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**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

MUR: 6211

DATE COMPLAINT FILED: AUGUST 31, 2009

DATE OF NOTIFICATION: SEPTEMBER 3, 2009

DATE ACTIVATED: APRIL 7, 2010

EXPIRATION OF SOL: JUNE 22-24, 2014

COMPLAINANT: Phil Greenberg

RESPONDENTS: Krikorian for Congress and Nathan Bailey, in his official capacity as Treasurer  
David Krikorian  
Armenian National Committee of America  
Hairenik Association, Inc. (d/b/a Armenian Weekly)

RELEVANT STATUTES: 2 U.S.C. § 431(9)(B)(i)  
2 U.S.C. § 441b(a)  
2 U.S.C. § 441d  
11 C.F.R. § 100.73  
11 C.F.R. § 110.11  
11 C.F.R. § 114.2(f)

INTERNAL REPORTS CHECKED: FEC Disclosure Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

The complaint in this matter alleges that David H. Krikorian, a 2010 candidate for Congress from Ohio's Second Congressional District,<sup>1</sup> and his campaign committee, Krikorian for Congress and Nathan Bailey, in his official capacity as treasurer (collectively "the Committee"), violated 2 U.S.C. § 441b(a) of the Federal Election Campaign Act of 1971, as amended ("the Act"), by accepting illegal in-kind contributions from the Armenian National

<sup>1</sup> Krikorian was narrowly defeated in a three-way race for the Democratic nomination. The Democratic primary was held on May 4, 2010. See Office of the Secretary of State of Ohio website at <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2010results/20100504USRep-D.aspx>.

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1 Committee of America ("ANCA"), a non-profit corporation, and the Armenian Weekly, a  
2 newspaper operated by Hairenik Association, Inc. ("Hairenik"). Correspondingly, the complaint  
3 alleges that ANCA and Hairenik, doing business as the Armenian Weekly, facilitated the making  
4 of contributions to the Krikorian campaign, in violation of 2 U.S.C. § 441b(a) and 11 C.F.R.  
5 § 114.2(f).

6 Specifically, the complaint asserts that ANCA made a corporate contribution to the  
7 Committee when it disseminated a "national email fundraising appeal to an unknown list of  
8 supporters," soliciting contributions for Mr. Krikorian's candidacy. Complaint, ¶ 2. Similarly,  
9 the complaint alleges that the Armenian Weekly made a corporate contribution when it published  
10 virtually the same fundraising appeal in its publication at [www.hairenik.com/weekly](http://www.hairenik.com/weekly).<sup>2</sup> Finally,  
11 the complaint alleges that both ANCA's e-mails and the material published by the Armenian  
12 Weekly failed to contain a disclaimer stating who paid for the communications, in violation of  
13 2 U.S.C. § 441d(a).

14 In response to the complaint, the Committee asserts that it did not direct ANCA or the  
15 Armenian Weekly to solicit funds on its behalf. The Committee then argues that, in any event,  
16 the activities undertaken by the ANCA and the Armenian Weekly are exempt under the Act,  
17 citing the "media exemption" at Section 431(9)(B)(i), and the exemption for restricted class  
18 communications at Section 431(9)(B)(iii). Committee Response, p. 1. The Committee further  
19 argues that costs associated with the e-mails were *de minimis*, and did not exceed the \$2,000  
20 reporting threshold at 2 U.S.C. § 431(9)(B)(iii) and 11 C.F.R. § 100.134(a). Finally, the  
21 Committee asserts that the communications at issue contained a link to "the ACT Blue web site"

<sup>2</sup> The complaint also maintains that the purported fundraising campaign on behalf of Krikorian may have raised as much as \$45,000, but the basis for this allegation is unclear. Although the Committee's amended 2009 July Quarterly Report, filed on August 9, 2009, shortly before the complaint was filed on August 31, 2009, discloses that the Committee raised slightly over \$45,000 from April 1, 2009 through June 30, 2009, there is no indication how many, if any, of these contributions resulted from the alleged solicitations at issue here.

