

ROLE OF NONPROFIT GROUPS IN THE 1996 ELECTIONS

The 1996 election witnessed an unprecedented level of political activity by nonprofit groups.¹ The Annenberg Public Policy Center at the University of Pennsylvania estimates that, during the 1996 election cycle, nonprofit groups spent between 55 and 70 million dollars on political advocacy campaigns.² These figures include so-called “independent expenditure”³ and “issue advocacy” campaigns,⁴ and constitute roughly one-seventh of the 400 million dollars expended on political advertising during the 1996 elections by parties, candidates and others.⁵ This amount does not measure all of the political advocacy and work of nonprofits, however. Get-out-the-vote (“GOTV”) efforts and other types of in-kind contributions by nonprofits supplemented paid media campaigns.

¹ Paul Taylor, *Introduction* to Deborah Beck, et al., *Issue Advocacy Advertising During the 1996 Campaign* 3 (Annenberg Public Policy Center 1997). The Committee uses the phrase “nonprofit group” as a shorthand method of describing those entities organized for a noncommercial purpose that directly participate in the electoral process through contributions to candidates, the expenditure of funds on behalf of candidates, or the expenditure of funds to educate the public on issues of public policy. These nonprofit groups are entities that are organized under either § 501(c) or § 527 of the federal tax code. 26 U.S.C. §§ 501(c), 527 (1997).

² Taylor, *supra* note 1, p. 3. The Annenberg Report calculated that the national political parties spent roughly \$80 million on issue advocacy and independent expenditure campaigns. This figure represents a substantial portion of the \$135 to \$150 million spent by nonprofit groups. *Id.*

³ “Independent expenditure” campaigns are communications that expressly advocate the election or defeat of a clearly identified federal candidate. These expenditures must be disclosed by the sponsoring group but are not subject to contribution or expenditure limits. In order to qualify as an independent expenditure, the communication cannot be made in coordination with the candidate. 2 U.S.C. § 441a(a)(7)(B).

⁴ “Issue advocacy” campaigns are communications designed to promote a set of ideas or public policies. Issue advocacy is distinguished from “express advocacy” in that the communications do not advocate the election or defeat of a clearly identified federal candidate. *Buckley v. Valeo*, 424 U.S. 1, 43-44 (1976) (narrowly construing Federal Election Campaign Act of 1974 as applying only to “expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office”).

⁵ Taylor, *supra* note 1, p. 3.

During and after the 1996 election, there were numerous press reports about the activities of nonprofit groups. These press accounts raised questions about whether the organizations were truly nonpartisan and independent from political parties and candidates as required by federal law.⁶ Because of allegations surrounding the political activities of nonprofit groups -- particularly relating to the use of issue advocacy campaigns -- one of the priorities of the Committee was to investigate the role of nonprofit organizations in the elections.

Senate Resolution 39, which authorized the Special Investigation, specifically expanded the scope of the inquiry to include not only illegal activities but improper conduct as well.⁷ As a result, the Committee intended to examine the following activities involving nonprofit organizations:

The independence of presidential campaigns from the political activities pursued for their behalf by outside individuals or groups;

the misuse of charitable and tax-exempt organizations in connection with political or fundraising activities;

unregulated (soft) money and its effect on the American political system;

promises and/or the granting of special access in return for political contributions or favors;

the effect of independent expenditures (whether by corporations, labor unions, or otherwise) upon our current campaign finance system, and the question as to whether such expenditures are truly independent; and

⁶ See, e.g., Glenn F. Bunting et al., "Nonprofits Behind Attack Ads Prompt Senate Probe," *Los Angeles Times*, May 5, 1997, p. A1; Fred Wertheimer, "Investigate the G.O.P., Too," *New York Times*, Feb. 18, 1997, p. A19; Elizabeth Drew, *Whatever It Takes* (1997).

⁷ Senate Report 105-7, p. 3.

contributions to and expenditures by entities for the benefit or in the interest of public officials.⁸

In order to further this goal, the Committee subpoenaed thirty-two nonprofit organizations in addition to the Republican National Committee (“RNC”), the Democratic National Committee (“DNC”), and the presidential campaigns of Senator Robert Dole and President Bill Clinton. The Committee also subpoenaed numerous persons associated with these entities for deposition testimony. Lastly, the Committee subpoenaed several banking institutions, seeking the financial records of some of the nonprofit groups.⁹

The Committee issued these subpoenas to investigate several specific allegations involving illegal or improper conduct by nonprofit groups during the 1996 federal elections. First, the Committee sought evidence that some political action committees (“PACs”) participated in schemes to evade the contribution limits set by federal election law.¹⁰ Second, the Committee wanted to determine whether expenditures by nonprofit groups for issue advocacy campaigns were coordinated with federal candidates and/or party committees in such a manner that those expenditures became illegal in-kind contributions to the candidates or parties. Third, the Committee intended to explore the increased use of issue advocacy campaigns by nonprofit groups during the 1996 elections. Specifically, the Committee hoped to examine the distinction

⁸ *Id.*

⁹ See below for listing of nonprofit groups that were subpoenaed by the Committee.

¹⁰ PACs, which are classified under § 527 of the tax code, may receive income that is exempt from federal taxation if that income is spent “influencing or attempting to influence” the election of candidates to federal, state, or local office. 26 U.S.C. § 527(c)(3), (e)(2). Unlike nonprofit groups organized under § 501(c) of the tax code, there are no partisan limitations on the political activities of PACs. Indeed, PACs may contribute directly to political candidates. However, because PACs may engage in partisan political advocacy -- as distinct from the nonpartisan advocacy of groups organized under § 501(c) -- their activities are subject to regulation under the Federal Election Campaign Act of 1971 (“FECA”).

between issue and express advocacy -- a distinction which in practical terms appeared to be meaningless in the 1996 elections. Fourth, the Committee sought evidence about the illegal use of nonpartisan, tax-exempt groups by political parties and candidates for partisan purposes.¹¹

As described in great detail in the portion of the report dealing with compliance, the Committee encountered substantial resistance to its subpoenas.¹² A substantial majority of the nonprofit organizations, led by the AFL-CIO, refused in whole or in part to produce documents or witnesses pursuant to lawfully issued subpoenas. Relying on dubious arguments about the constitutionality and scope of the Committee's subpoenas, many of these groups pursued a tactical strategy designed to impede the Special Investigation. Knowing that the Senate had imposed a December 31, 1997 deadline on the Special Investigation -- a deadline that rendered

¹¹ Entities organized under § 501(c) of the tax code receive preferential tax status so that their income is either totally or partially exempt from federal taxation. In order to qualify for this preferential tax status, these organizations must abide by specified limitations on their political activity. The degree of restriction on political activity varies widely.

Groups organized under § 501(c) may not contribute to political candidates or parties but they may participate in the political process. Groups organized for charitable, religious or educational purposes are generally classified under § 501(c)(3). Contributions to groups organized under § 501(c)(3) are not only exempt from federal tax, but the donor may deduct the contribution as well. 26 U.S.C. § 170(a), (c)(2). In return for this extremely favorable tax treatment, these nonprofits may "not participate in, or intervene in . . . any political campaigns on behalf of (or in opposition to) any candidate for public office." *Id.* § 501(c)(3). Moreover, a § 501(c)(3) may not sponsor issue advocacy campaigns. In short, these groups may not engage in political advocacy of any kind and must limit their activities to purely educational functions.

Groups classified under § 501(c)(4) are generally considered social welfare organizations. *Id.* § 501(c)(4). While the income of groups organized under §§ 501(c)(3) and (c)(4) is exempt from federal taxation, donations to a § 501(c)(4) are not deductible to the contributor. A group organized under § 501(c)(4), however, may engage in political advocacy so long as the advocacy is of a nonpartisan nature. *Id.* As a result, a § 501(c)(4) may sponsor issue advocacy campaigns.

Labor unions are nonprofit groups organized under § 501(c)(5) and mutual not-profit business organizations, such as the Chamber of Commerce, are classified under § 501(c)(6). These groups may engage in nonpartisan political advocacy only. *Id.* § 501(c)(5),(6). Both types of groups can sponsor issue advocacy campaigns.

¹² See below for discussion of noncompliance with Committee subpoenas by nonprofit groups.

useless the lengthy contempt procedures available to the Committee -- the nonprofit groups stalled, delayed and ultimately refused to cooperate with the Committee.

Because of the deadline, the Committee had no ability to force the nonprofit groups to provide the documents and testimony necessary to a full understanding of their conduct. As a result of these tactics -- particularly those of the AFL-CIO -- the Committee obtained only a smattering of relevant documents and a handful of useful depositions.

With only a portion of the material evidence before the Committee, it was unable to draw any reasonable conclusions about the conduct of most of the nonprofit groups. In fact, the Committee believes that it would be irresponsible to draw inferences about serious allegations of illegality and impropriety on such a limited amount of evidence. Consequently, the Committee cannot confirm or deny most of the allegations of illegal or improper conduct relating to the political activities of nonprofit groups in the 1996 elections.

In their zeal to find a moral equivalent to the proven misconduct of the DNC and the Clinton/Gore '96 campaign, the Minority has repeatedly disclosed to the press -- in violation of the Committee's Confidentiality Protocol -- documents and deposition testimony that they contend prove violations of election and tax laws by the RNC, Republican candidates and sympathetic nonprofit groups. The Committee finds such conclusions irresponsible given the limited available evidence and the lack of public hearings.

Instead of sitting in judgment on an incomplete record, the Committee will lay out some of the evidence that has been uncovered during the course of the Special Investigation.

