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June 7, 2005

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

RECEIVED
FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL
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Re: MUR 5635

To Whom It May Concern:

This letter constitutes the Conservative Leadership Political Action Committee's ("CLPAC") response to the General Counsel's Brief ("Brief") recommending that the Federal Election Commission find probable cause to believe that knowing and willful violations have occurred. After reviewing the background of this case, CLPAC will separately address each of the recommendations.

I. Background Of This Case

As correctly noted on page 2 of the Brief, CLPAC entered into an agreement with American Target Advertising ("ATA") for direct mail fundraising services. This agreement was subsequently amended on September 28, 2000, and again on October 11, 2000. All versions of the Agreement provided for two types of mailings – prospect and housefile.

A prospect fundraising mailing involves the use and/or rental of many mailing lists, including untested lists, copy, and techniques. Prospect fundraising letters are sent to people who have not previously responded with a contribution. Generally, prospect fundraising generates a very low return rate (around 1 to 2%) as compared with a mailing to an organization's housefile list, and such fundraising programs are inherently speculative. A response from a prospect fundraising letter is important for two reasons: (1) it usually results in a contribution; and (2) the donor's name is added to the housefile for future mailings.

A housefile mailing is a mailing made to names developed from the prospect mailings. A housefile mailing generates a larger response rate and more contributions because these donors have usually already contributed and/or shown an interest in the organization. It is expensive and time consuming to develop a housefile list, but once developed, it is very valuable to the organization. Unfortunately, new or small organizations usually do not have the funds to develop a housefile list.

The original agreement between CLPAC and ATA contained, among other things, a "no risk" provision for fundraising through direct mail. Specifically, it stated that

> [a]ll third-party invoices will be incurred in ATA's name. CLPAC will be responsible for payment of costs incurred hereunder only to the extent of the amount of moneys raised under this Agreement.

Contrary to the conclusion reached in the Brief, this provision is one of *limitation, not obligation*. CLPAC is not mandated by the Agreement to pay all costs up to the monies raised; rather, CLPAC is potentially liable only for expenses up to the monies raised. This limitation must be read in conjunction with the rest of the Agreement, particularly the disbursement of income provisions.

The original agreement specified how income received from the two kinds of mailings was to be disbursed. Under the original agreement, ATA was required to disburse, and CLPAC was entitled to receive, 70% of the net housefile income, plus any net income in excess of $1,000,000 from prospect mailings. The Agreement was later amended to provide that CLPAC was to receive only 50% of the net housefile income, but would receive net income from the prospect mailings before the $1,000,000 prospect income reserve was met. The trade-off for receiving net income from the prospect mailings before the $1,000,000 reserve was met was that CLPAC would receive 20% less of the more valuable, and more certain, net housefile income.

As valuable consideration for the arrangements described above, ATA received a copy of the CLPAC housefile generated under the Agreement as well as the *exclusive* marketing rights to those names. See paragraph 8 of the Original Agreement. Paragraph 7 of the Agreement also gave ATA the *exclusive* rights to do prospect mailings that referred to Hillary Rodham Clinton (later amended to include Al Gore) through the date of the election. The General Counsel omitted these important points. Names developed in the course of the prospecting program have a very high value – in some cases, $20 or more *per name*. This is the principal reason fundraising companies enter into "no risk" contracts.

Furthermore, paragraph 8 of the Agreement provides that "ATA may use the housefile for *any purpose*" while CLPAC is constrained in its use of the housefile. (emphasis added). The limited and controlled use by CLPAC of its housefile further added value to the names for ATA's marketing and other rental purposes. These exclusive rights and limits apply forever. While these exclusive marketing rights were very valuable to CLPAC, this bargained-for exchange made it possible for CLPAC to engage in fundraising for its planned independent expenditures at a critical time before the 2000 elections. These exclusive rights, and the future income to be generated from the list rentals and uses of such names and addresses, is valuable consideration. This normal and customary provision, in addition to the higher fees charged to CLPAC, was in exchange for the risk that ATA bore with the no-risk contract.