1 at www.actblue.com, which fully complies with the Act's disclaimer requirements. Committee  
2 Response, p. 2.

3 In response to the complaint, ANCA argues that it did not make any prohibited  
4 contributions or expenditures because, as a nonprofit corporation organized under "I.R.C.  
5 § 501(c)(4)," it may engage in political activity, so long as that activity is not the organization's  
6 primary purpose.<sup>3</sup> ANCA Response dated September 17, 2009, p. 1. ANCA further argues that  
7 because the communication at issue was made to its "e-mail communication mailing list," it was  
8 not a prohibited expenditure under the Act. *Id.* Finally, ANCA argues that e-mails are not  
9 political communications that require a disclaimer under the Act. Nevertheless, ANCA points  
10 out that its e-mails contained an electronic link to an ActBlue website for making on-line  
11 contributions and that ActBlue, in turn, included a disclaimer and other disclosure information  
12 required by the Act. Finally, ANCA urges the Commission to dismiss this matter because, even  
13 if a violation occurred, costs associated with the e-mails were negligible.

14 In response to the complaint, Hairenik, which publishes the Armenian Weekly, argues  
15 that it did not violate the Act when it published the fundraising solicitation at issue because its  
16 communications fall within the "press exemption" at 2 U.S.C. § 431(9)(B)(i) and 11 C.F.R.  
17 §§ 100.32 and 100.73. Hairenik Response, p. 2. Further, Hairenik asserts that its  
18 communication included an electronic link to a separate website run by ActBlue that contained  
19 all the required disclaimers.

20 Based on the complaint, the responses, and available information, we recommend that the  
21 Commission find reason to believe ANCA violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f)

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<sup>3</sup> It appears that ANCA may be relying on a portion of the Internal Revenue Code that allows a so-called "501(c)(4)" civic league or social welfare organization to participate in some political activity, as long as the organization's primary purpose is civic engagement or social welfare. See <http://www.irs.gov/publications/p557/ch04.html>.

1 by using its mailing list to solicit contributions outside of its restricted class. We further  
2 recommend that the Commission find no reason to believe ANCA violated 2 U.S.C. § 441d by  
3 failing to include a disclaimer on its e-mail solicitation. In addition, because Hairenik's  
4 communication falls within the press exemption, we recommend that the Commission find no  
5 reason to believe Hairenik violated 2 U.S.C. § 441b(a) or § 441d. Finally, we recommend that  
6 the Commission take no action at this time with respect to Krikorian for Congress and Nathan  
7 Bailey, in his official capacity as Treasurer, and David Krikorian.

## 8 **II. FACTUAL AND LEGAL ANALYSIS**

### 9 **A. ANCA**

10 A corporation is prohibited from making a contribution in connection with a federal  
11 election under the Act. See 2 U.S.C. § 441b(a). The Commission's regulations further provide  
12 that a corporation may not facilitate the making of a contribution by using its corporate resources  
13 to engage in fundraising activities for any federal election. See 11 C.F.R. § 114.2(f)(1).  
14 Examples of conduct that constitute corporate facilitation include the use of a corporate customer  
15 list to send invitations to individuals not within the restricted class to fundraisers without  
16 advance payment for the fair market value of the list.<sup>4</sup> See 11 C.F.R. § 114.2(f)(2). A  
17 corporation's restricted class consists of its stockholders and executive or administrative  
18 personnel, and their families. See 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R.  
19 §§ 114.1(a)(2)(i) and 114.1(j).

20 ANCA is a non-profit corporation that files its income tax returns with the Internal  
21 Revenue Service as an I.R.C. § 501(c)(4) organization. See ANCA Response, Attachment 1,

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<sup>4</sup> See also *Explanation and Justification: Corporate and Labor Organization Activity*, 60 Fed. Reg. 64260, 64264 (Dec. 14, 1995) (examples of corporate facilitation include soliciting contributions outside the restricted class).

