BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of	
Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer, American Target Advertising, Inc., the Viguerie Company, and ConservativeHQ.com, Inc.[1]	MUR 5635

SENSITIVE

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Find probable cause to believe that Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441b(a).

Find probable cause to believe that American Target Advertising, Inc., the Viguerie Company, and ConservativeHQ.com, Inc. violated 2 U.S.C. § 441b(a).

II. BACKGROUND

This matter stems from the Federal Election Commission's ("FEC" or the "Commission") audit of Conservative Leadership Political Action Committee ("CLPAC" or the "Committee"), which found that the Committee had accepted excessive and corporate contributions totaling $5,761,840 from a number of vendors, including American Target Advertising, Inc. ("ATA"), the Viguerie Company ("TVC"), and ConservativeHQ.com, Inc. ("CHQ"), (collectively the "Corporate Respondents"), that the Committee had failed to report debt it owed to those three vendors as well as fourteen other vendors, that the Committee had

[1] We address the remaining respondents (Mail Fund, Inc., Edward Adams, Benjamin Hart, Mark Roffman, American Automated Mailing, Inc., American Business Information Systems, Inc., and SMS Direct, Inc.) in a separate General Counsel's Report.

failed to report the purpose of disbursements totaling $1,848,417, and failed to report the occupation and name of employer of contributors for 93% of the contributions it accepted during 1999 and 2000. The Commission found reason to believe the Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA"), based on the audit findings and also found reason to believe that three of the Committee's corporate vendors, *i.e.*, the Corporate Respondents, violated the Act by making prohibited contributions to the Committee.[2]

These findings were based on a direct mail fundraising program that CLPAC had contracted with ATA to perform in the four months preceding the 2000 general election. Under the terms of the contract, all funds raised would be deposited directly into an escrow account and all costs associated with the program would be paid out of the escrow account. Should the fundraising program not generate sufficient funds to pay the costs, the contract provided that CLPAC would not be responsible for paying the shortfall. ATA operated the program through a number of other vendors, at least some of which were related to ATA, including TVC and CHQ, which provided mailing lists and Internet fundraising services for CLPAC's fundraising program.

The program did not raise sufficient funds to pay for ATA's services or the services provided by the vendors involved in the fundraising program. Indeed, only about $4 million was raised, but costs for the program totaled roughly $8 million. As a result, the Corporate Respondents and other vendors were not paid in full for the goods and services they provided to CLPAC. Specifically, ATA forgave Committee debt of $1,157,832; TVC forgave Committee debt of $500,652; CHQ forgave Committee debt of $77,425; SMS Direct Printing, Inc. forgave

[2] All of the facts recounted in this report occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act, herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA

Committee debt of $17,000; American Business Information Systems, Inc. forgave Committee debt of $8,770; and American Automated Mailing, Inc. forgave Committee debt of $7,674. CLPAC debt to other vendors who had worked on the fundraising program was paid on CLPAC's behalf by ATA ($1,195,024), TVC ($418,147), Mail Fund, Inc. ($68,254) and Edward Adams ($25,727). In all, CLPAC received contributions totaling $3,476,505 as a result of the vendors' forgiveness of debt and the payments several of the vendors made on CLPAC's behalf to pay its bills.

In addition to forgiving CLPAC debt and paying CLPAC's debt owed to other vendors, and although CLPAC owed ATA well over a million dollars, ATA contributed $465,000 to CLPAC, approximately $300,000 of which it used to fund advertisements in connection with the New York Senate campaign and the Presidential campaign. ATA also accepted contributions from corporate vendors totaling $2,473,517 on CLPAC's behalf.[3] In connection with the CLPAC fundraising program, ATA thus made contributions to CLPAC totaling $5,291,373. TVC and CHQ made contributions to CLPAC of $918,799 and $77,425 respectively.