The provisions in the no-risk agreement with CLPAC are similar to provisions contained in other agreements ATA has entered into with both political and non-political clients alike. The agreement provides that at the end of ATA's fundraising for CLPAC, ATA is fully responsible under the agreement for *any* costs for services or goods used in the mailings. Under the terms of the agreement, ATA received certain direct financial payments and control of valuable donor names and addresses generated under the agreement. The agreement specifically provides that CLPAC has no direct obligations for services and goods ATA contracts for in providing *its* direct mail services. All sub-vendor invoices were to be incurred in the name of ATA. As demonstrated in the affidavit of Mark Fitzgibbons (previously provided to the Commission), these contract provisions represent ATA's standard and usual course of business used with dozens of other clients and are common contractual terms in the fundraising industry.

After ATA had provided direct mail services for CLPAC, CLPAC learned that, in direct contravention of the agreement, ATA had entered into third party invoices in CLPAC's name.[1] As a result, these third party sub-vendors demanded payment of CLPAC of amounts which, pursuant to CLPAC's no risk agreement with ATA, should have been paid by ATA. CLPAC sent letters to all sub-vendors disavowing ATA's unauthorized act, copies of which have been previously provided to the Commission.

To fully understand CLPAC's responses, it is important to look at another important part of the background of this case. What was supposed to be a successful fundraising effort turned into unexpected losses caused by late and botched mailings near the date of the 2000 elections. During a critical period in the mailing process, one of the vendors had a fire at their mail plant, which delayed the mailing and delivery of some of the letters. Millions of delayed letters were mailed out at the same time as subsequently scheduled mailings. One subcontractor was supposed to print and mail one million letters, but failed until a day before the scheduled mail date to notify ATA that it would not be able to handle the job. Disputes with some of the other vendors contributed to the losses. These delays and failures resulted in increased costs, as well as loss of income, because a potential donor usually will make one contribution, even if two letters are received around the same time.

After the letters went out, the vendors threatened litigation to obtain their entire invoice amounts. Some of ATA's vendors, unaware that ATA had no authority to enter into any contract in CLPAC's name, mistakenly complained to CLPAC. The problem was further compounded when CLPAC mistakenly reported the amounts of the

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[1] CLPAC does not suggest that ATA's failure to enter into third-party agreements in its own name was intentional rather than inadvertent.

outstanding invoice amounts as debts on its reports to the Commission. When CLPAC realized that these debts were solely ATA's debts and that ATA had no authority to incur debts in CLPAC's name, CLPAC amended its FEC reports to remove these debts. CLPAC also informed all of these vendors that they were to look solely to ATA for payment, as specified in CLPAC's agreement with ATA.

Because of the no-risk arrangement, all that mattered to CLPAC was the success of the direct mail program. CLPAC had no authority or ability to take emergency steps to get the letters out on time. Any increased costs resulting from the botched mailings were the result of the vendors' and ATA's emergency steps to get the letters out on time. As ATA has shown, the increased costs were caused by the reduced number of already-printed inserts being left out to shorten the insertion process, and mailing at the first class postage rate instead of the standard bulk rate. "Forgiveness" of these increased costs for mistakes made by the vendors to ATA for a botched job should not constitute impermissible contributions. ATA and the vendors reduced the amount of money owed by ATA because of these mistakes. If the General Counsel's recommendation is adopted, CLPAC will be penalized for the fault of ATA's vendors. CLPAC could have done nothing to prevent or avoid these increased costs. This is precisely the type of situation against which a no-risk contract is designed to protect, and for which CLPAC was willing to give up valuable rights in its housefile mailing list.

II. Specific Recommendations

A. Prohibited Corporate Contributions

1. Corporations Forgave CLPAC Debt

On page 6, the General Counsel alleges that corporations forgave CLPAC debt and thereby made prohibited corporate contributions. As the basis for this claim, the General Counsel alleges that the six corporations extended credit to CLPAC. This is erroneous for several reasons.