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1 Decl. of Kenneth Hachikian, ¶ 3. ANCA's primary purpose is "civic engagement" and its usual  
2 activities include generating grassroots participation in the democratic process, and fostering  
3 civic awareness and support on issues important to Armenian Americans. See ANCA Response,  
4 Attachment 1, Decl. of Kenneth Hachikian, ¶ 5. ANCA does not have a separate segregated  
5 fund. Corporations such as ANCA, which do not have separate segregated funds, are permitted  
6 to solicit contributions to be sent directly to candidates, but these solicitations are limited solely  
7 to its restricted class, consisting of its stockholders and executive or administrative personnel,  
8 and their families. 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i), 114.1(j) and 114.2(f).

9 ANCA's Executive Director sent two e-mails dated June 22, 2009 and June 30, 2009,  
10 respectively, on ANCA letterhead to "its ANCA mailing list." See Complaint, Attachments 1-2;  
11 ANCA Response, p. 1. Both e-mails set forth "3 reasons" for "beating [incumbent  
12 Congresswoman Jean] Schmidt" and supporting challenger Krikorian, and urge readers to make  
13 "secure on-line donation[s]" to Mr. Krikorian's campaign.<sup>5</sup> See Complaint, Attachments 1-2.  
14 The e-mails direct potential donors to an electronic link to a separate website run by a separate  
15 entity, ActBlue.<sup>6</sup> ANCA Response, Hamparian Decl., ¶ 3.

16 ANCA acknowledged in its response to the complaint that it sent the e-mail solicitations  
17 at issue to its "email communication mailing list." However, ANCA failed to address whether  
18 the solicitations were sent only to its restricted class. In order to assist the Commission in  
19 determining whether to find reason to believe a violation occurred, by letter dated May 14, 2010,  
20 this Office sought voluntary clarification from ANCA concerning whether the mailing list used

<sup>5</sup> The June 22, 2009 e-mail also includes the Committee's postal address for anyone who did not want to make a contribution to the Committee on-line.

<sup>6</sup> That website includes the following statements in a printed box at the end of the communication: "Paid for by ActBlue ([www.actblue.com](http://www.actblue.com)) and not authorized by any candidate or candidate's committee. Contributions to ActBlue are not tax deductible." See ActBlue website at <https://secure.actblue.com/contribute/page/citizensforrikorian>.

1 to disseminate the communication at issue included only those within ANCA's restricted class,  
2 consisting of its stockholders and executive or administrative personnel, and their families. See  
3 2 U.S.C. § 441b(b)(2)(A); 11 C.F.R. §§ 114.1(a)(2)(i) and 114.1(j).<sup>7</sup>

4 In response, ANCA states that the "email communication was disseminated only to those  
5 individuals who regularly receive communications from ANCA and are on the ANCA E-list."  
6 ANCA Response dated May 18, 2010, p. 1. Notably, ANCA again failed to address whether the  
7 solicitations were sent only to its restricted class. Instead, it argues that as a qualified non-profit  
8 corporation it is not subject to the restrictions for regular corporations and membership  
9 organizations set forth at 11 C.F.R. § 114.2. *Id.* In this regard, ANCA emphasizes that it is  
10 organized under the provisions of the District of Columbia Non-Profit Corporation Act and is a  
11 tax exempt organization under the provisions of 26 U.S.C. § 501(c)(4). ANCA Response dated  
12 May 18, 2010, p. 1. As such, ANCA argues, it is expressly authorized to engage in political  
13 activity, so long as that activity is not the organization's primary purpose. *Id.* ANCA then notes  
14 the "incidental nature" of the e-mail solicitation at issue in this matter. *Id.*

15 Contrary to ANCA's contention, however, Section 114.10 of the regulations exempts  
16 non-profit corporations only from the Act's prohibitions on making independent expenditures  
17 and electioneering communications. See 11 C.F.R. § 114.10.<sup>8</sup> Non-profit corporations are still  
18 prohibited from making or facilitating contributions to federal candidates or candidate  
19 committees pursuant to 2 U.S.C. § 441b(a). Because ANCA failed to address whether the

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<sup>7</sup> We note that Part 114 of the Commission's regulations may be addressed in the Commission's upcoming rulemaking to implement changes in the law arising from the Supreme Court's decision in *Citizens United v. FEC*, 558 U.S. \_\_\_\_ (2010).