Based on the above facts, this Office served Respondents' counsel with General Counsel's Briefs ("GC Briefs"), incorporated herein by reference, setting forth the factual and legal bases upon which this Office is prepared to recommend that the Commission find probable cause to believe that CLPAC, ATA, TVC, and CHQ violated the Act. In their responses to the GC Briefs, CLPAC and the Corporate Respondents made essentially the same arguments. They argue that the vendors did not make contributions to CLPAC, but rather extended credit to the

[3] ATA accepted contributions from six corporations on behalf of CLPAC. Specifically, five corporations forgave CLPAC debt and/or paid CLPAC bills: the Viguerie Company, ATA's parent, forgave $500,652 in CLPAC debt and paid CLPAC bills totaling $418,147; ConservativeHQ.com, Inc. forgave CLPAC debt of $77,425; SMS Direct Printing, Inc. forgave CLPAC debt of $17,000; and American Business Information Systems, Inc. and American Automated Mailing, Inc. forgave CLPAC debt of $8,770 and $7,674, respectively. In addition, Mail Fund, Inc. loaned a total of $1,443,849 to other vendors to pay for postage and direct mail services in advance of mailings.

Committee in the ordinary course of business. And they argue that because ATA contracted with third-party vendors in its own name, those vendors' actions did not result in contributions to CLPAC.[4]

As discussed below and in the GC Briefs, the information developed during the audit of CLPAC demonstrates that the Corporate Respondents and other vendors made prohibited corporate and excessive contributions to the Committee subsidizing CLPAC's fundraising campaign, and that during the 2000 election cycle the Committee engaged in numerous reporting violations. We therefore recommend that the Commission find probable cause to believe that CLPAC violated 2 U.S.C. §§ 441b(a) and 441a(a)(1)(C) by knowingly accepting corporate and excessive contributions, and 2 U.S.C. § 434(b) by failing to report debt, disbursements, and the occupation and name of employer of contributors. We also recommend that the Commission find probable cause to believe that the Corporate Respondents violated the Act as follows: ATA violated 2 U.S.C. § 441b(a) by providing goods and services to CLPAC for which ATA was not paid, by paying other vendors on CLPAC's behalf, by contributing $465,000 to CLPAC, and by accepting corporate contributions on CLPAC's behalf from other corporations; that TVC violated 2 U.S.C. § 441b(a) by providing goods and services to CLPAC for which TVC was not paid and by paying other vendors on CLPAC's behalf; and that CHQ violated 2 U.S.C. § 441b(a) by providing goods and services to CLPAC for which CHQ was not paid.

[4] Respondents also allege in their Reply Briefs that the conduct of Commission attorneys violated various legal and ethical obligations. We disagree with each of the allegations. As those allegations are irrelevant to the merits of this case, we do not further address them in this Report.

III. DISCUSSION

A. CLPAC KNOWINGLY ACCEPTED CONTRIBUTIONS FROM CORPORATIONS THAT EXTENDED CREDIT TO THE COMMITTEE.

As explained in the GC Briefs and summarized above, the Corporate Respondents made, and CLPAC knowingly accepted, corporate contributions in the millions of dollars. GC Brief (CLPAC) at 5-13; GC Brief (ATA) at 6-14, GC Brief (TVC) at 3-6; GC Brief (CHQ) at 3-5. These corporate contributions took several forms, including extensions of credit to CLPAC that were not in the ordinary course of business. GC Brief (CLPAC) at 6-11, *see* 2 U.S.C. § 431(8)(A)(i), 11 C.F.R. §§ 100.7(a)(4) (2000),[5] 116.3, and 116.4.