First, the extensions of credit were not contributions because they were made in the ordinary course of their businesses and the terms were substantially similar to those extended to nonpolitical clients. The General Counsel makes the allegation that ATA's extension of credit and its arrangement of extensions of credit from other entities was not the usual and normal practice in the direct mail industry and did not comport with ATA's established procedures. ATA has submitted substantial credible evidence that it is the usual and normal practice for vendors to extend credit for direct mail programs, including postage.

Postage loans are very common in the fundraising industry and are extremely lucrative to the people making the loans. Interest rates charged are usurious, sometimes as much as 30%. Despite this, the loans are extremely well-secured, since the postage loans are usually paid back out of the first dollars raised by a fundraising mailing. Even fundraising mailings which lose money would produce enough money to cover all the postage loans. Because postage loans have a high rate of return and almost no risk, they are very common and made in the ordinary course of business in the fundraising industry.

Second, there was no extension of credit to CLPAC by the corporations. The regulations define an extension of credit, in part, as "any agreement between the creditor and political committee. . . ." 11 CFR § 116.1(e). A "creditor" is defined as "any person or entity to whom a debt is owed." 11 CFR § 116.1(f).

In this case, CLPAC had no agreements with the six corporations. The arrangements were between ATA and the six creditor corporations. Because CLPAC did not contract with the six corporations, there was no agreement and therefore, there can be no extension of credit. CLPAC did contract with ATA for direct mail services. CLPAC was not involved in how or in what manner ATA provided these services, or with whom ATA contracted. As previously discussed, ATA contractually could not incur debts in CLPAC's name. Furthermore, the contract at issue here is a no-risk contract. CLPAC did *not* sign any loan agreement or credit arrangement with any of ATA's vendors. As demonstrated in previously submitted letters from ATA, these advances to ATA are common in the industry, and ATA has entered into substantially similar agreements with both political and non-political clients. Therefore, any advances or short-term loans made must be attributed solely to ATA, which bore *all* liability for the services being provided by the six corporations. Any advances or short-term loans made were done so on behalf of ATA, not on CLPAC's behalf. The vendors threatened litigation against ATA, not CLPAC. Thus, the vendors believed that ATA was the debtor and liable not only for its own losses, but for the entire CLPAC program's losses.

Third, the transactions at issue are distinguishable from those addressed in MURs 3027, 5173 and AO 1989-21. In MUR 3027, the General Counsel's Report states on page 5:

> In this particular case, however, the facts presented suggest that certain mitigation is warranted in the resolution of this issue. Specifically, the facts noted above indicate that TVC, a large direct mail company serving political and non-political clients, had an established lending relationship with DMF&E, a finance company organized to engage in the business of securing financing and escrow services for the need of the direct marketing industry. As part of its normal business practice, TVC obtained a line of credit from DMF&E to do its mailing for its client PAPAC. Apparently according to an agreement with DMF&E, TVC was legally liable for repayment of the credit expended. There is no evidence that DMF&E knew the PAPAC client to be a federal political committee.

Like TVC[2] in MUR 3027, ATA serves political and non-political clients and has adequately demonstrated that it has established business relationships with companies that make loans to ATA. Like the agreement in MUR 3027, CLPAC's agreement with ATA provided that ATA was legally liable for costs incurred with its vendors. The Commission accepted the credit arrangement in MUR 3027 and dismissed its claim against DMF&E; likewise, the Commission should dismiss its claim against CLPAC and ATA based on these similar credit arrangements.

MUR 5173 is also distinguishable from CLPAC's arrangement with ATA. First, there appears to be no evidence in MUR 5173 that there was an established relationship between the direct mail fundraising firm and at least one of the vendors (DMFE). Second, the contract at issue in MUR 5173 was not a no-risk contract. Third, the loan agreement at issue in MUR 5173 was signed by both the direct mail fundraising firm and by the political committee, unlike the instant case.

Reliance upon AO 1989-21 is also misplaced. Advisory Opinion 1989-21 involved a sole proprietorship, which was not ordinarily in the business of fundraising. The Commission noted that the situation was different from AO 1979-36, which involved a direct mail firm that had made advances as part of a standard fundraising program. Consequently, AO 1989-21 is not relevant here.

