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December 9, 2012

Mr. Tom Hintermister  
Assistant Staff Director  
Audit Division  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20543

**Re: Further Response to Final Audit Report for the 2007-2008 Election Cycle for California Republican Party, C#000014590**

Dear Mr. Hintermister:

The California Republican Party (CRP) responds further to the FEC Audit Division's Draft Final Audit Report of the 2007-2008 election cycle ("Audit Report"). The FEC granted the CRP an extension of time to file this response to December 10, 2012.

The CRP's response and that of Strategic Fundraising, Inc. ("SFI") are enclosed in this transmittal. Both the CRP and SFI respond to the suggestions in both the Audit Division Report and the General Counsel's Report that accompanied it that the CRP and SFI could provide further information to successfully challenge the Audit Report's finding that CRP and SFI had not engaged in commercially reasonable efforts consistent with regular business practices to resolve CRP's debt to SFI, thus making the SFI debt potentially an illegal, excessive corporate contribution to the CRP.

The CRP's previous response to the Audit Division's Preliminary Audit Report addressed in some detail the facts and circumstances bases for our contention that SFI made commercially reasonable efforts to collect the CRP debt, and that the SFI and CRP contractual relationship, from the initial contract to the negotiated settlement that resulted in CRP paying off the debt in early 2009, was regular and in the ordinary course of business.

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As the CRP noted in its preliminary response last March, "In July 2008, the CRP and SFI negotiated an agreement that (1) resolved disputes about billing items; (2) negotiated a set aside of SFI-generated tele-fundraising receipts that were dedicated and credited to pay-down of the CRP debt; and (3) extended the SFI-CRP fundraising agreement into 2009-2010. SFI continues to this day as the CRP's tele-fundraising vendor." We emphasized, "the CRP along with SFI strongly disagrees that SFI failed to make commercially-reasonable efforts to collect the CRP debt, or that CRP considered the SFI's extension of debt to be a contribution by the corporation."

### **Questions Raised by Audit Division's and General Counsel's Reports**

The Audit Division's and General Counsel's Reports seem to give less emphasis to the fact that, in a difficult set of circumstances, the parties worked their way to a full and final resolution of the debt issue. The Reports raise several questions about the effect to SFI, such as:

- (1) Did the "no risk guarantee" in the SFI/CRP agreement result in actual financial losses to SFI? No. (Answer detailed below)
- (2) Did SFI get paid in full? Yes. (Answer detailed below)
- (3) Did SFI make a profit? Yes. (Answer detailed below)

SFI can and has addressed these issues separately. The CRP's responses to those questions are as follows:

(1) No Actual Financial Losses to SFI. Given that fundraising prospecting is designed to develop a useful list of donors that the telemarketer will contact on a regular, periodic basis to solicit funds, looking at the profit and loss statement alone does not tell the full story. The telemarketer and the client, in this case the CRP, were building a working asset. Nevertheless, the CRP believes that SFI did not suffer actual financial losses from the "no risk guarantee." As the Reports noted, these types of "no risk guarantees" are not unusual in the fundraising business. We believe this element of the CRP/SFI agreement was commonplace and in the ordinary course of business.

(2) SFI Effectively Paid in Full. SFI was paid nearly in full for the amounts it had initially billed for services, and subject to the consideration of extension of its telemarketing contract for 2009-2010, this was full and adequate consideration for which SFI was fully paid. Incidentally, SFI continued to provide telemarketing services to the CRP for the 2011-2012 cycle as well. The CRP paid SFI the following amounts during the 2009-2010 cycle and to date in the 2011-2012 cycle for these services that were directly attributable to the efforts of both parties to maintain their relationship arising from the 2008 settlement.

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2009	-	\$ 1,053,527.73
2010	-	<u>\$ 1,031,143.59</u>
TOTAL	-	\$ 2,084,671.32
2011	-	\$ 462,329.67
2012	-	<u>\$ 511,080.35</u>
TOTAL	-	\$ 973,410.02

The CRP/SFI settlement in 2008 provided essentially as follows: SFI agreed to waive accrued interest on the unpaid balances, subject to the CRP's agreement (a) that it would meet its obligations to pay the balance of amounts outstanding or that would be accrued in the fundraising efforts that SFI and CRP undertook from the late summer of 2008 through the beginning of 2009 to extinguish the past debt, and (b) that the CRP and SFI were to negotiate an extension of the fundraising agreement for the 2009 and 2010 cycle. The settlement agreement provided that if CRP were unable to meet conditions (a) and (b), the full amount agreed to be waived would become due and owing again. The parties also agreed that for future fundraising, the CRP was responsible to pay all the net fundraising dollars from that fundraising to SFI, on a weekly basis, that would be payable in full within five days. New donor prospecting was subject to a net dollar payment to SFI, due in 28 days. If CRP were to fail to meet these pay-as-you-go arrangements, the full amount of interest foregone, plus interest that would have accrued, would again become due and payable. This mutually-agreed upon carrot and stick approach was successful.