As noted above, the Committee sought to thoroughly examine allegations that some nonprofit groups illegally coordinated issue advocacy expenditures with federal candidates and

party committees, thereby providing unreported and unlimited in-kind contributions to those candidates and committees. FECA § 431(9)(A) defines the term “expenditure” as anything of value “made by any person *for the purpose of influencing any election for Federal office*[.]”¹³ Section 441a(a)(7)(B)(1) states that “expenditures” that are made “by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, *shall be considered to be a contribution to such candidate*[.]”¹⁴ As contributions, coordinated expenditures are subject to FECA’s limitations as to amount and source. Consequently, when a nonprofit expends funds for communications designed to influence a federal election, and the expenditure is made at the request of the candidate or the candidate’s agent or is based upon information obtained from the candidate or the candidate’s agent, the expenditure must be treated as an in-kind contribution to the candidate for the purposes of disclosure requirements and contribution limits.

In addition to FECA and FEC regulations applying to nonprofit groups generally, there are several regulations that specifically apply to political communications by labor organizations. For example, FEC regulations allow registration and voting communications “provided that . . . [t]he preparation and distribution or registration and get-out-the-vote communications shall not be coordinated with any candidate(s) or political party.”¹⁵ Labor organizations may also prepare and distribute the voting records of Members of Congress “provided that . . . [t]he decision on content and the distribution of voting records shall not be coordinated with any candidate, group

¹³ 2 U.S.C. § 431(9)(A)(1).

¹⁴ *Id.* § 441a(a)(7)(B)(1).

¹⁵ 11 C.F.R. § 114.4.

of candidates or political party.”¹⁶ FEC regulations also allow labor organizations to prepare and distribute voter guides so long as the unions do not contact “or in any way act in cooperation, coordination, or consultation with or at the request or suggestion of the candidates, the candidates’ committees or agents.”¹⁷

FEC regulations define coordination as

any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is --

Based on information about the candidate’s plans, projects, or needs provided to the expending person by the candidate, or by the candidate’s agents, with a view toward having an expenditure made; or

Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate’s committee or agent.¹⁸

Using these regulations as a guidepost, the Committee found some evidence that the AFL-CIO coordinated issue advocacy campaigns with the DNC and the Clinton/Gore ‘96 campaign. The Annenberg Report dubbed the AFL-CIO “the-800 pound gorilla of issue advocacy advertisers during the 1996 campaign.”¹⁹ Following the 1994 election in which Republicans wrested control of both houses of Congress for the first time in forty years, the AFL-CIO and its affiliated unions

¹⁶ *Id.* In addition to these regulations, the FEC has issued at least one advisory opinion holding that coordination is a consideration in determining whether general public communications critical of Members of Congress’ voting records are subject to the contribution limitations and prohibitions of the FECA. FEC Advisory Opinion 1985-14.

¹⁷ 11 C.F.R. § 114.4.

¹⁸ *Id.* § 109.1(b)(4)(I)(A),(B).

¹⁹ Taylor, *supra* note 1, p. 3.

set about reinvigorating the political operation of organized labor. One of the principal manifestations of this reorganization was a series of paid media campaigns, or issue ad campaigns, designed to boost the political influence of organized labor. The AFL-CIO and its affiliated unions developed and funded three separate and distinct programs: “Stand Up for America’s Working Families,” “Project ‘95,” and “Labor ‘96.” All three programs were ostensibly efforts to convince Congress to support the AFL-CIO’s political and legislative agenda and to educate voters about the voting records of their federal elected officials.

Evidence obtained by the Committee indicates, however, that all three programs were conceived, designed and implemented to defeat Republican Members of Congress during the 1996 federal elections. Specifically, the AFL-CIO sponsored a paid media campaign that repeatedly targeted incumbent Republicans. The Federation’s issue advertisements constituted an unrelenting barrage of television and radio ads, beginning in April 1995, that did not cease until the close of the 1996 elections.

The AFL-CIO and its affiliate unions provided the campaigns of the challengers in those districts direct contributions through COPE. The AFL-CIO also committed 102 political staff workers to organize union members in those races, and sponsored both direct mail campaigns and get-out-the-vote drives in those targeted districts.²⁰ In fact, the day after the 1996 election, AFL-CIO President John Sweeney claimed credit for reducing the Republican majority in the House of Representatives.²¹

²⁰ “Hotline Turnout Study,” *Hotline*, Nov. 1, 1996, p. *21 (quoting AFL-CIO Spokesperson Deborah Dion).

²¹ “Statement of John Sweeney, President, AFL-CIO, on Election ‘96” AFL-CIO Press Release, Nov. 6, 1996 (Ex. 1).

The first of these issue ad campaigns was called “Stand Up for America’s Working Families,” which began airing commercials attacking Republican legislative proposals on April 7, 1995.²² There can be little doubt about the partisan tone of the issue ads sponsored by the AFL-CIO.²³ For example, on June 26, 1995, the AFL-CIO released an issue ad entitled “Sparkler”, which attacked Republican budget proposals. The text and video of the ad were as follows:

Video	Audio
Kids at a Fourth of July parade	America. Where children can go as far as their dreams will take them . . .
	If we keep their opportunities bright and alive . . .
Kids on front steps, holding sparklers. Light fades until all we see is the sparklers and the light of the sparklers on their faces.	But every time the Republican Congress cuts jobs, cuts education, cuts college loans, Medicare or health and safety to pay for tax cuts for the rich, they undercut the promise of America . . . And a dream dies.
Sparklers start to go out until they are all extinguished.	Ask Congress to make America the land of opportunity again . . . To keep the American dream alive . . . To stand up for America’s working families. ²⁴
One sparkler lights. Kids laughing and waving sparklers	

²² “AFL-CIO Campaign for America’s Working Families,” AFL-CIO Press Release, Apr. 7, 1995 (Ex. 2).

²³ Thomas Donahue, who served as President of the Federation during most of 1995, described the program as “the AFL-CIO’s national effort to expose . . . Republican votes against workers and their families, and in favor of their rich friends. It’s our campaign to let the American people know the truth about what the Republicans are doing in Washington, and what else they have planned.” “AFL-CIO President Tom Donohue, Stand Up News Conference,” AFL-CIO Press Release, Aug. 21, 1995, p.1 (Ex. 3).

²⁴ “AFL-CIO TV: 30, ‘Sparkler,’” AFL-CIO Press Release, June 26, 1995, p.1 (Ex. 4).

Subsequent issue ads singled out Republican Members of Congress by name for criticism and urged the audience to contact their representatives directly. For example, the AFL-CIO released an issue ad for the Labor Day congressional recess in 1995, which criticized Republican proposals reforming the Occupational Health and Safety Act (“OSHA”). The commercials were titled by the name of the Member of Congress that was targeted. In one such ad, entitled “Grain-Dickey,” the text was as follows:

Video	Audio
	(Slow, Moving Track)
Stills of Patrick Hayes.	(Ron Hayes voice:)
	Our son Patrick was a good kid. A real hard worker.
Slow push in on silo.	Two years ago, Patrick was crushed to death in the feed mill where he worked.
Rescue shots.	The company thought they could get away with breaking the law.
	Patrick was just 19 years old when he died.
Ron and Dot Hayes, sitting together. Soft lighting.	Now, the Republicans in Congress are cutting health and safety . . .
Close up on Ron Hayes.	Protections I know can save lives. If they succeed, more people will die.
Worker and family shots.	(Voice over)
Call Rep. Dickey 1-800-765-4440.	Tell Republican Congressman Jay Dickey to stop cutting health and safety . . .

Disclaimer

So other families don't lose their loved ones.²⁵

During a press conference discussing the OSHA issue ad, a reporter asked Tom Donohue how the AFL-CIO selected the thirty-six congressional districts in which it ran these ads. He responded that the districts were selected because "the bulk of them are [represented by] first-term, freshmen Republicans who . . . may be defeatable."²⁶ Donohue's remarks suggest that these Republican Members of Congress were targeted because the AFL-CIO thought they were vulnerable in the 1996 federal election.²⁷

The Stand Up for America's Working Families campaign was later joined by "Project '95," which was an issue ad campaign sponsored by the American Federation of State, County & Municipal Employees ("AFSCME"). Project '95 grew out of the internal struggle over control of the AFL-CIO. For only the second time in Federation history, an incumbent leader, Tom Donahue, was being challenged by an insurgent, John Sweeney.

As part of the campaign to unseat Donahue, AFSCME President McEntee -- an ally of Sweeney -- created Project '95. Press accounts described Project '95 as "grassroots organizing against 14 targeted GOP Members [of Congress] that, union leaders hope, will materialize into electoral victory next year."²⁸ The Committee found evidence that AFSCME designed Project '95 -- purportedly an issue advocacy campaign -- in order to defeat Republican Members of

²⁵ AFL-CIO Press Release, Aug. 1995 (Ex. 5).

²⁶ Ex. 3, p. 3.

²⁷ Donahue later told reporters that the AFL-CIO would be targeting congressional "districts that are designated marginal or critical to us." Press Conference of Thomas Donohue, President of AFL-CIO, Sept. 21, 1995, p. 3 (Ex. 6).

²⁸ Tim Curran, "Labor's Political Rebirth?," *Roll Call*, Nov. 6, 1995, p. 1.

Congress, including many of the same representatives whose districts had been bombarded with AFL-CIO advertisements as part of the Stand Up for America's Working Families campaign.

Press accounts explained that Project '95 was

[f]unded by independent unions and other citizen groups and headed by 1990 [Democratic] Rhode Island House candidate Scott Wolf, the project has provided "issues education efforts" and full-time local coordinators in selected Republican-held [congressional] districts

Already, Wolf said, the '95 Project is in place in 14 House districts "and we will be expanding our coverage in the near future." He identified a quartet of potentially vulnerable GOP Members elected last year -- "Reps. Phil English (Pa), John Ensign (Nev), Frank Riggs (Calif), and Jim Longley (Maine)--as early targets."²⁹

The aggressive use of partisan attack ads disguised as issue advocacy -- similar to Project '95 -- became a centerpiece of John Sweeney's successful challenge to Donohue. The partisan motives for the issue ad campaigns were widely known. Deputy White House Chief of Staff Harold Ickes testified that Project '95 was "a very, very substantial campaign . . . that McEntee was basically heading up for Sweeney to take back the Congress [for the Democratic Party]."³⁰

Sweeney's proposals, however, went further than those put forth by McEntee and AFSCME. Sweeney proposed a new political training institute designed not only to train workers, campaign managers and prospective political candidates, but also to organize other union members to participate in key congressional races in 1996. Therefore, Project '95 can be understood as a dress rehearsal for Labor '96, the massive issue ad campaign sponsored by the AFL-CIO during the 1996 election cycle.