Unfortunately, a reporting mistake did occur. CLPAC incorrectly reported the debts incurred by ATA as debts incurred by CLPAC. However, these obligations did not require disclosure in the first instance because ATA was solely responsible for them. When CLPAC learned that ATA had incurred these debts in CLPAC's name in contravention of the agreement, and that the amounts had been incorrectly reported, CLPAC corrected its filings by recording credits from these sub-vendors on its reports. CLPAC believed this to be an appropriate means to eliminate the incorrectly listed debts on its reports. This reporting mistake does not turn otherwise permissible arrangements into impermissible contributions.

The General Counsel argues that CLPAC engaged in no fundraising efforts on its own to attempt to reduce the debt. This allegation ignores the realities of the 2000 election and the contractual relationship between ATA and CLPAC. Because the services were provided to ATA, ATA was the only party who could settle the debt or engage in debt reduction. ATA is not a political committee, and therefore, does not need to follow the debt reduction procedures as to debts between it and its vendors.

As the Commission is aware, post-2000 election litigation delayed the determination of the presidency. This litigation affected the ability of ATA to do debt reduction mailings. Debt reduction mailings are generally most effective following an election; however, because the presidency had not been determined, debt reduction

[2] TVC is the former name of ATA.

mailings would most likely have generated even greater losses with regard to the Gore mailings. Because Hillary Clinton won her race, the effectiveness of a debt reduction mailing for that program would have been small. Once the presidency had been determined, the chances for recouping losses was small.

CLPAC was also hampered in its ability to do debt reduction mailings because the Agreement with ATA did not permit CLPAC to use its housefile mailing list. This is significant because CLPAC could not take the names that ATA developed in its prospect mailings and separately mail those and keep the income from names developed by ATA. Nor can CLPAC do so now – the Agreement provides that ATA has the exclusive marketing rights to the housefile mailing list forever.

Should the Commission find that impermissible contributions resulted, the amount of the impermissible contribution should be based only on the amounts actually advanced, and not on interest. Additionally, the General Counsel fails to credit ATA's higher fees against the losses incurred. In AO-1979-36, the fundraising agency charged a fee that was 1/5th of the other costs of the direct mail program expenses. Unlike the agency in AO-1979-36, ATA not only charged CLPAC 25% more than its ordinary and usual fees, but charged 100% more than the industry standard fee. Thus, the Commission's concern voiced in AO 1991-18 that a political client pay the costs of the program at the usual and normal charge in the ordinary course of business does not exist here. ATA's higher fees actually operate as an additional safeguard – in exchange for ATA bearing more of the risk, CLPAC must pay double the industry standard.

B. Corporations Paid Third-Parties

The Brief incorrectly states that if the terms of the Agreement were followed, CLPAC should have been responsible for, at a minimum, expenses totaling $4,666,695. The Brief also opines that undocumented credits in the amount of $1,769,353 and the payments by other entities in the amount of $1,707,152 on behalf of CLPAC, represent the receipt of impermissible contributions totaling $3,941,505.

The payments by other entities cannot result in the receipt of impermissible contributions because these debts were solely ATA's obligation; they were not an extension of credit to CLPAC. Therefore, payments made to vendors by ATA were not made "on behalf of CLPAC." Any credits issued by these vendors to ATA were not made "on behalf of CLPAC." As discussed above, ATA was contractually prohibited from entering into any contracts in CLPAC's name. Any debts incurred, and any subsequent credits issued, were solely on ATA's behalf for services provided by its vendors *to ATA*.

This is especially important, not only because the no-risk contract specified that all debts were to be incurred solely in ATA's name, but because ATA maintained the means by which debts could be paid. Because ATA had the exclusive marketing rights to

CLPAC's housefile, ATA could permit vendors to use the names and credit the fair market value use of those names towards the debt.

AO 1979-36 supports this position. In that Advisory Opinion, a non-bank advanced money for a fundraising program in its ordinary course of business. The Commission found no impermissible contribution resulted where such advance was in the ordinary and usual course of business. Like the advances in AO 1979-36, the advances here were in the ordinary course of business.