The Act defines contributions to include "any gift, subscription, loan, advance, or deposit of money or anything of value." 2 U.S.C. § 431(8)(A)(i). "[T]he extension of credit by any person is a contribution." 11 C.F.R. § 100.7(a)(4) (2000). The regulations, however, provide an exception for extensions of credit where the extension is "in the ordinary course of the person's business and the terms are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation." *Id.* The regulations further provide that "if a creditor fails to make a commercially reasonable attempt to collect the debt, a contribution will result," and that if a creditor forgives or settles committee debt for less than the amount owed, "a contribution results unless such debt is settled in accordance with the standards set forth at 11 C.F.R. 116.3 and 116.4." *Id.*

In this case, the extensions of credit were not in the ordinary course of business given their size and the short-term nature of the fundraising program. GC Brief (ATA) at 8. Thus, they constituted contributions. But even if they had been made in the ordinary course of

[5] With the passage of the BCRA, 11 C.F.R. § 100.7 was renumbered; it now appears at 11 C.F.R. § 100.55.

business, CLPAC never paid them and the creditors' forgiveness of the debt resulted in contributions from the creditors to the Committee.

1. The Extensions of Credit Resulted in Contributions to CLPAC When the Creditors Forgave CLPAC Debt.

As analyzed in the GC Briefs, ATA extended credit to CLPAC of over $2.3 million and arranged for other vendors to extend credit to the committee in amounts that totaled approximately $6 million—all for a fundraising program scheduled to run for four months immediately preceding the 2000 election.[6] Regardless of whether these extensions of credit were in the ordinary course of business, which we do not concede, the credit was not repaid and the Corporate Respondents forgave the CLPAC debt. Prior to forgiving the debt, the corporations did not make efforts to collect amounts owed by CLPAC and did not attempt to settle the debt in accordance with the provisions of 11 C.F.R. §§ 116.3 and 116.4. The Corporate Respondents claim that the contract between CLPAC and ATA precluded ATA from suing CLPAC for payment on the debt, from demanding payment, imposing late fees or referring the debt to a collection service, examples of commercially reasonable attempts at collection listed at 11 C.F.R. § 116.4(d). ATA Brief at 30.

Over the last fourteen years, the Commission has consistently disapproved arrangements such as the one between the Committee and ATA. For example, the Commission disapproved a no-risk contract in Advisory Opinion ("AO") 1991-18. The Respondents assert that AO 1991-18 is distinguishable from this matter because the AO involved a telemarketing fundraiser, while the fundraising program here involved, primarily, direct mail. ATA Brief at 29, 30. However, the Commission did not distinguish direct mail fundraising from other forms of fundraising when it summarized its advisory opinions involving "arrangements in which vendors have provided

[6] *See* Final Audit Report, Attachment 1 to the First General Counsel's Report, at 18.

political committees with goods or services to assist in raising funds and where that vendor was compensated by the receipt of funds directly from the contributors." AO 1991-18 (citing AO 1990-1 (900-line telephone service); AO 1989-21 (t-shirt fundraiser); AO 1979-36 (direct mail fundraiser); AO 1976-50 (t-shirt fundraiser)). In all of these situations, the Commission "was concerned that regardless of the degree of success of the effort to raise funds, the committee would retain contribution proceeds while giving up little, or the committee would assume little or no risk with the vendor bearing all, or nearly all, the risk." *Id.* In AO 1991-18 the Commission disapproved a proposed fundraising program because of its "speculative nature," and did not restrict this analysis to the fact that the proposed fundraising involved telemarketing, rather than direct mail (or some other) media.[7]

The Respondents also claim that the Commission approved a similar arrangement in AO 1979-36. In AO 1979-36, a committee and its fundraiser entered into a no-risk contract and the fundraiser extended credit to the committee, providing goods and services in advance of payment. The Commission concluded that if the extension of credit was in the ordinary course of business for the fundraiser, then the extension of credit did not constitute a contribution. *See also* 11 C.F.R. § 100.7(a)(4) (2000). However, the Commission did not suggest that a failure to pay on the extension of credit also would not constitute a contribution.[8]

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[7] ATA also argues that the Commission's failure to understand no-risk contracts is not unique and that other federal regulatory agencies have been chastised for similar failures. ATA Brief at 36-38. However, ATA's reference to an Internal Revenue Service ("IRS") case and a United States Postal Service ("Postal Service") rulemaking are inapposite. The IRS case dealt with a determination of a charity's tax-exempt status under the Internal Revenue Code of 1954. The Postal Service rulemaking, under the Postal Reorganization Act of 1970, addressed contractual relationships between qualified nonprofit organizations and commercial fundraisers Neither of these matters is relevant to the question whether ATA made a prohibited corporate contribution to CLPAC under the Federal Election Campaign Act