(3) SFI Made a Profit. Based upon its additional submission, SFI believes that it made a profit, and continues to make a profit on its fundraising relationship with the CRP. The CRP believes that the best evidence of that is that the relationship has continued, as noted above, for another four years and nearly 3 ½ years after the settlement was reached and the CRP extinguished its 2007-2008 debt to SFI. Were SFI not to have had a profitable relationship with the CRP, that relationship would have ended, as SFI retained the contractual right to terminate. Instead, SFI pursued a mutually-satisfactory settlement for which the CRP paid off the balance as agreed to by the parties (as outlined above), and the parties have renewed their contractual relationship twice, once for the 2009-2010 cycle and again for the 2011-2012 cycle.

#### CRP's Concerns About the FEC's Inquiries

Having responded to these questions, the CRP strongly believes that in the context of this extraordinary situation it faced, the FEC should consider procedures and tests for evaluating debt settlements for ongoing entities somewhat differently than it does for committees that do not have continuing existence or debt settlements in the context of extraordinary situations.

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Political party committees, unlike most candidate committees, expect to have continuing existence and not "go out of business." The FEC's debt settlement procedures contemplate that a political committee such as a principal (candidate) committee formed to accept contributions and make expenditures in connection with a single candidate's federal election campaign, will conclude its campaign activities, pay its debts and dissolve. If it cannot pay its debts, the committee must follow prescribed FEC procedures to satisfy the Commission that it has made reasonable efforts to settle those debts with creditors. The FEC then blesses those efforts by granting termination notwithstanding that some debts are not paid in full.

Committees with ongoing existence are different, and of those with continuing existence (SSFs in particular), can be distinguished from party committees. SSFs very seldom would face the situation party committees face because they have a fairly stable, ongoing source of income and controllable (discretionary) expenses. While it may be contended that a political party committee also can simply pull in its horns or shut down its business, as SFI has noted, a political party must fundraise to live, and its fundraising is affected by external conditions, some of its making and some not. For if SFI's debts were not paid in a timely manner, so also other, smaller CRP creditors faced similar circumstances. Would the FEC consider whether each of these vendors had "suffered loss" from special features of their contractual relationships, got paid in full, or made a "profit" over a specified time period of the contract, where the parties had reached an arms-length commercially reasonable settlement to resolve the debt? Even a non-corporate vendor could face the possibility of having been deemed in the 20/20 focus of a subsequent audit to have made an "excessive" contribution. If so, every committee would be forced to confront whether FEC oversight of its attempts to recover could result in an enforcement penalty that would make simply folding its tent preferable to the risks and costs of trying to work out a settlement with vendors to enable it to keep its doors open, to fulfill its function as a political party under our electoral system.

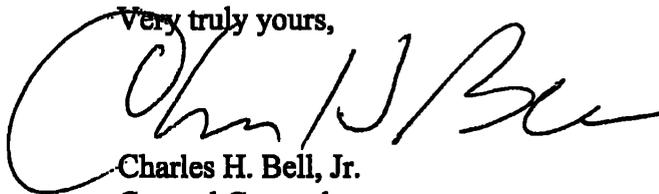
When a political party committee with continuing existence fails into a serious fundraising trough, leaving not only major but even minor creditors unpaid, (as happened to the CRP in the circumstances outlined at pp. 2 - 4 of the CRP's March 2012 submission), forbearance with respect to enforcement should be considered.

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### CONCLUSION

For the foregoing reasons, and on the basis of the additional information submitted by CRP and SFI, CRP respectfully requests the Commission to amend Finding No. 2 and not to adopt Finding No. 3.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ch H Bell", written over the typed name.

Charles H. Bell, Jr.  
General Counsel  
California Republican Party

Enclosure

# strategic FUNDRAISING

Tom Hintermister, Assistant Staff Director, Audit Division  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20543

December 6, 2012

Re: Draft Final Audit of 2007-2008 Election Cycle for California Republican Party,  
C#000014590

Dear Mr. Hintermister :

On behalf of Strategic Fundraising, Inc. ("Strategic") of St. Paul, Minnesota, this letter is in regard to the Draft Final Audit Report of the FEC concerning the alleged extension of credit by Strategic to the California Republican Party ("CRP").

The Summary on 'Finding 3' is simply not accurate and is contradicted by the facts of the situation, the end result and even within the Audit staff's own 'Facts and Analysis'.

In the Ordinary Course of Business section, it is noted that 'safeguards proposed by the Commission have included requiring advance deposits by a committee to reimburse vendors for potential shortfalls, limiting the term of the contract or allowing vendors to terminate the contract early and demand full payment. The CRP has bylaws that forbid it from entering into agreements that span across two board terms essentially limiting the contact to approximately two years. Additionally as part of our standard fundraising agreements with all clients both political and non-profit, we include a termination clause that either party can execute for any reason.

