



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 3, 1999

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Carol Laham
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

RE: MUR 4736
Rick Hill for Congress Committee
and Gary F. Demaree, as treasurer

Dear Ms. Laham:

On April 13, 1998, the Federal Election Commission ("the Commission") notified Rick Hill for Congress Committee and Gary F. Demaree, as treasurer, (referred to collectively hereinafter as "the Committee") of a complaint designated as MUR 4736, alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act").

In considering MUR 4736, the Commission has found reason to believe that the Committee violated 2 U.S.C. § 434, § 441a(f) and § 441b, which are provisions of the Act. The Factual and Legal Analysis, which formed the basis for the Commission's finding, is attached for your information.

The underlying basis for the Commission's findings in MUR 4736 is substantially similar, and in many respects identical, to the basis for the Commission's June 1998 findings against the Committee in MURs 4568, 4633 and 4634. Due to the related nature of these MURs, the Commission has decided to investigate MUR 4736 as part of its investigation in MURs 4568, 4633 and 4634. Future communications regarding this MUR will refer to MURs 4568, 4633, 4634 and 4736 as being part of a single investigation.

For your information, this Office has considered and will treat the Committee's responses and submissions in MURs 4568, 4633 and 4634 as if they also had been filed in MUR 4736. You also may submit additional factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such additional materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements

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Rick Hill for Congress Committee and
Gary F. Demarre, as treasurer
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should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed to conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Mark Shonkwiler or Marianne Abely at (202) 694-1650.

Sincerely,



Scott E. Thomas
Chairman

Enclosure:
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Rick Hill for Congress Committee
and Gary F. Demaree, as treasurer

MUR: 4736

I. GENERATION OF THE MATTERS

MUR 4736 originated with a complaint filed by Bob Ream, as chairman of the Montana Democratic Committee ("MDC"). The complaint cites what the MDC alleged to be specific violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), committed during the 1996 Montana at large congressional race between Rick Hill and Bill Yellowtail. The complaint focuses on the activities of the Triad Management Services, Inc. ("Triad") and two non-profit corporations, Citizens for Reform ("CR") and Citizens for the Republic Education Fund ("CREF"), which are managed by Triad.

The Commission currently is investigating similar allegations as part of an ongoing investigation in MURs 4568, 4633 and 4634. The Commission has determined that it will investigate MUR 4736 jointly with MURs 4568, 4633 and MUR 4634.

II. FACTUAL AND LEGAL ANALYSIS

During the latter part of 1996 and throughout 1997, there were a number of press accounts concerning the activities of Triad and two non-profit groups, CR and CREF, with which it appears that Triad worked in connection with the 1996 federal elections. In summary, it was reported that during both the primary and general elections, Triad came to the aid of a substantial number of Republican congressional campaigns (more than

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twenty-five), including the Rick Hill for Congress Committee, after learning of their needs through a process it referred to as a "political audit."

The assistance that was reportedly provided by Triad, CR and CREF came in several different forms. Triad is reported to have controlled the efforts of CR and CREF in raising funds for, as well as producing and broadcasting, over \$3 million worth of political advertising during the weeks prior to the 1996 federal elections in what appears to have been an effort to influence the outcome of certain elections. It has been reported that at least some of these advertisements were coordinated with particular congressional campaigns. Triad also reportedly communicated the results of its political audits, along with solicitations for contributions to specific campaigns, to wealthy individuals who received periodic "Triad Fax Alerts" and forwarded contributions to different campaign committees.

If true, the allegations summarized above suggest that there may have been a pattern of activity on the part of Triad, CR and CREF which may have had the effect of circumventing the registration and reporting requirements, as well as the contribution prohibitions and contribution limitations, established by the FECA. In connection with this activity, it appears that the Rick Hill for Congress Committee may have received either excessive or prohibited contributions, and also may have failed to report certain in-kind contributions.

A. THE APPLICABLE LAW

The Act provides that no person, including a political committee, may contribute more than \$1,000 per election to any candidate for federal office or his authorized committee. 2 U.S.C. § 441a(a)(1). The Act also limits to \$5,000 the amount that a

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qualified multicandidate committee may contribute to a candidate or their authorized committee.¹

For the purposes of the Act, “expenditures 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 a contribution to such candidate.” 2 U.S.C. § 441a(a)(7). The Commission has ruled that expenditures for communications which favorably discuss candidates in an election-related context and are coordinated with such candidates constitute in-kind contributions to the candidates. *See* Advisory Opinion 1988-22.