[8] This distinction was addressed in a General Counsel's predecisional memo to the Commission during the audit phase of this matter that analyzed the transactions now the subject of this MUR. Memorandum from James A. Kahl to Joseph F. Stoltz, dated October 15, 2004 ("October 15 Memo"), TVC and CHQ Brief Exhibit 1. We concluded that the "parties' execution under the contract" resulted in CLPAC's receipt of contributions. *Id.* at 5-6. ATA, however, completely mischaracterizes the October 15 Memo. ATA claims that the October 15 Memo

With respect to the payment or non-payment of an extension of credit, the Commission has made plain that in political committee fundraising, "none of the costs of the program [may] be left unpaid by the committee." AO 1990-14. In AO 1989-21, the Commission rejected a credit arrangement similar to the arrangement in this matter. That AO was requested by a vendor who wished to provide fundraising services for political committees by selling items such as t-shirts, regardless of the amount of money raised, *i.e*, whether the costs of t-shirts were recovered, the political committee would receive contribution proceeds. AO 1989-21. On the other hand, the Commission has concluded no contribution would result when committees are "solely liable" for the costs of a fundraising program. In AO 1990-1, for example, the Commission considered a program using 900-line telephone service to promote candidates and political committees and determined that it was consistent with AO 1979-36 because not only was each client campaign required to post a deposit to cover costs and losses but they were "solely liable" for the costs of the program.

ATA cites AO 1985-28 for the proposition that an "arrangement" between a corporation and a political committee will not result in a contribution so long as the arrangement is in the ordinary course of business. ATA Brief at 13. However, AO 1985-28 is inapplicable to the facts here because it did not involve an extension of credit. In AO 1985-28, a political committee that planned to host a fundraising dinner at a racetrack asked whether the racetrack's charge for the fundraiser could include a rebate if the committee paid for a certain minimum number of dinners served by the racetrack (which was a corporation). The Commission concluded that the

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acknowledges that "no-risk contracts are, as a matter of law, consistent with the Commission regulations." ATA Brief at 49. It further contends that this Office "admitted" in the memorandum "that there were no unlawful contributions or receipt of contributions by virtue of the no-risk contract. . . ." *Id.* at 51. Both assertions are incorrect. Our October 15 memorandum concluded that while the contract may not "per se" result in a contribution, ATA nonetheless made an unlawful contribution to CLPAC by virtue of the manner in which the parties executed that contract. Thus, the complaint by the Corporate Respondents via reference to the October 15 Memo that the failure to address the memorandum in the GC Brief is evidence of unethical, retaliatory, and bad faith prosecution is inapposite

arrangement would not result in a contribution if the amount of the rebate and the rebate process itself "were usual and normal practices offered by the [racetrack] in its ordinary course of business to its non-political clientele." AO 1985-28. The question presented was whether the racetrack was offering its services at its usual and normal charge or offering them at a discount or if, by offering its standard rebate, the racetrack would be viewed as making a contribution to the political committee. Because a rebate was included in the usual and normal charge, the racetrack was allowed to offer the rebate in its charge to the committee.

Finally, ATA complains that the GC Brief does not provide citations, references or supporting documentation for the dollar figures the Brief advances. ATA Brief at 8-10. The Commission, however, previously provided ATA with a copy of the Final Audit Report to explain the factual and legal analysis for its reason to believe finding, and the Final Audit Report provided the dollar figures that appear in the GC Brief. The figures in the Final Audit Report were drawn almost exclusively from ATA's own Quick Books files, which ATA had provided to the auditors. The GC Brief to ATA also included information regarding the CLPAC fundraising mailings taken from ATA's own management reports (*see* Attachment A), which ATA also had provided to the auditors,[9] as well as another copy of a chart that was previously provided with notice of the Commission's reason to believe findings (*see* Final Audit Report, Attachment 1 to the First General Counsel's Report at 18).