²⁹ *Id.*

³⁰ Deposition of Harold Ickes, June 27, 1997, p. 92.

Labor '96 cost the AFL-CIO \$35 million. Of that figure, the paid media campaign cost \$25 million, with the balance funding direct mail advertising and organizational activities. The AFL-CIO financed the issue ad campaign with a \$.15 per member, per month assessment.³¹

Labor '96 sponsored issue ads that were clearly designed to influence the outcome of the election. For example, Labor '96 aired a number of issue ads that attacked by name Republican Members of Congress, while simultaneously depicting an ominous looking image of House Speaker Newt Gingrich and Senate Majority Leader Bob Dole. One of those ads, which aired in the Washington state congressional districts of Republican Congressmen Rick White and Randy Tate, stated as follows:

Video	Audio
Congressmen Rick White (Picture of Newt Gingrich)	On November 20th, our Congressmen voted with Newt Gingrich and against working families.
Federal budget vote (Picture of elderly man) Cut Medicare	They voted to cut Medicare, education, and college loans, all to give huge tax breaks to the big corporations and the rich.
(Picture of graduate) Cut Education	
Congressmen Rick White and Randy Tate voted tax breaks for the rich (picture of Wall Street,	

³¹ Beck et al., *supra* note 1, pp. 10-12.

limousine doors opening)

Picture of Clinton vetoing bill
in Oval Office...

Dole and Gingrich pictured
behind podium together.

Congressmen Rick White
and Randy Tate

(American Flag)
(Man at the mail box,
woman on the phone)
(Picture of Capitol)
(Picture of family)
1-800-765-4440

Paid for by the Men
and Women of the AFL-CIO.³²

As this ad illustrates, Project '96 was a partisan campaign designed to influence federal elections and return political control of Congress back to the Democratic Party.

Since these expenditures were apparently “made for the purpose of influencing a[] federal election” -- as that phrase is used in FECA § 431(9)(A)(1) -- the question of coordination becomes central to any determination of impropriety against the AFL-CIO, the DNC, the Clinton/Gore '96 campaign and Democratic Members of Congress. Within weeks of John Sweeney assuming the AFL-CIO presidency in October 1995, the Federation stepped up the coordination of its political efforts with the DNC, the White House and Democratic Members of Congress.

. . . But President Clinton said no.
He stood up for working families and sent the
Gingrich budget back to Congress.

Now it's up to us. We need to get
involved and speak out. Let's tell
Congressmen White and Tate, this time,
don't vote for the wealthy special interests.

This time vote for America's working
families.

³² AFL-CIO Video Tape, “Randy Tate/Rick White”.

For example, on November 15, 1995, the senior leadership of the AFL-CIO, including Sweeney, Richard Trumka and Linda Chavez, met in the Oval Office with Vice President Gore, Harold Ickes, Chief of Staff Leon Panetta, Deputy Chief of Staff Erskine Bowles, Jennifer O'Connor, Ickes' assistant for labor matters, and David Strauss, the Vice President's Chief of Staff. Ickes' handwritten notes indicate that the possible purpose of the meeting was to discuss the AFL-CIO's political contributions and strategy during the 1996 federal election campaign.³³

Beginning on December 1, 1995, the AFL-CIO launched television and radio issue advertisements opposing budget proposals put forth by Republican congressional leaders. The issue ads targeted twenty Republican congressional districts. As part of this effort, the AFL-CIO also funded a direct mail campaign in fifty-five districts represented by Republican Members of Congress.³⁴

Ickes met for a second time with senior leaders of the AFL-CIO on December 5, 1995. That afternoon, Sweeney and McEntee met with Ickes at the White House. Documents obtained by the Committee show that the AFL-CIO's leadership provided the White House and Clinton-Gore '96 campaigns a sneak preview of the Federation's political plans for 1996. Ickes' handwritten notes of the meeting state that the Federation was targeting fifty-five congressional districts, that AFSCME "freed up" \$10.5 million for the upcoming political campaign to "move 75 people into [the] field for '96," and that Sweeney "will propose . . . that all unions do this."³⁵

³³ Handwritten Notes of Harold Ickes, Nov. 15, 1995 (Ex. 7).

³⁴ Mike Hall, "Workers Building Support for Budget Veto," *AFL-CIO News*, Dec. 1, 1995 (Ex. 8).

³⁵ Handwritten Notes of Harold Ickes, Dec. 5, 1995 (Ex. 9).

According to Ickes' sworn deposition testimony, his notes "refer[] to the fact that organized labor was going to make a very strong effort to try to take back the House . . . to make it Democratic."³⁶ He stated that his notes "referred to the internal campaign of the AFL-CIO mounted in 1996, which was reportedly about \$35 million to focus on taking back the House of Representatives."³⁷ Ickes testified that the campaign "focused on swing districts to try to ensure that Democrats could take back the House in '96."³⁸ Ickes added that AFL-CIO Political Director Steve Rosenthal wanted "to let the White House know the key points [of the AFL-CIO's political action efforts in 1996] and the amount of resources that labor was devoting to trying to take back the House."³⁹

Two days later, on or about December 7, 1995, Ickes presided over a critical third meeting at the White House with officials of the AFL-CIO and representatives of various affiliated unions. Media consultants for both the AFL-CIO, the DNC and the Clinton-Gore '96 campaign, including the President's chief media consultant Dick Morris, also attended this meeting with Ickes. According to the deposition testimony of Morris, the meeting was held in the Roosevelt Room of the White House.⁴⁰ Morris testified about that meeting as follows:

The second meeting was one that was set up by Mr. Ickes in the Roosevelt Room of the White House, which was a meeting he arranged, conceptualized, and chaired. And at that meeting, there were six or seven representatives of labor there, and on the campaign -- on the Clinton-Gore side, present were Ickes, Sosnik, Stephanopolous, myself, and I believe -

³⁶ Deposition of Harold Ickes, Sept. 22, 1997, p. 168.

³⁷ *Id.* at pp. 176-77.

³⁸ *Id.* at p. 177.

³⁹ *Id.* at p. 185.

⁴⁰ Deposition of Richard Samuel Morris, Aug. 20, 1997, p. 216.

- and some of the consultants. I can't be quite clear on who I think probably -- some -- either Penn or Schoen or Knapp. I don't believe Squier was there. And at the meeting-- and from labor, they had somebody from the teachers, somebody from the municipal -- from the AFSCME, somebody from the AFL. And they may have had Vic Fingerhut there, who was their media creator. I'm not sure about that.

And they showed us the ads that they either had run or were -- either had run or were thinking of running. I was never quite clear what it was. And we showed them ads that we had already run, *and they suggested to us that there be coordination of the advertising--this was issue oriented ads about the budget . . . And their suggestion was that in States where we were advertising they not, and in States where they weren't, we do.*⁴¹

When asked who from organized labor spoke at the meeting, Morris testified that

[t]here were five or six [people] who spoke. The teachers union person --each of the union people-- the teachers union, the AFSCME, the AFL, and there may have been one or two other unions -- spoke in turn about what their media plans were that they were planning to advertise in states of Republican senators, they were going to spend \$1 million over the course of the next year on doing it, here are the ads they had already run, here were the ads that they were about to run. It was a full briefing of us by them on their media plans.⁴²

Morris also testified that Ickes was favorably disposed to the idea of coordination with the AFL-CIO. Morris said that, during the course of that meeting, Ickes "was basically urging us, me, to coordinate with a [labor-run media] campaign that I thought was counterproductive to our campaign and would have rather not been on the air."⁴³

Ickes' version of the meeting conflicts somewhat with the recollection of Morris:.

Q: Do you recall if . . . they actually showed their media ads?

A: It was during the budget fight. I think AFL-CIO was running -- in fact, I'm pretty sure they were running some ads during the budget fight and they may well have shown us some of those ads.

⁴¹ *Id.* at p. 216-17 (emphasis added).

⁴² *Id.* at p. 222.

⁴³ *Id.* at p. 220.

...

Q: Do you recall why the labor representatives were showing you their ads?

A: Yeah. They would come over from time to time, just the way Steve Rosenthal would tell me what labor was doing.

Q: Were there other occasions where they came over and showed you [their] ads?

A: Very, very seldom. I vaguely remember this. I don't recall -- there may have been another meeting like this, but I don't recall it specifically. But I have some vague recollection of them coming over because I think they put -- they ran ads in certain areas.

...

Q: During these meetings, did anyone from labor ever suggest that they divide up the media area such as states or congressional districts with the DNC or the Clinton-Gore campaign?

A: With respect to the budget fight?

Q: Yes, specifically.

A: They may -- a lot of things were suggested in meetings like that and it could well have been that there was some suggestions. But my -- I think that these ads were up and running and that the AFL-CIO just wanted to show us what they were running.⁴⁴

White House Political Director, Doug Sosnik, also attended the meeting in the Roosevelt Room on December 7, 1995. In his deposition, Sosnik recalled being present but could not remember any details.⁴⁵ Sosnik testified, however, that he discussed AFL-CIO advertisements with Harold Ickes on at least one other occasion. Sosnik testified that he told

Harold [Ickes] -- when the AFL-CIO said that they were going to run ads, I said to Harold -- and this was prior to them running the ads, and this was prior to the DNC running ads -- I said how are we supposed to -- what are the rules of the road here, in terms of what is appropriate or not appropriate in working with labor?

⁴⁴ Deposition of Harold Ickes, Sept. 22, 1997, pp. 191-93.

⁴⁵ Deposition of Douglas Brian Sosnik, Sept. 12, 1997, pp. 141-46.

...