<sup>8</sup> We note that in its intervening decision in *Citizens United v. FEC*, the Supreme Court struck down as unconstitutional the Act's prohibition on corporate financing of independent expenditures and electioneering communications. See 558 U.S. \_\_\_\_, slip. op. at 50 (2010). Thus, it is now permissible for all corporations to use general treasury funds for this purpose. The *Citizens United* decision, however, did not disturb the Act's prohibition on corporate contributions.

1 solicitation e-mails were sent only to its restricted class and we currently have no information  
2 that ANCA received advance payment from the Krikorian Committee for the fair market value of  
3 the list, we recommend that the Commission find reason to believe the Armenian National  
4 Committee of America violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f). *See* MUR 6127  
5 (Obama for America) (Commission concluded there was facilitation where owner of a local  
6 corporation used a corporate e-mail list to send e-invites to an Obama-DNC  
7 fundraiser, and based the amount in violation on the value of the corporate e-mail list).<sup>9</sup>

8 The complaint also alleges that ANCA violated 2 U.S.C. § 441d by failing to  
9 include a disclaimer in its e-mail communications. Section 441d of the Act, as  
10 implemented by 11 C.F.R. § 110.11, provides that all public communications, as defined in  
11 11 C.F.R. § 100.26, by any person that solicit any contribution must include a disclaimer.  
12 Pursuant to 11 C.F.R. § 100.26, all Internet communications, except for those placed on  
13 another's website for a fee, are excluded from the definition of "public communication,"  
14 and are therefore not subject to the Act's disclaimer requirements. *See* 11 C.F.R. § 100.26.

15 The available information indicates that ANCA distributed its solicitation on behalf  
16 of Krikorian for Congress solely by e-mail, *see* ANCA Response, p. 2, and we have no  
17 information suggesting that the e-mails were placed on another person's website for a fee.  
18 Because the e-mails were sent via the Internet and apparently were not placed for a fee on  
19 another person's website, the e-mails were not "public communications" that required a

<sup>9</sup> In its response to our clarification letter, ANCA argued for the first time that its E-list is analogous to a membership list of a membership organization and that, as such, the provisions of 11 C.F.R. § 114.7 would permit broad communication between ANCA and its members. *See* ANCA Response dated May 18, 2010. Available information reflects, however, that ANCA is not a membership organization. Its Articles of Incorporation submitted in its initial response state that "The Corporation will not have any members." *See* ANCA Response dated September 17, 2009, Attachment 2.

1 disclaimer under the Act. Therefore, we recommend that the Commission find no reason  
2 to believe the Armenian National Committee of America violated 2 U.S.C. § 441d.

3 **B. Hairenik Association, Inc. (d/b/a Armenian Weekly)**

4 Hairenik is a non-profit corporation formed under Massachusetts law. See Hairenik  
5 Response, Khachatourian Decl., ¶ 5. Hairenik owns and publishes the Armenian Weekly,  
6 a weekly newspaper that is published both in print and on the Internet. See Hairenik  
7 Response, Khachatourian Decl., ¶ 3. The Armenian Weekly published at  
8 www.hairenik.com/weekly and presumably also in print, a piece in the Opinion section  
9 under the caption, "Hamparian: Support David Krikorian." See Complaint, Attachment 3.  
10 Although the text of the piece is substantially similar to the text of the e-mails  
11 disseminated by ANCA, it was not published on ANCA letterhead. See description of e-  
12 mails, *supra*, at pp. 5-6. In addition to urging readers to make secure on-line donations to  
13 the Committee, the Armenian Weekly Opinion piece also invited the reader to make his or  
14 her check out to Krikorian for Congress and send it to the Committee's address, which it  
15 provided in the column, if the reader would rather not give on-line. See Complaint,  
16 Attachment 3.