[9] The ATA management reports presented the information in chronological order, but split the information -- presenting the information for the house file mailings in one chart and the prospect mailings in another chart. Attachment A simply combines the two charts and presents all of the information regarding the mailings in chronological order.

2. The $465,000 Payment by ATA to CLPAC Was Not an Extension of Credit.

ATA asserts that its payment of $465,000 was in the ordinary course of business and compelled by concerns that failure to make such a payment would expose it to a charge of fraud. ATA Brief at 40-41. However, it was not an extension of credit for goods and services provided in advance of payment. *See* 11 C.F.R. § 116.1(e). As we explained in the GC Brief at p. 11, ATA's disbursement of $465,000 to CLPAC could not have been the payment of net proceeds, because there were none; the program generated only net losses. Instead, the money represented a payment by ATA to CLPAC and thus a contribution. 2 U.S.C. § 431(8)(A)(i). Furthermore, ATA was not compelled to give $465,000 to CLPAC. The Supreme Court has, on three occasions prior to the payment, denied that there was any connection between high solicitation costs and fraud, and rejected state attempts to regulate solicitations on that basis.[10] In any event, none of these cases address corporate payments to a political committee.

3. The Value of the Housefile Does Not Negate the Prohibited Contribution ATA Made to CLPAC.

The Respondents assert that the housefile it obtained from CLPAC will generate gross revenue of $2.3 million and is sufficient to compensate ATA in full for any losses it sustained as a result of the CLPAC fundraising program. CLPAC Brief at 2, ATA Brief at 16-17, TVC and CHQ Brief at 12-14. The housefile doubtless has some value; indeed the Audit Division has estimated that the housefile was worth up to $140,000 when ATA acquired it. Accordingly, we have reduced the amount of ATA's contribution to CLPAC by $140,000.

[10] *See Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), *Secretary of State of Maryland v. Joseph H Munson Co.*, 467 U.S. 947 (1984), *Riley v National Federation of the Blind of North Carolina*, 487 U.S. 781 (1988), *see also Illinois ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 602 (2003). As noted by Respondents, in the *Madigan* case, the Supreme Court re-affirmed this basic position, while holding fraud claims might be brought if based on allegations that fundraisers made false and misleading statements to donors as to how their donations would be used

The Audit Division has reviewed housefile valuations in its audits of other committees. Based on the valuations in those audits, which were supported by third-party evaluations and accompanied by documentation, the Audit Division estimates that the housefile in this matter may be worth, at most, $140,000. In the audit of the Buchanan 2000 Committee, for example, the Commission concluded, for purposes of determining the committee's repayment obligation, that a mailing list of similar size for the year 2000, for which the purchaser obtained exclusive rights, was worth between $131,000 and $149,000. See Statement of Reasons in LRA 596 (Buchanan Foster, Inc.) at 8-9. The Buchanan committee sold its mailing list in 1996 to a third party and the Commission valued the year 2000 mailing list at $140,000 by reference to that earlier sale.

TVC and CHQ, in contrast, value the housefile they obtained from CLPAC at $2.3 million. They assume that each name is worth $.105 and that the list (consisting of 70,000 names) will rent 40 times a year for 8 years. TVC and CHQ Brief at 13. In other words, they assume that the list will rent every nine days for eight years or a total of 640 times in eight years. However, they have not factored in depreciation, despite acknowledging that mailing lists depreciate over time.[11] Also, while they acknowledge that mailing lists must be maintained,[12] they have not accounted for the costs of maintaining the mailing list.

4. Corporations that Contracted with ATA Made Prohibited Contributions to CLPAC.

The Respondents contend that because ATA contracted with TVC and CHQ and other corporations (the "vendors") to provide services for CLPAC's fundraising program, there was no

[11] As TVC and CHQ admit, "Most direct mail files that are not replenished generally lose their value over time by a reason of a number of factors. One factor is attrition (some donors die). Other factors involve what is known as 'recency and frequency' of donations, change of address, and some others." TVC and CHQ Brief at 10.