The decision that I made following these discussions [with White House and/or DNC counsel] was not to discuss with labor either the content nor the placement of their ads prior to them doing it, and the same in our world, which was not to discuss with them any ads that the campaign was to -- were going to put out, either in substance or where they were going to go.⁴⁶

Despite Sosnik's testimony, both Ickes and Morris testified that organized labor and the DNC previewed each others' ads. In addition, Morris' testimony that Ickes and the labor representatives openly discussed coordinating their respective campaigns is the most direct evidence that Labor '96 was nothing more than a coordinated expenditure -- and therefore an in-kind contribution -- to the DNC and Clinton-Gore reelection campaigns.

Shortly after the coordination meeting in the Roosevelt Room, the AFL-CIO launched Labor '96, its issue advocacy campaign that aired through the presidential and congressional elections. On January 16, 1996, the AFL-CIO announced "a scornful \$1 million radio and television campaign" protesting the federal government shutdown, and targeting twenty-seven unspecified congressional districts.⁴⁷

Documents obtained from the White House further illustrate how the Clinton-Gore '96 campaign coordinated with organized labor, particularly the AFL-CIO, to obtain the maximum electoral benefit from their issue advocacy efforts. On February 14, 1996, Jennifer O'Connor -- Ickes' principal aide for labor issues -- wrote him a draft memorandum about organized labor's anticipated role in the 1996 election campaign. O'Connor proposed "[c]ommunications/message

⁴⁶ *Id.* at pp. 148-49.

⁴⁷ "27 Members of Congress Who Voted to Cut Medicare, Medicaid, Education, College Loans to Fund Tax Cut for Rich Now Face Public Outrage, Media Blitz," AFL-CIO Press Release, Jan. 16, 1996 (Ex. 10).

sessions,” which involved “[b]ring[ing] in unions to discuss message with [White House Communications Director] Don Baer, [Clinton-Gore ‘96 Communications Director] Ann Lewis and others.”⁴⁸ Her memorandum to Ickes also called for “mailings/union talking points,” and “GOTV” activities.⁴⁹

One week later, the AFL-CIO’s ruling executive council formally approved Labor ‘96 (a.k.a. “Project ‘96”). At a special convention, one month later, the affiliated unions of the AFL-CIO voted to endorse President Clinton for re-election, and to fund Labor ‘96 with \$35,000,000. A Federation press release announced that Labor ‘96 intended to inform voters “how Republican leaders of Congress are trying to destroy Medicare, Medicaid, education and college loans . . . and how they tried to destroy workplace health and safety protections, wage standards and environmental protections[.]”⁵⁰

On March 30, 1996, Steve Rosenthal met with DNC Chairman Don Fowler at Federation headquarters to discuss “funding issues outside of the Coordinated Campaign structure,” including “the amount of financial support that w[ould] be directed from the various [unnamed] organizations[.]”⁵¹ Rosenthal and Fowler also discussed “which states should receive support from these organizations in order to maximize our effort.”⁵²

⁴⁸ Draft Memorandum from Jennifer O’Connor to Harold Ickes, Feb. 14, 1996 (Ex. 11).

⁴⁹ *Id.*

⁵⁰ “AFL-CIO Special Convention Endorses Clinton for Re-election, Votes Funds for Massive National Education and Action Program,” AFL-CIO Press Release, Mar. 25, 1996 (Ex. 12).

⁵¹ Memorandum from Alejandra Y. Castillo to Don Fowler, Mar. 29, 1996 (Ex. 13). The Committee did not have the opportunity to question Chairman Fowler about this meeting with Rosenthal because the DNC did not produce this document until one week after Chairman Thompson announced the suspension of hearings.

⁵² *Id.*

Labor '96 was not simply a paid media issue advocacy campaign. During the second week of July, the AFL-CIO conducted a candidate seminar for fifty Democratic congressional candidates at which Geoffrey Garin and other labor pollsters presented their research and consulting services.⁵³ In addition, the Committee has documentary evidence and deposition testimony indicating that the AFL-CIO also may have shared the results of internal polling data and other information with officials of the White House, the DNC and/or Clinton-Gore '96. Garin testified that “after the disaster [of the 1994 elections] occurred and they decided to change pollsters at the White House,” he provided several briefings to President Clinton’s key political aides, including Harold Ickes.⁵⁴ Garin also indicated that the AFL-CIO shared with White House, DNC and Clinton-Gore '96 officials the results of the 1995 polling data that prompted the Federation to overhaul its political operation. Garin said that the AFL-CIO shared the polling data in order “to strengthen the quality of political education and political action within the labor movement.”⁵⁵

David Strauss, a key aide to Vice President Gore, also testified in his deposition that Garin briefed the Vice President and other White House officials during the fall of 1995 on “a whole range of issues . . . concerning the mood of the country and how people were responding to the President.”⁵⁶ At about the same time that the AFL-CIO created “Stand-Up for America’s Working Families,” Garin and a Democratic pollster conducted a major research project entitled

⁵³ Mary Jacoby, “Labor Works Around Edges of Election Law,” *Chicago Tribune*, July 27, 1996, p. 1.

⁵⁴ Deposition of Geoffrey Garin, Sept. 5, 1997, p. 37.

⁵⁵ *Id.* at p. 29.

⁵⁶ Deposition of David M. Strauss, Aug. 14, 1997, p. 71.

“The Situation Facing America’s Working Families.” Garin testified that he presented the results of that paper to White House economic advisors in early 1995.⁵⁷ It is unknown whether that research was shared with the President’s political aides as well.

On July 13, 1996, Steve Rosenthal met again with Ickes in the White House. Ickes’ handwritten notes of the meeting indicate that they discussed Labor ‘96 in great detail. For example, Ickes’ notes show that Rosenthal said that the AFL-CIO was going to commit “102 staff” in “76 CDS [congressional districts],” “500 guys in 30 districts,” spend “\$20.5 [million] for radio [advertisements],” and “devote 2000-2500 [staff and union activists] full-time during [the] last 6 weeks [of the campaign].”⁵⁸

The Committee also obtained documents that suggest that Steve Rosenthal and other senior leaders of the AFL-CIO knew, or should have known, of the statutes and regulations prohibiting coordination of campaign expenditures between the Federation, the DNC, White House, and Clinton-Gore ‘96 campaign. For example, an AFL-CIO press release announcing the hiring of Rosenthal noted that he previously served as the deputy political director of the DNC, where he supervised the party’s nationwide 1992 coordinated campaign.⁵⁹ Prior to that, Rosenthal served as political director of the Communications Workers of America (“CWA”) and on several state and local political campaigns.⁶⁰

⁵⁷ Garin deposition, pp. 40-41.

⁵⁸ Handwritten Notes of Harold Ickes, July 13, 1996 (Ex. 14).

⁵⁹ “AFL-CIO President Announces More Key Staff Changes,” AFL-CIO Press Release, Nov. 16, 1995 (Ex. 15).

⁶⁰ *Id.*

There is additional evidence that the leadership of the AFL-CIO knew about restrictions on coordinated political activity. Documents produced by the DNC show that Rosenthal and possibly Garin attended and participated in a conference, entitled “Win In ‘96: A Coordinated Campaign Meeting.” The DNC sponsored the conference in June of 1996 in Washington and presented the legal framework for coordinated campaigns. DNC General Counsel Joseph Sandler and Deputy General Counsel Neil Reiff devoted an entire section of the briefing materials to “working with . . . labor unions.”⁶¹

A handbook distributed by Sandler and Reiff states that “unions can distribute voter registration information, as long as [such] activity is not coordinated with any particular party or candidate, [and] no activity can be targeted toward [a] particular party or candidate.”⁶² The DNC lawyers advised the AFL-CIO that voter guides could “say anything short of express advocacy *if* there is no contact whatsoever with any campaign or party . . . [and] no coordination as to [the] distribution or content with any campaign or party committee.”⁶³ Finally, the handbook states that union-sponsored GOTV drives “must not include express advocacy, cannot be targeted to supporters of a candidate or to members of a particular party, [and] cannot be coordinated with [a] candidate or party.”⁶⁴

Therefore, there is a substantial body of evidence suggesting that the AFL-CIO violated FEC regulations regarding coordination of public communications by labor organizations and

⁶¹ “Win in ‘96: A Coordinated Campaign Meeting,” DNC Handbook, June 6-9, 1996, pp. 15-18 (Ex. 16).

⁶² *Id.* at p. 16.

⁶³ *Id.* at p. 16 (emphasis in original).

⁶⁴ *Id.* at p. 17.

candidates for federal office. There is also evidence that the AFL-CIO coordinated expenditures for its Labor '96 issue advocacy campaign with officials from the White House, DNC and Clinton-Gore '96 campaign. If so, the AFL-CIO may have provided illegal in-kind contributions to Democratic candidates for federal office, including President Clinton and Vice President Gore.

As explained in the compliance section of this report, the Committee subpoenaed several nonprofit groups that are generally supportive of the Republican agenda. Despite limited evidence, the Committee found that some of these organizations sponsored issue ads that were clearly designed to influence the outcome of federal elections.

One of the organizations that the Committee subpoenaed was Triad Management Services, Inc ("Triad"). Triad, which was the subject of several press reports, is a for-profit political consulting firm that advises conservative donors as to which PACs, candidates and special projects (i.e., tax-exempt organizations) are most likely to advance the conservative principles of the donors.⁶⁵ Triad does not work for individual candidates or PACs. Carolyn Malenick, the President and founder of Triad, started the company in 1995 after serving as the Finance Director of the Oliver North for Senate campaign.⁶⁶

In return for a set fee, Triad provides its conservative clients due diligence and research on political candidates, PACs, and tax-exempt organizations. Triad then recommends to its clients where to make donations. Triad earns management fees from two nonprofit organizations, Citizens for Reform ("CR") and Citizens for the Republic Education Fund ("CREF"), that were

⁶⁵ Deposition of Meredith O'Rourke, pp. 107-108.