The Commission correctly notes that 'SFI was not responsible for the "caging" of contributions'. It was not/is not the case of 'the committee retain[ed] contribution proceeds while giving up little, or assum[ing] little to no risk with the vendor bearing all, or nearly all the risk'. All of Strategic's fundraising agreements both verbal and written give SFI the control over 'risk'. While some fundraising/donor acquisition is low margin work, it goes without saying that through our 20 years of experience we are able to avoid 'losing money'.

The Commission's conclusion on this section that without additional information SFI did not extend credit to the CRP in its ordinary course of business is without basis and is contradicted by the fact that the CRP was able to fundraise out of the financial situation and pay off its balance owed to SFI.

In the Commercially Reasonable Debt Collection section, the Commission notes that it determines that these attempts are commercially reasonable if the vendor has pursued its remedies as vigorously as it would pursue its remedies against a non-political debtor in similar circumstance. As we documented in our March 2012 response to the Interim Audit Report, we recently had a large,

national non-profit 501(c)(3) that found itself in a similar situation. Our contracts with our clients forbid us from disclosing confidential information regarding the relationships unless ordered by a Court should it come to that. Fortunately, their outstanding balance has also been paid off under a similar verbal agreement.

Other documentation to demonstrate SFI's full efforts to collect the debt is difficult to come by as this occurred 4-5 years ago, the CRP staff and treasurer involved have moved on and our CEO at the time has since retired. I was new to SFI in mid 2008 so I personally had limited interactions with the situation until after the verbal payment plan was agreed to. Mike Akin, our Political Account Director, located several emails from the timeframe and those are enclosed.

I was able to locate a response from our CEO to the CRP legal team that noted our long standing 'billing' practices. It is noted below and was also detailed in my March 2012 response to the Interim Audit Report. The full response is enclosed.

- 3) The vast majority of all accounts payable due to Strategic are for detailed, contractually agreed upon charges for new donor acquisition ("recruiting") services, active donor fundraising services and for normal, per transaction, caging service charges. These charges are consistent with the longstanding and mutually agreed upon accounting and billing practices that have been in place throughout most of our fourteen year relationship with the CRP. Furthermore, all supporting detail related to our fundraising results, performance and costs - along with the cash receipts which support our invoicing is (and has always been) available to the CRP. The CRP receives detailed weekly invoices along with monthly statements from us. We also provide the CRP (and all our clients) with comprehensive daily, weekly and Year-to-Date fundraising performance, billing summary and open invoice reports via our website. Strategic has always been, and continues to be very cooperative in providing up and all detail or backup requested for any invoiced amounts. In summary, our books have always been open and there has never been any indication from the CRP that they disputed the amount owed Strategic.

The Assessment by the Audit Staff section states that we did not provide either 'examples' of client contracts or any supporting documentation to verify that the 'exclusivity clause' is common place; however, as I previously noted, we are bound by strict confidentiality clauses from our client both political and non-profits. I am including a recent contract with a candidate that lost his election this year. It is similar to our other contracts but slightly different because it was for a candidate committee.

The Commission Audit staff goes onto note they the 'break even guarantee' and 'exclusivity' clause are not unusual and the provision that the CRP 'retained contribution proceeds while giving up little, or assuming little to no risk' is also not unusual. The assumption by the Commission Audit staff that 'SFI would lose money on the prospecting calls' is presumptuous. As part of our agreement with the CRP we routinely audit the 'caged' data to verify every donation is being reported to us accurately and in a timely fashion as called for in our contract.

The Commission Audit staff assertion that 'SFI's effort to convince the CRP to resume the fundraising program and SFI's continued provision of services when the CRP had repeatedly failed

to pay raises the question of whether SFI's debt collection efforts were commercially reasonable' is proven wrong in the fact that the CRP paid off the debt and is a continued partner of SFI's to this day. The fact is the plan to pay SFI back with the money SFI helped raise for the CRP worked as planned. Our experience tells us that 'withholding of additional services until overdue debts are satisfied' doesn't work. I have been made aware of several state parties having their vendors stop doing work for them only to 1) not get paid, 2) get paid more slowly or 3) end the relationship permanently. We sought a win-win solution and achieved it. The Commission staff suggests that 'information supporting this contention by SFI (that we could fundraise out of the debt) would be precisely the type of information that would demonstrate the commercial reasonableness of SFI's course'. It does not seem appropriate however to disclose private (to the CRP) and proprietary (to SFI) information that could/would end up on the public record. Sharing LifeTime Value data, inception donor counts, renewal rates, fundraising plans, etc does not appear to be in the purview of the Commission.

As the Commission can clearly see, Strategic believed at all times that this extension of credit would further the CRP's receipt of new funding from new donor acquisition, and the renewal and reactivation of old donors. The long term relationship we enjoy with the CRP was worth the extra effort to work out a mutually beneficial payment plan that allowed SFI to continue raising funds for the CRP. At no time has Strategic intended to make a contribution to the CRP's federal account by virtue of its extension of credit. The bottom line is that it worked out, SFI was paid and the relationship was maintained.

Sincerely,



Mark Dixon

Chief Financial Officer

Strategic Fundraising, Inc.