[12] The Respondents state that they regularly update their mailing lists to keep addresses current and that they employ "data processing techniques that allow an 'older' list to be matched against more rent donor activity to determine which donors are still 'active.'" *Id*

extension of credit to CLPAC by the vendors. CLPAC Brief at 4-5, ATA Brief at 42-44,TVC and CHQ Brief at 2. Thus, Respondents argue, the vendors' forgiveness of debt did not result in prohibited corporate contributions to CLPAC. CLPAC Brief at 4.

CLPAC relies on MUR 3027 (Public Affairs Political Action Committee) to support its argument that the Commission may not hold CLPAC liable in this matter. The circumstances of MUR 3027, however, differ in a very meaningful way from the circumstances of this matter. In particular, there was "no evidence [in MUR 3027] that the respondent vendor knew that the recipient was a federal political committee." *See* MUR 3027 General Counsel's Report (Oct. 18, 1991) at 5. Here, the opposite is true: the vendors knew that the client was a political committee as evidenced by the fact that they originally sought payment (mistakenly, according to CLPAC) directly from CLPAC. Also, they provided services to CLPAC, sending mailings that solicited contributions to CLPAC and advocated the defeat of federal candidates. And CLPAC reported the payments to the vendors as disbursements. The Committee failed to pay the vendors, which resulted in debt CLPAC owed the vendors. The vendors forgave that debt, resulting in the vendors making and the Committee receiving contributions. Thus, the corporations that contracted with ATA made prohibited contributions to CLPAC.

B. CLPAC Knowingly Accepted Excessive and Prohibited Contributions from Individuals and a Corporation that Made Loans or Advanced Funds on Its Behalf.

The Respondents argue that CLPAC did not receive contributions from the three individuals (Edward Adams, Benjamin Hart, and Mark Roffman) and the corporation (Mail Fund, Inc.) that made loans on its behalf or advanced funds to pay for postage or mailing list rental fees used in the CLPAC direct mail program. The Respondents attempt to apply their extension of credit theory to these loans and advances, arguing that these "postage lenders" made

their loans and advances in the ordinary course of business and thus made no contributions to CLPAC. They assert that these lenders are an integral part of the direct mail industry and to find a violation with respect to them would be unreasonable.

Under the Act, a loan to a political committee is a contribution. 2 U.S.C. § 431(8)(B)(i). There is an exception for loans by financial institutions, *see* 2 U.S.C. § 431(8)(B)(vii), but the lenders at issue here do not qualify as financial institutions. The extension of credit exception to the contribution definition, *see* 11 C.F.R. §§ 100.7(a)(4) (2000) and 116.3(b), applies to advances of goods and services. 11 C.F.R. § 116.1(e). It does not apply to advances of funds, *i.e.*, loans, which are covered under the definition of "contribution" at 2 U.S.C. § 431(8)(B)(i). Here, the postage lenders did not provide any goods or services: they simply advanced money for the purchase of postage. As the Commission determined in MUR 5173 (Republicans for Choice Political Action Committee), postage loans such as these constitute contributions. *See also* MUR 3027 (Public Affairs Political Action Committee).

C. There is Not Probable Cause to Believe ATA, TVC, and CHQ Knowingly and Willfully Violated the Act.

In the GC Briefs, we included allegations that the Corporate Respondents' violations were knowing and willful. GC Brief (ATA) at 14-16, GC Brief (TVC) at 6-7, GC Brief (CHQ) at 5-7. We based the allegations on the fact that the Commission admonished the Corporate Respondents' principals for similar conduct in a prior matter. Specifically, in MUR 3841 (United Conservatives of America), the Commission found reason to believe that ATA's parent company violated 2 U.S.C. § 441b by making corporate contributions in the form of extensions of credit to a political committee whose chairman was Richard Viguerie.