17 The Act prohibits corporations from making contributions from their general  
18 treasury funds in connection with the election of any candidate for Federal office. 2 U.S.C.  
19 § 441b(a); 11 C.F.R. § 114.2(b)(1). Exempt from the definition of contribution, however,  
20 are "any cost[s] incurred in covering or carrying a news story, commentary, or editorial by  
21 any broadcasting station (including a cable television operator, programmer or producer),  
22 Web site, newspaper, magazine, or other periodical publication, including any Internet or  
23 electronic publication, . . . unless the facility is owned or controlled by any political party,

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1 political committee, or candidate[.]” 11 C.F.R. § 100.73. This exclusion is known as the  
2 “press exemption.” The press exemption has been extended to “media entities that cover  
3 or carry news stories, commentary, and editorials on the Internet,” *id.* at 18,608, as well as  
4 “bloggers and others who communicate on the Internet.” *Id.* at 18,610; *see* Advisory  
5 Opinions 2008-14 (Melothe), 2005-16 (Fired Up!), 2000-13 (iNEXTV), and MUR 5928  
6 (Kos Media, LLC).

7       The Commission conducts a two-step analysis to determine whether the press  
8 exemption applies. First, the Commission asks whether the entity engaging in the activity  
9 is a press entity as described by the Act and regulations. *See* Advisory Opinion 2005-16  
10 (Fired Up!). Second, in determining the scope of the exemption, the Commission  
11 considers: (1) whether the press entity is owned or controlled by a political party, political  
12 committee, or candidate; and, if not, (2) whether the press entity is acting as a press entity  
13 in conducting the activity at issue (*i.e.*, whether the entity is acting in its “legitimate press  
14 function”). *See Reader's Digest Association v. FEC*, 509 F. Supp. 1210, 1215 (S.D.N.Y.  
15 1981). If the press entity is not owned or controlled by any political party, political  
16 committee, or candidate, and if it is acting as a press entity with respect to the conduct in  
17 question, the Commission lacks subject matter jurisdiction over the complaint. *FEC v.*  
18 *Phillips Publishing, Inc.*, 517 F. Supp. 1308, 1313 (D.D.C. 1981).

19       The Commission has recognized that an entity otherwise eligible for the press  
20 exemption “would not lose its eligibility merely because of a lack of objectivity in a news  
21 story, commentary, or editorial, even if the news story, commentary, or editorial expressly  
22 advocates the election or defeat of a clearly identified candidate for Federal office.”  
23       Advisory Opinion 2005-16 (Fired Up!); *see* MUR 5928 (Kos Media, LLC). Additionally,

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1 the Commission has concluded that press entities do not necessarily forfeit the press  
2 exemption if they solicit contributions for candidates. *Explanation and Justification for*  
3 *Final Rules on Internet Communications*, 71 Fed. Reg. at 18,609. A solicitation for  
4 contributions may appear in a commentary that is a regular feature of a website, provided  
5 that the solicitations themselves do not become a regular feature of its content. See  
6 Advisory Opinion 2005-14 (Melothe) ("[T]he intermittent provision of a hyperlink  
7 directing a media Web site's visitors to a campaign's contribution page . . . would not be  
8 prohibited.") (*citing* Advisory Opinion 1980-109 (Ruff Times)).

9 The available information indicates that the Armenian Weekly, which distributes its  
10 newspaper both on-line and in print, is a *bona fide* press entity. In addition, Hairenik asserts  
11 that the Armenian Weekly is not "owned by any political party, political committee, or  
12 candidate." See Hairenik Response, p. 2. While Hairenik's response does not address  
13 whether the Armenian Weekly was "controlled" by any political party, political committee, or  
14 candidate, we have no information suggesting that it is, or was at the time of the activity at  
15 issue. Finally, based upon a review of the Armenian Weekly's website, it appears that in  
16 publishing the opinion piece at issue, the newspaper was acting in its legitimate press  
17 function. Opinion columns appear to be a regular feature of the Armenian Weekly newspaper  
18 and there is no indication that solicitations are a regular part of the columns' content. See  
19 Armenian Weekly website at <http://www.armenianweekly.com> (last visited July 29, 2010).  
20 Based on all of the foregoing considerations, we recommend that the Commission find no  
21 reason to believe Hairenik Association, Inc. (d/b/a Armenian Weekly) violated 2 U.S.C.  
22 § 441b(a). See Advisory Opinion 2005-16 (Fired Up!) (Commission determined that the  
23 media exemption applied to a blogger that covered and carried news stories, commentaries,