The Act further provides that a candidate or his authorized committee may not knowingly accept, and a political committee may not knowingly make, a contribution or expenditure in violation of the provisions of the Act. 2 U.S.C. § 441a(f).

The Act also requires any organization which qualifies as a political committee, including the authorized committee of a candidate, to file periodic reports of all receipts and disbursements with the Commission. 2 U.S.C. § 434.

Notwithstanding certain narrow exceptions, the Act prohibits corporations from making contributions in connection with any election.² 2 U.S.C. § 441b(a). Similarly,

¹ A multicandidate committee is a committee which has been registered with the Commission for at least six months, has received contributions from more than 50 persons, and has made contributions to five or more candidates for federal office. 2 U.S.C. § 441a(a)(4).

² Corporations are prohibited from making “any direct or indirect payment, distribution, loan, advance, deposit, or gift of money or any services, or anything of value (except a loan of money by a bank in accordance with applicable laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any federal election.” 2 U.S.C. § 441b(b)(2).

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candidates and political committees are prohibited from accepting corporate contributions, including expenditures attributable as in-kind contributions, in connection with any election. 2 U.S.C. § 441b(a).

Corporations also are prohibited from “facilitating the making of contributions” to candidates or political committees. 11 C.F.R. § 114.2(f). Facilitation means using corporate resources or facilities to engage in fundraising activities in connection with any federal election. *Id.* In this same context, a candidate, political action committee or other person is prohibited from knowingly accepting or receiving any prohibited contribution made or facilitated by a corporation. 11 C.F.R. § 114.2(d).

B. FACTS

1. Triad, CR and CREF

Triad, CR and CREF all appear to have been created during the 1996 election cycle. Triad reportedly was founded by Carolyn Malenick, who previously had worked as a fund-raiser for various political groups and campaigns, including, *inter alia*, Oliver North’s 1994 bid for the US Senate. At different times, Ms. Malenick reportedly has described herself as the President and Chief Executive Officer of Triad; the Director of Triad; and the Chief Operating Officer of Triad. *See, e.g.*, 11/19/97 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Triad advertises itself as a political consulting firm that provides services to donors interested in making political contributions to conservative candidates, campaigns, issues and projects. Triad attempts to distinguish itself from other political consulting firms by claiming that it only works for donors, not for candidates or campaigns.

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Press accounts indicate that Triad representatives have described the company as operating in a manner akin to a stock brokerage for conservative political donors, providing research and analysis of upcoming elections, and dispensing advice on how to maximize the impact of political contributions. *See* 9/28/96 National Journal article. In sum, Triad reportedly seeks to give wealthy contributors advice on how to get the “biggest bang for the buck” with their contributions by telling them which conservative candidates look like winners and which ones need help. *Id.*

CR and CREF reportedly were founded in mid-1996. *See*, 10/29/97 Minneapolis Star-Tribune article. Both groups are reported to initially have represented themselves as non-profit corporations formed under the social welfare organization provisions of 26 U.S.C. § 501(c)(4). *See* 10/24/97 Denver Post article. A newspaper article stated that CR’s application for non-profit tax status was granted, but that CREF never made the necessary filings with the IRS. *Id.* In late 1997, both groups reportedly took action to change their tax status to that of political organizations under 26 U.S.C. § 527. *Id.*

Although CR and CREF purport to have been founded by Peter Flaherty and Lyn Nofziger respectively, it has been widely reported that CR and CREF are run by Triad. *See, e.g.*, 10/29/97 Minneapolis Star-Tribune article; and 10/8/97 The Hill article. Indeed, Ms. Malenick responded to news reports regarding Triad’s alleged control of CR and CREF by acknowledging that Triad had “management contracts” to run various CR and CREF projects. *See* November 19, 1997 Carolyn Malenick letter-to-the-editor of the Dayton Daily News.

Further indications of Triad’s apparent control of CR and CREF can be found in documents attached as exhibits to the Final Report on Investigation of Illegal or Improper

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Activities in Connection with 1996 Federal Election Campaigns by the Senate Committee on Governmental Affairs ("Senate Report"). These include what appear to be the "management contracts" to which Ms. Malenick referred. These contracts appear to reflect complete control by Triad over the execution of the CR and CREF "public education program[s]." *See* 9/26/96 Triad Consulting Agreements with CR and CREF (stating that "TRIAD shall be free to decide the means by which it will provide the Services").