⁶⁶ Deposition of Anna Lee Malenick Evans, August 19, 1997, at pp. 8, 23-24.

also subpoenaed by the Committee.⁶⁷ In return for the management fees, Triad solicited donations to CR and CREF from its conservative clients in order to fund an issue advocacy campaign that was critical of Democratic congressional candidates.⁶⁸ In the Fall of 1996, Triad raised several million dollars and also managed the issue advocacy campaigns.⁶⁹ Under the guidance of Triad, CR and the CREF funded several million dollars of issue ads in the weeks preceding the 1996 elections.⁷⁰ Like the issue ad campaign sponsored by the AFL-CIO, these commercials mentioned the name and depicted the image of federal candidates. Many of the advertisements sponsored by CR and CREF, under Triad's direction, can be fairly labeled as "attack ads" that focused on the voting records and even personal backgrounds of Democratic candidates.

For example, during the hearings, the Committee viewed an issue ad sponsored by CR that informed voters that Bill Yellowtail, the Democratic candidate for a Montana congressional seat, had been arrested for spousal abuse.⁷¹ Also like the Labor '96 campaign, many of the CREF's issue ads focused attention on the candidate rather than exclusively on issues. For example, the CREF aired an issue ad attacking Winston Bryant, the Democratic candidate for Senate in Arkansas. In the ad, the announcer stated as follows:

Senate candidate Winston Bryant's budget as Attorney General increased 71%. Bryant has taken taxpayer funded junkets to the Virgin Islands, Alaska and Arizona. And spent

⁶⁷ *Id.* at p. 26; O'Rourke deposition at p. 40.

⁶⁸ Evans deposition at p. 28; O'Rourke deposition at p. 140.

⁶⁹ Evans deposition at p. 63; O'Rourke deposition at pp. 140-150.

⁷⁰ Evans deposition at pp. 138, 146.

⁷¹ Testimony of Lawrence Noble, Sept. 25, 1997, p. 71.

about \$100,000 on new furniture. Unfortunately, as the state's top law enforcement official, he's never opposed the parole of any convicted criminal, even rapists and murderers. And almost 4,000 Arkansas prisoners have been sent back to prison for crimes committed while they were out on parole. Winston Bryant: government waste, political junkets, soft on crime. Call Winston Bryant and tell him to give the money back.⁷²

Since the issue ads were intended "to influence the outcome of a[] federal election" -- within the meaning of FECA § 431(9)(A) -- the question of illegality turns on whether those issue ads were coordinated with federal candidates or the candidate's agents.⁷³ The Committee has no evidence of coordination between Triad and any of the national party committees. In fact, there is some suggestion that Carolyn Malenick created Triad because of dissatisfaction with the Republican Congressional Campaign Committee ("RCCC") and that the RCCC viewed Triad as a competitor for conservative Republican donors.

Triad gathered crucial information about individual Republican candidates before selecting the topics and media markets for issue ads. Triad's political consultant, Carlos Rodriguez, performed what Triad called "political audits" on over 250 Republican congressional campaigns. These audits allowed Rodriguez to evaluate the strengths and weaknesses of each campaign and to make recommendations of assistance to Malenick.⁷⁴

For example, a typical audit memorandum indicated the campaign's proposed budget, cash on hand, and current debt. The memoranda also provided the latest polling data and highlighted the key issues in the campaign. The memoranda also set forth an extensive narrative discussion of

⁷² Beck et al., *supra* note 1, p. 23.

⁷³ 11 U.S.C. § 441a(a)(7)(B)(1).

⁷⁴ *See, e.g.*, Randy Tate Audit Memorandum, Oct. 3, 1996 (Ex. 17).

each campaign's good and bad points. Rodriguez would then close with a discussion of the candidate's crucial needs and issue a recommendation to Malenick.⁷⁵

Rodriguez audited the campaign of John Thune, a Republican congressional candidate on September 25, 1996. Though Rodriguez did not meet with Thune personally, he did visit with the campaign manager, Dan Nelson. Rodriguez noted in his audit memorandum that the Thune campaign possessed “[g]ood consulting. Good polling. Good media. In a state where strategy and media dictates the outcome of an election, this campaign is well staffed and poised to win in November.”⁷⁶ Under the “Action” item, Rodriguez indicated that he and Malenick should “[c]ontinue communication with Dan Nelson and John Thune.”⁷⁷ In the way of assistance, Rodriguez suggested to Malenick that, “[i]f there is anything we can do to help [the campaign] it would probably be in the area of 501(c)4 education with regards to the liberal tendencies of his opponent.”⁷⁸ There is no evidence, however, to support a finding that Triad coordinated issue advocacy expenditures with the Thune campaign, or that the Thune campaign had any knowledge of or participation with Triad in its activities.

Under FECA and FEC regulations, the expenditure must be shown to have been made at the request of the candidate or the candidate's agent, or based on information obtained from the candidate.⁷⁹ Communication in the abstract is not equivalent to coordination. The Committee

⁷⁵ *E.g.*, Rick White Political Audit Memorandum, Oct. 3, 1996 (Ex. 18).

⁷⁶ John Thune Political Audit Memorandum, Sept. 25, 1997, p. 2 (Ex. 19).

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ 2 U.S.C. § 441a(a)(7)(B)(1); *see also* 11 C.F.R. § 109.1(b)(4)(I)(A),(B).

found no evidence that Congressman Thune or anyone from his campaign staff directed the substance or location of issue advocacy expenditures made by CR and CREF. In fact, the Committee has found no evidence that Congressman Thune or his campaign even knew about these issue ads before they were aired. Therefore, there is no basis to conclude that Triad illegally or improperly coordinated issue advocacy expenditures with the Thune campaign.

Another example illustrates the point more clearly. During a visit with the campaign of Rick Hill, a Republican congressional candidate in Montana, Rodriguez learned that the Democrat candidate, Bill Yellowtail, had been involved in a spousal abuse incident. During the audit, Rodriguez also learned that Hill did not intend to raise the issue in the campaign. In his audit memorandum following the visit, Rodriguez described one of the Hill campaign's needs as "3rd Party to 'expose' Yellowtail" for wife-beating.⁸⁰ Triad followed Rodriguez's advice and, in the last weeks of the 1996 campaign, CR funded several hundred thousand dollars worth of issue ads that focused on Yellowtail's arrest for spousal abuse.

At first blush, this evidence suggests that CR, acting through Triad, selected the substance and location of issue ads at the request of a congressional candidate. The Committee, however, found evidence that indicates that the Hill campaign did not ask Triad to air these ads. Shortly after the CR issue ads began running in Montana, the Rick Hill campaign contacted Triad to protest the negative advertising and demanded that the ads cease immediately. On October 25, 1996, the Hill campaign's lawyer, Tom Hopwood, wrote to Mark Braden, the attorney for CR,

⁸⁰ Rick Hill Political Audit Memorandum, Sept. 24, 1996, p. 2 (Ex. 20).

decrying CR's "unwanted intrusion into this congressional campaign."⁸¹ Hopwood noted that Rick Hill "was not consulted about these ads, had no knowledge of their existence and most assuredly disapproves of their content."⁸² He added that "this type of overtly negative campaigning simply does not work in Montana. . . . Simply put, Montanans do not need or want the type of campaigning embodied in your client's ads."⁸³

In light of the contemporaneous letter from the Hill campaign and the inability to depose Carolyn Malenick or Carlos Rodriguez, the Committee cannot conclude that CR funded the Yellowtail issue ad at the request of Congressman Hill or his campaign. As a result, there is no basis to conclude that Triad illegally or improperly coordinated issue ad expenditures with the Hill campaign.

In the case of Congressman Vince Snowbarger, a Republican from Kansas, there is evidence of contact between his campaign staff and Rodriguez. However, the Committee has not found any documents or testimony to support a finding of coordination. Rodriguez met with Snowbarger's campaign staff in June of 1996 and provided the staff a detailed fundraising strategy. In the action item of his audit memorandum, Rodriguez stated that he would "continue to monitor the campaign, working closely with [the campaign] to find out what progress they are making both in fundraising and voter contact."⁸⁴ In September of 1996, Snowbarger's campaign staff visited with Triad in Washington to discuss the progress of the campaign. In the last weeks

⁸¹ Letter from Tom K. Hopwood, Counsel for the Rick Hill for Congress Committee, to E. Mark Braden, Counsel for CR, Oct. 25, 1997 (Ex. 21).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Vince Snowbarger Political Audit Memorandum, June 15, 1996 (Ex. 22).

before the election, CR spent roughly \$300,000 on issue ads and phone banks in Snowbarger's district.

Even though there was regular communication between Triad and the campaign, the Committee has found no evidence suggesting that CR selected media markets or the substance of the issue ads at the request of Representative Snowbarger's campaign or based on information obtained from the campaign. The Committee cannot determine what information CFR used to create the issue ads that aired in Representative Snowbarger's district. Absent some evidence of direction and control, the Committee is left only with evidence of communication between Snowbarger's campaign and Triad. Communication alone is clearly not sufficient to infer illegal or improper coordination of expenditures. There is no evidence that the Snowbarger campaign had any role in CFR's advertisements.

In the case of Senator Sam Brownback of Kansas, the Committee obtained testimony that Senator Brownback met with Carolyn Malenick and her clients during the 1996 Republican National Convention.⁸⁵ As described by Meredith O'Rourke in her deposition to the Committee, the meeting was arranged so that Senator Brownback could thank Triad clients who had contributed to his campaign.⁸⁶ O'Rourke also testified that, on two occasions, she helped Senator Brownback call potential contributors from the RCCC.⁸⁷

The Committee found no evidence to suggest that the Brownback campaign acted in any way illegally or improperly in its dealings with Triad. It is entirely appropriate for Senator

⁸⁵ Deposition of Meredith O'Rourke, Sept. 3, 1997, p. 119.

⁸⁶ *Id.* at pp. 119-20.

⁸⁷ *Id.* at pp. 94-96.