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1 or editorials); Advisory Opinion 1980-109 (Ruff Times) (Commission held that the press  
2 exemption applied to a commentary including a contribution solicitation that was  
3 contained in a subscription periodical).

4 Because the Armenian Weekly qualifies as a press entity and was acting as a press  
5 entity in publishing and distributing the opinion piece at issue, the communication did not  
6 require a disclaimer. Therefore, we recommend that the Commission find no reason to  
7 believe that Hairenik Association, Inc. (d/b/a Armenian Weekly) violated 2 U.S.C. § 441d.  
8 See AQ 2010-08 (Citizens United) (costs of producing and distributing films and  
9 associated marketing activities are exempt from disclosure, disclaimer, and reporting  
10 requirements for "expenditures" and "electioneering communications" under the press  
11 exemption).

12 C. Krikorian for Congress and David Krikorian

13 Neither a federal candidate nor a political committee may knowingly accept a  
14 contribution from a corporation. See 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). The  
15 complaint alleges that the Committee violated 2 U.S.C. § 441b(a) by accepting illegal in-  
16 kind contributions from ANCA and Hairenik (d/b/a Armenian Weekly). In response, the  
17 Committee asserts that it did not direct either ANCA or the Armenian Weekly to solicit  
18 funds on its behalf, and that no contributions or expenditures were made by these groups  
19 directly to [their] campaign." Hairenik Response, p. 2.

20 While there is reason to believe that ANCA violated 2 U.S.C. § 441b(a) by using  
21 its corporate mailing list to solicit contributions to the Committee, see discussion, *supra* at  
22 pp. 4-8, we have no information indicating that the Committee knew that some of the  
23 contributions it received may have been facilitated by ANCA and thus prohibited.

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1 *See* 2 U.S.C. § 441b; 11 C.F.R. §§ 114.2(f) and 103.3(b). We also have no indication of  
2 how many, if any, contributions received by the Committee resulted from ANCA's  
3 apparent corporate facilitation. In the absence of any specific information suggesting that  
4 the Committee was aware that ANCA may have impermissibly facilitated contributions on  
5 its behalf, we recommend that the Commission take no action at this time with respect to  
6 David Krikorian and Krikorian for Congress and Nathan Bailey, in his official capacity as  
7 treasurer.<sup>10</sup>

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14 We therefore  
15 recommend authorizing the use of compulsory process, including interrogatories and  
16 subpoenas *duces tecum*, as necessary.

17 **IV. RECOMMENDATIONS**

- 18 1. Find reason to believe the Armenian National Committee of America violated  
19 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2(f);  
20  
21 2. Find no reason to believe the Armenian National Committee of America violated  
22 2 U.S.C. § 441d;  
23  
24 3. Find no reason to believe Hairenik Association, Inc. (d/b/a Armenian Weekly)  
25 violated 2 U.S.C. §§ 441b(a) and 441d, and close the file with respect to it;  
26

<sup>10</sup> Because we conclude that the Armenian Weekly opinion piece at issue falls within the press exemption, there is no merit to the allegation that the Committee accepted a prohibited in-kind contribution from Hairenik.

4. Take no action at this time with respect to Krikorian for Congress and Nathan Bailey, in his official capacity as Treasurer, and David Krikorian;
5. Authorize the use of compulsory process, including interrogatories and subpoenas *duces tecum*, as necessary;
6. Approve the attached *Factual and Legal Analyses*; and
7. Approve the appropriate letters.

Thomasenia P. Duncan  
General Counsel

August 4, 2010  
Date

By:

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