One newspaper account reported that a Triad spokesman stated that the CR and CREF ad campaigns were intended as a direct response to the AFL-CIO's "issue ad" campaigns in the districts of vulnerable Republican candidates. *See* 10/29/97 Minneapolis Star-Tribune article. The Triad spokesman also is reported to have said that "[i]f there had been no AFL-CIO campaign, there would have been no Citizens for the Republic Education Fund issue campaign." *Id.*

2. Triad's Political Audits

At least one news account has reported that Triad personnel and consultants performed what Triad labeled as "political audits" on approximately 250 campaigns during the 1996 election cycle. *See* 10/29/97 Minneapolis Star-Tribune article. This news account also reported that a Triad spokesperson described the purpose of these political audits, many of which reportedly included meetings with the candidate or senior campaign officials, as the identification of "races where donors could support candidates who shared their ideological views and had a viable campaign." *Id.*

The political audit reports released as exhibits to the Senate report suggest that Triad conducted a standardized review of congressional campaigns. The first point

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reflected in many of these audit reports was a date on which a Triad representative met with someone from the campaign to obtain the information contained in the audit. Most of the audit reports included as Exhibits to the Senate Report followed a standard format discussing some or all of the topics listed below.

FORMAT OF TRIAD "POLITICAL AUDIT" REPORT

- I. **Finances** - (assessment of planned expenditures, current cash-on-hand and possible fundraising shortfalls)
- II. **Polling** - (review of polling trends in race)
- III. **Key Issues** - (list of issues considered critical to the campaign's success)
- IV. **Needs** - (campaign's self-identification of specific nonmonetary needs; e.g., big name speaker to attract supporters to rally)

General Observations (Comments on campaign organizations)

Good Points about Campaign - (Subjective analysis of strengths)

Bad Points about Campaign - (Subjective analysis of weaknesses)

Prospect for Victory - (Assessment of Candidate's Chance to Win)

Action - (Follow-up Actions for Triad personnel)

Conclusion (Recommendation on support for campaign)

See, e.g., Triad political audit reports attached to Senate Report.

Indeed, it appears that as part of these audits, Triad met with representatives from each of the campaigns specifically addressed by the MURs, including the Rick Hill for Congress Committee, to discuss the specific strengths and weaknesses of their campaign, and to learn what help the campaign needed to successfully compete in the upcoming election. *See* Triad Audit Reports. Information obtained by the Commission, including

the audit reports, suggest that in some instances, after completing an audit, Triad may have had ongoing contacts with some campaigns to assess the developing prospects and needs.

Triad's political audit of the Hill campaign, which is the focus of MUR 4736, was performed by Carlos Rodriguez on September 24, 1996.³ The audit memorandum was apparently based on a single meeting that took place at the campaign's headquarters in Helena, Montana. During the meeting, the Hill staffers reportedly gave the Triad consultant access to news clippings which contained stories about Mr. Yellowtail admitting to slapping his wife, having once fallen behind on child support payments, and having burglarized a camera store while a college student. See 11/25/97 Associated Press Political Service article. These topics are prominently listed in the Triad audit report under the heading of "Key Issues" - "Anti-Yellowtail". The document also states that, in addition to a direct mail campaign and \$15,000 for a phone bank, the number one item on the list of the Hill campaign's "Needs" was a "3rd Party to 'expose' Yellowtail." *Id.* The memo concludes with Mr. Rodriguez stating that he would monitor the campaign closely and that he was recommending "full involvement by Triad clients."

It appears that rather than waiting for donors to make specific requests for information about a particular campaign, Triad periodically sent general "Fax Alerts" to prospective donors which extolled the virtues of various campaigns and provided Triad's recommendations for political contributions. Based on documents attached as exhibits to

³ Certain Triad generated documents identify Mr. Rodriguez as Triad's Political Director. Reportedly in addition to serving as Rodriguez and Company's owner and Chief Operating Officer, Mr. Rodriguez was also on the Board of Directors of CREF. See The MDC Complaint.

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the Senate Report, it appears that Triad sent no fewer than sixty (60) separate fax alerts between February and December 1996. *See* Triad Fax Alert Index. Further, while the Commission currently lacks information as to how many potential contributors received each Triad Fax Alert, one of the fax alerts in the middle of the known range (No. 28 out of 60) notes that "over 160 businessmen and women have been added to the Fax Alert in the last 18 months." *See* 10/10/96 Triad Fax Alert titled "Countdown to Election Day: 27 Days."

