacle List Company and Pinnacle will keep an exchange balance history for both donors and non-donors. This exchange balance history will include sample copy, actual mail dates and actual mail quantities for each BFP usage of the CWF files.
2. To facilitate the exchange process and ensure as few delays as possible, BFP will receive a complete copy of both the CWF donor and non-donor data files for use during the exploratory process and potentially throughout a presidential campaign. At the conclusion of the exploratory process, or in the event of a presidential campaign, at the conclusion of the campaign, BFP will provide CWF a complete copy of all BFP donor and non-donor data files. At the outset, CWF will pay the cost of providing BFP with a copy of both CWF donor and non-donor files and in return at the conclusion of the campaign, BFP will pay the cost of providing CWF with copies of the BFP donor and non-donor files.

- If you have any questions about this process, please let me know as soon as possible. Thanks.**

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