C. ATA Disbursement of $465,000 to CLPAC

The initial Agreement provided that CLPAC was to receive 70% of the net housefile income. This Agreement was subsequently amended to provide that CLPAC was to receive only 50% of the net housefile income in consideration of receiving net income from the prospect mailing before the $1,000,000 prospect income reserve was met. CLPAC was liable for the payment of costs *at most* for the extent of the moneys raised under the Agreement. The Agreement did not provide that no disbursement could be made until all costs were paid. In fact, the express language of the amended Agreement provides otherwise – CLPAC was entitled to receive net income from the prospect mailings even before the $1,000,000 buffer amount was reached. Thus, the payment of $465,000 by ATA to CLPAC did not result in an impermissible contribution.

This arrangement is similar to the arrangement approved by the Commission in AO 1979-36. In that advisory opinion, the agreement between a direct mail fundraising firm and a campaign committee provided that "irrespective of the actual total amount of fees and expenses, the Committee shall only be required to pay a maximum of ¾ of the total amount of contributions received during the period of the Agreement as a result of Working Names direct mail activities." Thus, if fees and expenses exceeded the amount of contributions, the Committee would have only been liable for ¾ of the total amount of contributions. Submitted with the request for the advisory opinion was an affidavit stating that within the direct mail industry, this type of proposed financing agreement represents an ordinary mode of operation. The Commission concluded that if this arrangement is of a type which is normal industry practice and contains the type of credit which is extended in the ordinary course of business with terms which are substantially similar to those given to nonpolitical, as well as political, debtors of similar risk and size of obligation, and if the costs charged the Committee for services are at least the normal charge for services of that type, then the amounts expended by the direct mail fundraising firm would not be considered to be campaign contributions.

Although it has been over 25 years since the Commission approved AO 1979-36, the direct mail industry still uses these types of financing arrangements. As amply demonstrated by ATA in its submissions to the Audit Division, the no-risk agreement, and ATA's relationships with its vendors, are its normal and established practice for both its political, and its nonpolitical, clients. ATA has also demonstrated that the services provided to CLPAC were at least the normal charge for services of that type, and in fact, were double the normal charge.

Like the agreement in AO 1979-36, which limited liability to a maximum of ¾ of the total amount of contributions *irrespective* of the actual total amount of fees and expenses, ATA's agreement with CLPAC also limited liability. Like the agreement approved by the Commission in AO 1979-36, the agreement in this case also provided for limited liability even if actual expenses exceed contributions. As the General Counsel notes on page 9 of his Brief, the committee in AO 1979-36 was permitted to retain 25% of fundraising proceeds while paying the costs of the fundraising program from the remaining 75% of the proceeds. This would occur regardless of whether the remaining 75% of the proceeds was sufficient to pay all of the actual fees and expenses.

The General Counsel attempts to distinguish AO 1979-36 by arguing that the agreement between CLPAC and ATA contained only one safeguard – no disbursements would be made until prospect mailings netted $1 million. The General Counsel notes that CLPAC accepted funds even though prospect mailings had not yet netted $1 million. However, the General Counsel fails to note that in consideration for the early disbursement of funds, CLPAC gave ATA co-ownership of the valuable housefile mailing list as well as exclusive mailing rights to it. ATA's marketing and other rental of this list provided additional income to ATA.

The General Counsel also alleges that the agreement did not contain an initial test period or termination provision. This latter type of safeguard was not necessary in this case. The mailings were done over such a short period of time before the election, that it would not have been practical or possible to terminate the agreement upon a poor showing. The direct mail program's short duration and limit focus served as a safeguard, as well as ATA charging CLPAC double the normal rate.

In AO 1991-18, the Commission addressed a fundraising program that could have taken a year or longer before enough funds were received to pay earned commissions. However, the Commission stated that the speculative nature of the program and the consequent possibilities of shortfall did not permit the Commission to give its approval to the program "*in the absence of* a record by GSI or similar companies of the implementation of a program of similar structure and size in the ordinary course of business" (emphasis added). The Commission went on to state that in the absence of such a record, the committee could make a substantial advance payment or alter the program to provide for short, defined periods in which full payment is made by the period's end.