Brownback to meet with campaign contributors to thank them for a donation. The Committee has no evidence suggesting that any of those contributions was given illegally or improperly. In addition, the Committee finds no impropriety in Meredith O'Rourke helping Senator Brownback telephone potential donors. While it would be an illegal in-kind donation from a corporation for O'Rourke to assist Senator Brownback as part of her job responsibilities at Triad, the preliminary evidence indicates that O'Rourke performed this service in a voluntary capacity and on her own time. Mark Braden, Triad's Counsel, has indicated that Triad's employment records show that O'Rourke was not compensated by Triad for the service she rendered Senator Brownback.⁸⁸ Like any other citizen, O'Rourke is free to volunteer time to political candidates of her choosing.

The Committee also discovered evidence that Triad was particularly sensitive at the time to coordination problems. Shortly before the election, Triad discovered that several sub-vendors had not observed the proper distance between the nonprofit groups and individual campaigns. On October 24, 1996, Carlos Rodriguez circulated a confidential memorandum to all vendors and subvendors hired by CR and CREF, reminding them of the strict requirements of issue advocacy campaigns.⁸⁹

Rodriguez advised the vendors that Triad had recently learned that "at least one mail piece submitted for legal clearance is a version of a voter contact piece that has been used in at least one Republican campaign for a House seat. Even worse, the piece used by that campaign was paid for by the Republican party."⁹⁰ Rodriguez reminded Triad vendors that, "[u]nder no circumstances is

⁸⁸ Ruth Marcus, "The Secret of a Senator's Success?" *Washington Post*, Dec. 12, 1997, p. A1.

⁸⁹ Memorandum from Carlos Rodriguez to All CR and CREF Vendors/Subcontractors, Oct. 24, 1996, p. 1 (Ex. 23).

⁹⁰ *Id.*

Citizens for Reform or Citizens for the Republic Education Fund to act or even create the appearance of acting as an agent of, or in cooperation with any political party, candidate or campaign.”⁹¹ He then warned the vendors not to use materials generated by candidate or party committees, stating as follows:

If you have received clearance on any educational material (direct mail, TV, radio) that is not your original work product created solely for the educational effort on behalf of our two committees, you must do the following immediately:

1. STOP production/distribution of that work product.
2. Contact me.
- ...

Violation of this rule may result in serious legal action against [CR, CREF] and you. *These are issue advertisements, not party or candidate ads.*

I know that this is new to most of you, *so please bear with us and be extra careful as we try to meet the letter and spirit of the rules that apply to these types of educational efforts.*⁹²

The Committee considers this memorandum to be a highly probative contemporaneous statement of Triad’s intent with respect to coordination of issue advocacy campaigns. It clearly demonstrates that Triad was sensitive to coordination concerns and that it took every effort to ensure that its vendors observed the requirements for issue advocacy.

Carolyn Malenick reiterated her concern about coordination in a November 6, 1996 memorandum to Dick Dresner and Joanne Banks, who were media consultants hired by Triad to

⁹¹ *Id.*

⁹² *Id.* at pp. 1-2 (emphasis added & omitted).

create issue ads for CR and CREF.⁹³ In the memorandum, Malenick chastised Dresner, Wicker & Associates for not observing instructions regarding coordination with individual campaigns. She stated as follows:

It has come to my attention that from Wednesday of last week, the sub-contractors chosen by Dresner, Wicker and Associates, Inc. chose additional subcontractors to perform the duties for the 501(c)4 projects managed by TRIAD Management Services, Inc.

When planning meetings took place between the principals of both parties, vendors were discussed at great length. *It was made clear, in the final discussion on Tuesday, October 15th, that the vendors could have no contact with campaigns and that all vendors were to be known.* The vendors of Dresner, Wickers & Assoc, Inc. having sub-contracted additional vendors without TRIAD's knowledge, has created both legal and political problems that could have been avoided, had this requirement been met.

. . . Both Citizens for Reform and Citizens for the Republic Education Fund, managed by TRIAD, plan to hold Dresner, Wickers and Associates responsible for any fall-out incurred over the coming months, with vendors chosen by Dresner, Wickers and Associates.⁹⁴

As this memorandum makes clear, Malenick and Triad attempted to ensure that vendors hired to create issue ads did not coordinate -- or even have contact -- with individual campaigns.

Consequently, there is substantial evidence militating against a finding of coordination between Triad and federal candidates. Without a complete factual record, the Committee simply cannot conclude that there is evidence sufficient to infer that CR and CREF -- acting through Triad -- illegally coordinated issue advocacy expenditures with individual candidates or their campaigns.

The same can be said of the RNC and the nonprofit groups that have been linked to it in numerous press reports. The Committee's investigation found evidence that the RNC routinely

⁹³ Memorandum from Carolyn Malenick to Dick Dresner and Joanne Banks, Nov. 6, 1997 (Ex. 24).

⁹⁴ *Id.* (emphasis added).

supported nonprofit groups that it considered sympathetic to its cause. This support principally took the form of financial contributions directly from the RNC or from funds raised by RNC officials. Standing alone, there is nothing illegal or improper about the RNC donating money to like-minded nonprofit groups.

Despite evidence of substantial contributions to nonprofit groups by or through the RNC, the Committee has found no evidence that the RNC directed or controlled the expenditure of those funds. Absent such direction and control or other evidence that the RNC coordinated the expenditure of those funds, the Committee cannot conclude that the RNC misused the various nonprofit groups that it supported.

Documents obtained by the Committee indicate that the RNC considered nonprofit groups an integral part of the conservative coalition. For example, an April 23, 1996 memorandum to RNC Chairman Haley Barbour from RNC Political Director Curt Anderson, explained that the RNC “no longer treat[s] coalition planning as if it is an ancillary activity, or a quaint way of getting well meaning but ignorant people involved. . . . We teach that campaigns must include both a thematic and tactical approach to including the combined efforts of every coalition group that they can conceivably appeal to.”⁹⁵ Anderson explained that “[a]t virtually all of our field meetings we have put together day long meetings [sic] in which we bring the decision makers from the biggest coalition groups. We generally spend an hour with each of them comparing notes on races. . . .”⁹⁶ Anderson further advised Barbour that, “[w]hile it has always been true that

⁹⁵ Memorandum from Curt Anderson, RNC Political Director, to Haley Barbour, RNC Chairman, Apr. 23, 1996, pp. 1-2 (Ex. 25).

⁹⁶ *Id.* at p. 2.

our coalition groups need direction on how they can best effect [sic] the outcome of elections, many of the larger groups are becoming increasingly sophisticated in their approach and they employ competent professionals who know how to make things happen.”⁹⁷

In an earlier memorandum to Chairman Barbour on the same subject, Anderson indicated that -- in response to a request from Barbour -- he had collected a list of nonprofit groups that would be most supportive of the Republican agenda.⁹⁸ Anderson included the NRLC, the Christian Coalition, ATR and Citizens for a Sound Economy as possible members of this coalition group.⁹⁹ The senior leadership of the RNC considered approximately thirty nonprofit groups for membership in this coalition,¹⁰⁰ but Anderson envisioned that the coalition would be limited to groups “that actually have troops in the field that they can motivate, activate, and deliver, or groups that have a track record of expending significant resources to do the same.”¹⁰¹

RNC documents indicate, however, that the RNC clearly appreciated the difference between the permissible and impermissible activities of PACs and nonprofit groups. In a manual on nonprofit groups and coalition building prepared by the National Republican Senatorial Committee (“NRSC”), each of the organizations is listed and described. The NRSC manual divides the groups into two categories, “those who endorse candidates and those who do not.”¹⁰²

⁹⁷ *Id.* at p. 3.

⁹⁸ Memorandum from Curt Anderson, RNC Political Director, to Haley Barbour, RNC Chairman, Mar. 4, 1996 (Ex. 26).

⁹⁹ *Id.*

¹⁰⁰ RNC Chart of Nonprofit Groups (Ex. 27).

¹⁰¹ Ex. 26 at p. 1.

¹⁰² NRSC Coalition Building Manual, Chapter XII, p. 21 (Ex. 28).

The manual states that, as a PAC, the NRLC can endorse candidates and directly advocate the election or defeat of a candidate, while correctly noting that Citizens for a Sound Economy, the Christian Coalition and ATR cannot endorse candidates as groups organized under § 501(c)(4) of the tax code.¹⁰³

The Committee obtained documents showing that the RNC, NRSC and RCCC followed the coalition building strategy outlined in the Anderson memoranda by contributing large sums of money to coalition members, including ATR, the NRLC, and the CCF. The documents indicate that, on October 4, 1996, the RNC donated \$2 million to ATR from its Republican National State Elections Committee Corporate Operating account.¹⁰⁴ The RNC donated an additional \$1 million to ATR on October 17, 1996.¹⁰⁵ ATR received another \$1 million contribution from the RNC on October 25, 1996,¹⁰⁶ and received \$600,000 more from the same account on October 31, 1996.¹⁰⁷ In addition to the \$4.6 million donated to ATR, the RNC contributed \$650,000 to the NRLC in the last weeks before the 1996 election.

In addition to direct contributions from the RNC to nonprofit groups, the senior leadership of the RNC helped to raise funds for many of the coalition's nonprofit organizations. An October 17, 1996 memorandum from Joanne Coe to Haley Barbour, Curt Anderson and Sanford McCallister indicates that the RNC solicited contributions to several nonprofit groups and routed

¹⁰³ *Id.*

¹⁰⁴ Republican Nat'l St. Elections Comm. Corp. Operating Check No. 8501 (Ex. 29).

¹⁰⁵ Republican Nat'l St. Elections Comm. Corp. Operating Check No. 8576 (Ex. 30).

¹⁰⁶ Republican Nat'l St. Elections Comm. Corp. Operating Check No. 8633 (Ex. 31).

¹⁰⁷ Republican Nat'l St. Elections Comm. Corp. Operating Check No. 8673 (Ex. 32).

those donations from the donor to the organizations.¹⁰⁸ In the memorandum, Coe stated that she sent two \$100,000 checks to ATR and NRLC from Carl Lindner, a wealthy businessman and a major donor to the RNC. She also indicated that senior RNC officials had raised \$950,000 for the American Defense Institute (“ADI”), a pro-defense group organized under § 501(c)(3) of the tax code.