Based upon further consideration of the current matter, we do not recommend that the Commission find that the violations were knowing and willful. Respondents asserted that they

fully intended to raise a substantial sum of money when they embarked on the program, which if successful could have yielded sufficient funds to pay all the corporate vendors for their goods and services. ATA Brief at 3-5, 11-13. We know of no facts to the contrary. It was not until the program ended that the failure of the program to raise sufficient funds to cover the costs could be determined. But by that point, ATA and the other vendors in this matter had already provided the goods, services, and funds at issue here. Because the outcome of the fundraising program was not resolved until the violations had already been committed, we believe that the Commission should not find probable cause to believe that the Corporate Respondents' violations were knowing and willful.

D. CLPAC Failed to Report Debt, Contributor Information, and the Purpose of Disbursements.

Based on the results of the audit of CLPAC, the GC Brief recommended the Commission find probable cause to believe the Committee violated several reporting requirements of the Act. In its Probable Cause Reply, CLPAC denied that it failed to report debt. It argued that the debt at issue was not its debt, but debt owed by ATA. As we explained above, *supra* at 11-12, the corporations that contracted with ATA made contributions to CLPAC. CLPAC reported its payments to the vendors as disbursements and originally reported the vendor debt as its own in the disclosure reports it filed for the last four reporting periods in 2000. However, on June 8, 2001 and July 30, 2001, the Committee amended those reports and deleted all debts reported. They continue to report none of this debt. Accordingly, we recommend that the Commission find probable cause to believe that Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report debt.

The Commission also found reason to believe that CLPAC failed to report the occupation and name of employer for 93% of the contributors for the two-year period ending December 31, 2000. In its Probable Cause Reply, CLPAC stated that its contract for reporting software had not been renewed and, as a result, it could not access its reports. It explained that its reporting failure resulted from the failure of the entity that managed the escrow account, to provide source documentation for the contributions in the first place and its failure to maintain the documentation for subsequent retrieval. As we explained in the GC Brief at page 15, however, it was the Committee's responsibility to report fully, and it has failed to do so. Moreover, while the Committee could have avoided the violation by putting forward evidence that it made best efforts at compliance, it has not done so.[13] Accordingly, we recommend that the Commission find probable cause to believe that Conservative Leadership Political Action Committee, and David Fenner, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to report the occupation and name of employer of its contributors.

Finally, CLPAC failed to disclose the purpose of 56 disbursements totaling $1,848,416, which the audit revealed were payments for the fundraising program. CLPAC asserts that it never possessed the original invoices for its fundraising program and thus did not have the information it needed to report the purposes of the disbursements. ATA received the invoices, authorized the payment to the vendors, and forwarded payment information to CLPAC. That information did not, however, include the purpose of the disbursements. During the audit, ATA provided Commission auditors with electronic spreadsheets from which the auditors could determine the purpose of the disbursements. The auditors provided CLPAC with a schedule of the disclosure errors sufficient to allow the Committee to file amended reports to correct the reporting deficiency. Nevertheless, the Committee still has filed no amendments, claiming that

[13] *See* General Counsel's Brief (CLPAC) at 15

because it does not have access to previously-filed electronic reports, filing amendments would be too burdensome. Accordingly, we recommend that the Commission find probable cause to believe that Conservative Leadership Political Action Committee, and David Fenner, in his official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose the purpose of disbursements.

IV. CONCILIATION

V. RECOMMENDATIONS

1. Find probable cause to believe that Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 441a(f) and 441b(a).

2. Find probable cause to believe that American Target Advertising, Inc., the Viguerie Company, and ConservativeHQ.com, Inc. violated 2 U.S.C. § 441b(a).

3. Approve the attached conciliation agreements and appropriate letters.

4.

9/1/05
Date

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Attachments:
1. Conciliation Agreement, Conservative Leadership PAC
2. Conciliation Agreement, American Target Advertising, Inc.
3. Conciliation Agreement, the Viguerie Company
4. Conciliation Agreement, ConservativeHQ.com, Inc.