Thus, while it is true that the Commission disapproved of the program in AO 1991-18, as noted on page 10 of the General Counsel's Brief, it did so because there was no record of similar programs in the ordinary course of business. Unlike the record in AO 1991-18, ATA has provided a substantial record showing that ATA has implemented programs of similar structure and size in its ordinary course of business for both political and nonpolitical clients. Therefore, AO 1991-18 fails to support the General Counsel's position.

As in AO 1979-36, the Commission should find that no impermissible contributions resulted. Should the Commission find that the $465,000 is an impermissible contribution, this amount must be reduced to account for the valuable housefile list and exclusive marketing arrangement that ATA received as consideration, as well as the increased fees charged to CLPAC.

D. Corporate Loans

CLPAC incorporates its above responses herein. As discussed above, AO 1979-36 supports CLPAC's position that no impermissible contributions resulted from ATA's vendors loaning ATA money. No loans were made to CLPAC, and should the Commission find that loans were made, the evidence amply demonstrates that they were made in the ordinary course of business.

E. Excessive Contributions

For the reasons given above, no impermissible loans were made because Adams, Hart and Roffman made loans on behalf of ATA in the ordinary course of business. Therefore, no excessive contributions to CLPAC resulted.

F. Reporting Violations

1. Disclosure of Outstanding Debts

CLPAC incorporates herein its above responses. Because these debts were solely ATA's obligation, per CLPAC's Agreement with ATA, they were not outstanding debts of CLPAC. Contractually speaking, the vendors' sole recourse for payment of these debts was against ATA. CLPAC never entered into any contracts with any of the vendors; ATA was contractually prohibited from entering into any contracts in CLPAC's name. Therefore, the debts were solely ATA's arising out of services provided to ATA and CLPAC never had an obligation to report these debts in the first instance. As such, no debt settlement agreement was necessary.

On page 9, the General Counsel alleges that ATA forgave CLPAC's debt to ATA within 24 months. Because the no-risk agreement limited CLPAC's liability to ATA, there was no debt to forgive. Therefore, there was no outstanding debt and no reporting violation.

2. Disclosure of Occupation/Name of Employer and Disclosure of Disbursements

As CLPAC has previously stated, it encountered several problems in disclosing occupation and name of employer. First, CLPAC used to file its FEC reports using private vendor software. When the software maintenance contract was not renewed, CLPAC was effectively locked out of the software.

Second, the original source documents were never provided to CLPAC. These documents went to the vendor contracted by ATA who was doing caging and list maintenance of the housefile list. Because the contracts were between ATA and its vendors, the bills were paid from the escrow account. CLPAC did not have the authority to approve any disbursements from that account; as such, the original invoices were never in the possession of CLPAC.

Despite these problems, CLPAC has made every effort to obtain the necessary documents from ATA and its vendors. However, these vendors either did not maintain the contributor response devices or the documents necessary to permit CLPAC to disclose the purposes requested, or no longer have them. Therefore, CLPAC is unable to make the amendments to disclose the necessary information. CLPAC is further hampered in its efforts to file "complete amended electronic reports" because it does not have access to the previously filed electronic reports. Therefore, to amend its reports, CLPAC would be forced to reenter data from thousands of pages already filed with the FEC.

III. This MUR Has Implications Beyond The Parties Involved Herein

New non-profit organizations, as well as others that lack capital and expertise, rely upon direct mail companies to help them build successful fundraising programs at little or no financial risk. New organizations have a particular need to rely upon this skill and expertise because they have not established a need for their cause and acceptance of their capability with the general public. A successful direct mail fundraising letter will establish this need and secure a donation.

Post-BCRA, political committees are facing even more competition for contributions. A new political committee does not have a housefile list and may not be able to gets its message out if it lacks initial start-up funds. The end result is that the established political committees have a greater advantage in competing for contributions.