Although there is evidence that the RNC donated large sums of money to several sympathetic nonprofit groups and even solicited additional funds for those groups from the RNC’s largest donors, there is no evidence that anyone at the RNC ever directed or controlled the expenditure of these funds. Based upon the evidence obtained by the Committee, the Committee finds nothing illegal about the RNC financially supporting like-minded nonprofit groups. In addition, the Committee possesses no evidence of illegalities by the organizations that received these contributions, such as ATR and ADI. Indeed, the Committee obtained the entirety of its information on this subject because prior to the AFL-CIO’s intentional noncompliance with valid Committee subpoenas, these organizations complied with the Committee’s subpoenas.

In a related area, there can be little doubt that the RNC’s issue ads were intended to influence the outcome of a federal election within the meaning of FECA § 431(9)(A)(1). One of those issue ads, entitled “The Story,” was nothing more than a biography of Bob Dole. The Story states as follows:

Audio of Bob Dole: We have a moral obligation to give our children an America with the opportunity and values of the nation we grew up in.

Voice Over: Bob Dole grew up in Russell, Kansas. From his parents he learned the value of hard work, honesty and responsibility. So when his country called

¹⁰⁸ Memorandum from Joanne Coe, to Haley Barbour, RNC Chairman, et al., Oct. 17, 1996 (Ex. 33).

. . . he answered. He was seriously wounded in combat. Paralyzed, he underwent nine operations.

Audio of Bob Dole: I went around looking for a miracle that would make me whole again.

Voice Over: The doctors said he'd never walk again. But after 39 months, he proved them wrong.

Audio of Elizabeth Dole: He persevered, he never gave up. He fought his way back from total paralysis.

Voice Over: Like many Americans, his life experience and values serve as a strong moral compass. The principle of work to replace welfare. The principle of accountability to strengthen our criminal justice system. The principle of discipline to end wasteful Washington spending.

Voice of Bob Dole: It all comes down to values. What you believe in. What you sacrifice for. And what you stand for.¹⁰⁹

Like *The Story*, another RNC issue ad entitled “Stripes” focused on personality traits rather than public issues. The text of the RNC ad is as follows:

Voice Over: Bill Clinton, he's really something. He's now trying to avoid a sexual harassment lawsuit claiming he is on active military duty. Active duty? Newspapers report that Mr. Clinton claims as commander in chief he is covered under the Soldiers and Sailors Relief Act of 1940, which grants automatic delays in lawsuits against military personnel until their active duty is over. Active duty? Bill Clinton, he's really something.

Accompanying Visual: Clinton golfing, duck hunting, and, clad in a safety helmet, enjoying a bike ride with Hillary. In the background, someone whistles a vaguely martial tune. The ad closes with a “Blues Brothers” photo of Clinton in dark glasses and a dark suit, and smiling.¹¹⁰

A detailed analysis is unnecessary. A document produced by the RNC indicates that even the RNC's Political Director did not think *The Story* qualified as issue advocacy. In a May 22, 1996

¹⁰⁹ Script of RNC's “The Story” Commercial, May 29, 1996 (Ex. 34).

¹¹⁰ “GOP Ad on Clinton's Claim in Sexual Harassment Suit,” AP File, PM Cycle, May 25, 1996 (Ex. 35).

memorandum to Haley Barbour, Curt Anderson stated that “[w]e could run into a real snag with the Dole Story spot. Certainly, all the quantitative and qualitative research strongly suggests that this spot needs to be run. Making this spot pass the issue advocacy test may take some doing.”¹¹¹

Under the language of FECA, however, the RNC’s issue ad campaign would only be illegal if it was produced at the request of Senator Dole or coordinated with the Dole campaign.¹¹² Based on the available evidence, the Committee finds no basis for concluding that any illegal coordination between the RNC and Dole campaign took place.

The RNC’s issue ad campaign commenced well after -- almost eight months -- the beginning of the DNC’s issue ad campaign. In addition, the RNC spent almost \$20 million less than the DNC on this effort. Finally, there is no evidence that Senator Dole micro-managed the RNC’s issue ads in the same fashion that President Clinton controlled the DNC’s campaign. Whereas the evidence indicates that the President “directed and controlled” the DNC’s issue ads - including drafting and editing scripts -- there is no evidence that Bob Dole personally had any role in the RNC’s ad campaign.¹¹³

There is some indication, however, that the RNC may have had some communication with the Dole campaign to some extent on the campaign. Documents produced by the RNC suggest that Scott Reed may have provided input regarding the amount of expenditures for issue ads for party-building purposes. Haley Barbour, the RNC Chairman, wrote a memorandum to Curt

¹¹¹ Memorandum from Curt Anderson, RNC Political Director, to Haley Barbour, RNC Chairman, May 22, 1996, p. 2 (emphasis added) (Ex. 36).

¹¹² 2 U.S.C. §§ 431(9)(A)(1), 441a(a)(7)(B)(1).

¹¹³ Senator Dole did know contemporaneously that the RNC intended to sponsor the issue ad campaign on his behalf. “Remarks of GOP Presidential Candidate Senator Bob Dole,” *Federal News Service*, June 6, 1996 (Ex. 37).

Anderson, the RNC's Political Director, on June 5, 1996 concerning Barbour's rejection of a request by the RNC staff for \$800,000 to underwrite costs of RNC Unity Events.¹¹⁴ In the memorandum, Barbour advises Anderson that he

will reach out to Scott Reed to ask him whether the Dole campaign would want us to 1) reduce other spending, such as the issue advocacy television advertising, by \$800,000; 2) significantly increase the number and lead time for Victory '96 events in order to offset these costs (although I am not convinced at this time that the Victory '96 events will produce the revenue currently anticipated and budgeted for expenditure [sic]; 3) not spend the sum requested for Unity Events; or 4) consider some other alternative.¹¹⁵

As explained in the compliance section of the report, the Committee was never able to secure the deposition testimony of Curt Anderson, Joanne Coe, or Don Sipple.¹¹⁶ In addition, the Committee attempted unsuccessfully to obtain the testimony of Scott Reed on these topics after he was deposed originally in connection with the National Policy Forum ("NPF"). As a result, the Committee obtained no evidence that the RNC's issue ads were aired at the request or suggestion of the Dole campaign staff. Similarly, the Committee cannot determine on this limited factual record whether the substance of the ads or the markets in which they aired were selected based on information obtained from the Dole campaign staff. As a result, the Committee cannot draw any

¹¹⁴ Memorandum from Haley Barbour, RNC Chairman to Curt Anderson, RNC Political Director, June 5, 1996 (Ex. 38). The FEC allows political parties to spend a mix of soft and hard money on television issue advocacy. FEC Advisory Op. 1995-25, Fed. Election Camp. Fin. Guide (CCH) ¶ 6162 at 12,109 (August 24, 1995).

¹¹⁵ *Id.*

¹¹⁶ Barbour was deposed, and testified before the Committee at public hearings, but was not questioned about this memorandum.

meaningful conclusions about the allegations that the RNC coordinated its issue advocacy expenditures with the Dole campaign.

At the outset of the investigation, there were also several press accounts that cited documents obtained from the Minority staff and alleged that Triad participated in illegal schemes to funnel contributions to candidates from donors that had already contributed the maximum allowed by law to those candidates. For instance, several stories focused on the in-laws of Senator Sam Brownback.¹¹⁷ The press reports noted that FEC records indicate that, after John and Ruth Stauffer had donated the maximum allowed by law to Senator Brownback, they donated \$37,500 to eight PACs. Within days of those contributions, the eight PACs contributed \$36,000 to Senator Brownback's campaign.¹¹⁸

Carolyn Malenick and most of the principal witnesses with knowledge of Triad's activities refused to answer substantive questions under oath during scheduled depositions.¹¹⁹ The Committee did not interview or depose the Stauffers or any of the persons associated with the eight PACs. There is no evidence that Senator Brownback had any knowledge of or involvement with these activities.

In another example, the press reported that Robert Riley, Jr., donated \$1,000 to the 1996 primary campaign of his father, Robert Riley, Sr., a successful Republican congressional candidate in the third district of Alabama. After consulting and hiring Triad, Robert Riley, Jr., donated

¹¹⁷ James Kuhnhenh, "Inquiry Sought into Donations by Brownback In-laws," *Kansas City Star*, May 2, 1997, p. A6.

¹¹⁸ *Id.*

¹¹⁹ *E.g.*, Deposition of Carolyn Malenick, Sept. 16, 1997, pp. 5-29; Deposition of Lyn Nofziger, Sept. 16, 1997, pp. 6-22; Deposition of Carlos A. Rodriguez, Sept. 17, 1997, pp. 5-23.

\$1,000 each to five conservative leaning PACs in May of 1996. Several days after the donations, four of the five PACs donated a total of \$3,500 to Representative Riley's campaign.¹²⁰

The Committee obtained an interview with Robert Riley, Jr. He stated that his contributions to the Triad-recommended PACs were not given with the guarantee or understanding that the PACs would return the contributions to his father's campaign.¹²¹ Riley stated that Malenick was very emphatic that she could not promise that Triad or its PAC coalition would help his father. Malenick convinced Riley that contributing to conservative PACs would be the best way to assist the Republican cause generally and thereby ensure a Republican majority in Congress.¹²²

Riley vigorously denied that his contributions to the PACs were an effort to illegally funnel money to his father's campaign in order evade the individual contribution limits of federal law. Riley asserted that his purpose in supporting the conservative PACs was to advance, in general, the conservative agenda through the overall support of sympathetic candidates. His purpose in consulting with Carolyn Malenick was to identify which PACs would best achieve these goals, relying on the research and advice of Triad.¹²³ The Committee found no testimony or documents to contradict Riley's account of his contributions.¹²⁴

¹²⁰ Kuhnhenh, "Inquiry Sought into Donations by Brownback In-laws," *Kansas City Star*, at p. A6. The four PACs were the Free Congress PAC, the American Free Enterprise PAC, the Citizens Allied for Free Enterprise PAC, and the Faith, Family and Freedom PAC. *Id.*

¹²¹ Memorandum of Interview of Robert R. Riley, Jr., Sept. 16, 1997, p. 2.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ In fact, Riley provided the Committee with copies of affidavits from Billie Joe Johnson, Jr., his father's campaign manager, and Donna Rose Suggs, his father's campaign treasurer, which corroborated his account of the contributions. Affidavit of Billie Joe Johnson, Jr. (Ex. 39); *see also* Affidavit of Donna

Even though the timing and amount of the contributions in these examples suggest that the PACs served as conduits that allowed the donors to evade the \$1,000 contribution limit, there is no evidence that the PACs or donors understood that their donations would be passed back to a particular candidate. In fact, in the case of Robert Riley, Jr., Riley emphatically denied that there was ever such an agreement between himself and the four PACs who later donated to his father's campaign. The circumstantial evidence cited in the press reports about Representative Riley and Senator Brownback is simply insufficient to draw an inference of illegality, and there is no evidence to suggest the campaigns had any knowledge of these activities.

Relying solely on a suspicious pattern of donations is unpersuasive by itself, because the pattern is far too common to support a finding of wrongdoing. For example, on June 29, 1996, Marilyn Williams of West Bloomfield, Michigan contributed \$1,000 -- the maximum allowed by law -- to the primary campaign of Sandy Freedman. Freedman was seeking the Democratic nomination for Florida's eleventh congressional district. On August 2, 1996, Williamson donated \$3,000 to Emily's List, a PAC that exclusively supports female Democratic candidates. Eleven days later, on August 13, 1996, Emily's List donated \$3,000 to Sandy Freedman's campaign.¹²⁵

Similarly, on June 3, 1996, Barry Shier of Las Vegas, Nevada contributed \$1,000 each to the primary and general election campaigns of Robert G. Torricelli, the Democratic candidate for Senate in New Jersey. Shier is an executive with Mirage Resorts, Inc., in Atlantic City, New

Rose Suggs (Ex. 40). The affidavits were prepared in connection with an FEC complaint, MUR 4633, filed against Robert Riley, Jr. by James Anderson of Montgomery, Alabama.

In the affidavits, Johnson and Suggs state that they received PAC checks from Triad but that they had no discussions with Triad indicating that donations from Robert Riley, Jr., would be funneled through the PACs back to his father's campaign. *Id.*

¹²⁵ Federal Election Commission Records for Emily's List and Marilyn Williamson (Ex. 41).

Jersey. On June 4, 1996, the day after Shier's donations, the Torricelli primary and general election campaigns each received \$1,000 donations from the Mirage Resorts, Inc., Political Action Committee, a.k.a., Golden Nugget PAC. Perhaps coincidentally, Shier donated \$2,000 to the Golden Nugget PAC two days later on June 6, 1996.¹²⁶

On June 30, 1995, Don Tyson of Springdale, Arkansas donated \$1,000 to the primary campaign of Tom Harkin, the Democratic candidate for Senate in Iowa. Tyson is the Chairman of Tyson, Inc., a food processing company that is one of the largest wholesale distributors of chicken in the country. On July 18, 1995, several weeks after Tyson contributed to the Harkin campaign, he donated an additional \$1,000 to the National Broiler Council Political Action Committee. Nine days later, on July 27, 1997, the PAC contributed \$1,000 to the Harkin campaign.¹²⁷

On September 28, 1995, Charlotte Lowder of Montgomery, Alabama contributed \$1,000 -- the maximum allowed by law -- to the primary campaign of Roger Hugh Bedford, the Democratic candidate for Senate in Alabama. Several months later, on December 15, 1995, she donated another \$1,000 to the Colonial Bancgroup Inc. Federal Political Action Committee ("Colonial Fed PAC"). Only four days later, on December 19, 1995, the Colonial Fed PAC contributed \$1,000 to the Roger Hugh Bedford for U.S. Senate primary campaign.¹²⁸

As with Triad, the Committee cannot conclude that Emily's List, the Golden Nugget PAC, the National Broilers PAC, and the Colonial Fed PAC participated in schemes designed to evade the individual contribution limits established by federal law. Likewise, the Committee does not

¹²⁶ Federal Election Commission Records for Barry Shier and the Golden Nugget PAC (Ex. 42).

¹²⁷ Federal Election Commission Records for Don Tyson and the National Broiler Council PAC (Ex. 43).

¹²⁸ Federal Election Commission Records for Charlotte Lowder and the Colonial Fed PAC (Ex. 44).

believe that there is evidence sufficient to conclude that the federal candidates who received donations from these PACs were party to a conspiracy designed to evade the individual contribution limits.

The Committee gathered documents that -- at least initially -- suggest that some national labor unions participated in conspiracies to evade contribution limits. Under federal election law, multi-candidate PACs can donate a maximum of \$5,000 per election, per candidate committee.¹²⁹ One way of circumventing this limit is to create several different PACs that are controlled by a common entity or source. In order to prevent such a scheme, FECA contains “affiliation” rules that impose a single limit on “all contributions made by political committees *established or financed or maintained or controlled* by any corporation, labor organization, or any other person.”¹³⁰

FEC regulations identify a number of circumstantial factors probative of affiliation between PACs, including 1) common or overlapping membership, 2) common or overlapping officers or employees, 3) the direct provision of funds or goods on an on-going basis from one PAC to another, 4) an active or significant role by one PAC in the formation of the other and, perhaps most importantly, 5) similar patterns of contributions.¹³¹ Using these factors as a guidepost, the Committee found circumstantial evidence that the National Council of Senior Citizens (“NCSC”), a § 501(c)(4) organized ostensibly to lobby on behalf of America’s elderly,¹³²

¹²⁹ 2 U.S.C. § 441a(a)(2)(A).

¹³⁰ *Id.* § 441a(a)(5) (emphasis added).

¹³¹ 11 C.F.R. § 110.3.

¹³² The NCSC receives the bulk of its annual revenue from the federal government. In fiscal year 1996, the NCSC received \$34 million in grants from the Department of Labor as part of its Senior Community

was affiliated with the AFL-CIO during the 1996 elections in a manner that allowed the latter to circumvent the \$5,000 contribution limit for PACs.

This scenario is illustrated by the campaign of Thomas Fricano, the Democratic congressional candidate for the twenty-seventh district of New York. Fricano is a former executive of the United Auto Workers (“UAW”). The Committee on Political Education (“COPE”), the AFL-CIO’s PAC, contributed \$5,000 to Fricano’s primary campaign on June 19, 1996, the maximum allowed by law. The NCSC’s PAC followed COPE’s lead with an additional \$5,000 donation to Fricano’s primary campaign on September 5, 1996.¹³³

On its face, there is nothing suspicious about two PACs donating the maximum contribution to the same political candidate. In this case, however, the evidence suggests that the NCSC is affiliated with the AFL-CIO so that both PACs’ contributions are limited in the aggregate to \$5,000 per candidate, per election.¹³⁴ There is evidence that national labor unions helped create the NCSC. Virtually the entire NCSC Board of Directors and local directors are officials of AFL-CIO affiliated unions.¹³⁵

The most significant evidence of affiliation, however, lies in the donation and contribution patterns. The NCSC’s PAC received only seven donations from individuals in 1996, and these

Service Employment Program. In contrast, the NCSC’s lobbying budget for 1996 totaled only \$4.4 million. The Lobbying Disclosure Act of 1995 prohibits lobbying activities by groups, organized under § 501(c)(4), that receive federal funding. Therefore, the NCSC divided its functions between a § 501(c)(4) and a PAC in order to spend only nonfederal funds on political activity.

¹³³ Federal Election Comm’n Records for COPE and the NCSC PAC (Ex. 45).

¹³⁴ 2 U.S.C. § 441a(a)(2)(A),(5).

¹³⁵ For example, Eugene Glover, the NCSC’s President, is the former Secretary-Treasurer of the International Association of Machinists. Steve Protulis, the NCSC’s Executive Director, is the former National Coordinator of Support Groups for COPE.

were all from employees or officers of the NCSC. The remainder of the funds donated to the NCSC's PAC derived from COPE and the PACs of AFL-CIO affiliated unions, almost all of which had already donated to COPE itself. As a result, 96% of the funds flowing into the NCSC's PAC in 1996 derived from union sources. In addition, all of the candidates that received contributions from the NCSC's PAC were similarly supported by COPE.¹³⁶

This pattern of donations to the NCSC PAC and of contributions by the PAC to AFL-CIO supported candidates suggests -- at least circumstantially -- that the NCSC acted in concert with the AFL-CIO during the 1996 election cycle. If the NCSC was affiliated with COPE, as the evidence suggests, then the AFL-CIO could use the NCSC as a conduit to evade the \$5,000 contribution limit set by federal law. Indeed, the Fricano campaign discussed above illustrates how affiliated PACs can potentially funnel additional donations to candidates after one PAC has donated the maximum of \$5,000.

While evidence of this affiliation scheme is compelling, the Committee believes that it would be inappropriate to conclude that the AFL-CIO and the NCSC acted illegally, even though both the AFL-CIO and the NCSC refused to comply with Committee subpoenas requesting documents. The AFL-CIO defied deposition subpoenas and thereby prevented the Committee from gaining sworn testimony from persons involved in these contributions. As a result, the Committee does not possess the full documentary record about these contributions.

In summary, because many of the nonprofit groups refused to cooperate with the Committee and the Committee had no effective means to compel compliance, it does not possess a sufficient factual record to make findings about allegations of illegal and improper conduct by

¹³⁶ Ex. 45.

nonprofit groups during the 1996 elections. As a result, the Committee does not believe that it can draw sustainable conclusions on the many serious allegations regarding nonprofit activity that arose out of the 1996 elections.