Timing is also critical for direct mail fundraising. As many non-profits know, timing can be more important than perfect copy, especially during times of crisis. For example, a small non-profit attempting to raise funds right now to aid the tsunami victims would have difficulty securing the necessary capital and meeting tight deadlines without the help of an experienced direct mail fundraising firm. In the political realm, some organizations attempted to quickly capitalize on the heightened political exuberance following the Clinton years and build their donor base for the future. Especially for small and/or new political committees, these efforts are usually not possible without the availability of no-risk agreements.

No-risk contracts are generally contracts between non-profit organizations and professional direct mail fundraising firms which have expertise in marketing and fundraising, and which have confidence that their experience can help the non-profit raise money through direct mail. Often, because of this experience, direct mail fundraising firms are willing to enter into no-risk contracts to help protect the non-profit from devastating financial losses if the fundraiser's judgment proves wrong and adequate funds are not raised. No-risk contracts are used for several reasons. Sometimes they are used by non-profits who cannot afford to absorb the risk of a fundraising campaign being unsuccessful.[3] Sometimes they are offered by direct mail firms as a way for the non-profit to test out a new agency without a great deal of risk. Sometimes no-risk contracts are used when non-profits do not have the capital to start nationwide direct mail campaigns. Sometimes they are used when non-profits do not have a large in-house fundraising department. And, sometimes no-risk contracts are used when state charitable solicitation laws require solicitors to guarantee that a percentage of fundraising proceeds be paid to non-profit clients even when the costs exceed income. Irrespective of the reasons for using no-risk contracts, they are common in the direct mail industry, for political organizations and non-political organizations alike.

Direct mail fundraising is not just about raising money and building a donorbase. A large part of the fundraising letter is the inclusion of the issue(s) which are important to the organization. These letters not only raise money for the organization's future activities, but they convey important information about the issues. CLPAC's direct mail letters not only urged recipients to contribute to help raise funds for its upcoming independent expenditure campaign, but the letters also described the issues of importance to CLPAC.

No-risk contracts serve several purposes and are an important part of direct mail fundraising. Without them, many new or small non-profit organizations would not be able to grow or effectively communicate their message. No-risk contracts are very

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[3] The United Cancer Council, Inc. provides a good example of this danger. UCC had a no-risk contract with a direct mail fundraising firm; when the contract ended, UCC had almost half a million dollars in the bank, as well as a donor list of more than 1.1 million names. UCC then retained another firm to provide it with direct mail fundraising services Unlike its previous no-risk contract, UCC was responsible for all fundraising costs incurred. The direct mail solicitations failed to generate income sufficient to cover the costs. Faced with significant fundraising expenses incurred under its contract that exceeded its financial resources, UCC was forced to file for bankruptcy under Chapter 7. *See United Cancer Council, Inc v Commissioner of Internal Revenue Service*, 165 F.3d 1173 (7th Cir. 1999); Amicus Brief of Bruce W Eberle & Associates, Inc., et al (Nos. 98-2181, 98-2190), available at http://www.freespeechcoalition.org/ucamicus.htm.

common and widely used. The regulated community has been operating under the Commission's approval of no-risk agreements AO 197-36 for over 25 years. Therefore, any change of course by the Commission is best done through a rulemaking, which provides an opportunity for the regulated community to comment, rather than through an investigation of one political committee.

IV. Conclusion

As CLPAC and ATA have sufficiently shown, the no-risk agreement involved in this case was in the normal course of business. Political and non-political organizations use similar no-risk arrangements in order to conduct their direct mail fundraising. Therefore, no impermissible contributions, extensions of credit, or improper reporting of outstanding debts resulted from this arrangement. As such, the Commission should find no probable cause to believe that a violation of the Federal Election Campaign Act has occurred.

Furthermore, resolution of the no-risk contract, and its corresponding issues in this case, affects not just the Respondents in this case, but a large number of the regulated community who have been using no-risk arrangements for their direct mail fundraising. As such, these issues should be decided in the larger and more open context of a rulemaking.

If you have any questions or need additional information, please do not hesitate to contact us.

Very truly yours,

Heidi K. Abegg

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Attorneys for Conservative Leadership PAC