As discussed below, Triad appears to have used the information derived from its "political audits" in a number of different ways that may have resulted in excessive, prohibited and/or unreported in-kind contributions to the Rick Hill for Congress Committee.

a. **Advertising Campaigns**

It appears that, on at least some occasions, Triad used the knowledge of the needs of specific congressional campaigns gained through its political audits in managing a number of political advertising campaigns sponsored by CR and CREF. Indeed, documents attached to the Senate Report suggest that Triad solicited donors to provide financial support for the CR and CREF campaigns with explicit representations that such advertisements would help re-elect candidates whose needs had been reviewed in a Triad audit report. Further, it appears that Triad may have used information obtained in the political audits to select some, if not all, of the congressional districts in which advertisements were run; and to select some, if not all, of the issues raised in CR and CREF advertisements.

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During the latter half of 1996, Triad began to solicit prospective contributors for money to fund the advertising campaigns by what it described as 501(c)(4) social welfare organizations for the stated purpose of countering organized labor's efforts to defeat various Republican candidates. *See* 9/27/96 and 10/24/96 Triad Fax Alerts. Specifically, Triad sent Fax Alerts to an unidentified number of potential contributors informing them of the opportunity to fund last minute CR and CREF advertising campaigns designed to help Republican candidates whose election or re-election was purportedly endangered by organized labor spending.⁴

For example, in one of its Fax Alerts, Triad states that the "the left has wasted their resources by buying Christmas cards in July" while Triad has conserved its resources so that CR and CREF "can begin the fall harvest." Triad Fax Alert, dated 9/27/96. (emphasis in original). As part of an effort to convince contributors that it is not too late for the CR and CREF efforts to effectively counter union-sponsored advertisements, Triad reminds readers of the Fax Alert that "People do not start focusing attention on the General Elections until the political season begins following Labor Day which has come and gone." *Id.* (emphasis added).

Based on documents attached to the Senate Reports, it appears that CR and CREF spent approximately \$3 million on political advertising campaigns that may have been intended to influence what has been reported as somewhere between twenty-six (26) and thirty-four (34) House and Senate races. *See* 10/29/97 Minneapolis Star-Tribune article;

⁴ A 10/7/96 Triad Fax Alert states that corporate contributions are accepted and welcome; and that there is no limit on the amount that an individual or corporation can contribute to a 501(c)(4) organization. *See* 10/7/96 Triad Fax Alert.

10/29/97 Wall Street Journal article; and 10/30/97 Washington Post article. *See also*, undated Exhibit to Senate Report summarizing twenty-six races in which CR and CREF reportedly sponsored political advertising. In different congressional districts, the CR and CREF advertising campaigns reportedly included (in order of frequency) television, radio, direct mail and phone bank efforts. *Id.*

A good example of the Triad-managed political advertising is a television advertisement that CR reportedly ran on Montana television stations shortly before the 1996 congressional election between Republican Rick Hill and Democrat Bill Yellowtail. The text of the CR-sponsored advertisement was reported to the Commission as follows:

Television Ad Transcript

Who is Bill Yellowtail ?

He preaches family values, but he took a swing at his wife.

Yellowtail's explanation ? He only slapped her, but her nose was not broken.

He talks law and order, but is himself a convicted criminal.

And though he talks about protecting children, Yellowtail failed to make his own child support payments, and then voted against child support enforcement.

Tell Bill Yellowtail you don't approve of his wrongful behavior.

See Complaint in MUR 4568.⁵

⁵ The CR ad refers to facts whose truth apparently are not contested by Mr. Yellowtail, and are a matter of public record. CR's last minute efforts to inform the public of these unfavorable facts about Mr. Yellowtail may have had a significant impact on the election. Mr. Yellowtail reportedly was leading Mr. Hill in the polls prior to the CR advertising campaign, but eventually lost the election. Mr. Hill won with 50% of the vote, as opposed to 46% for Mr. Yellowtail and 4% for a third party candidate.

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While it is unclear at this time the extent to which the information in the audit reports actually may have guided the advertising efforts by Triad, CR, and CREF, the Rick Hill audit report attached as an exhibit to the Senate Report, as well as the other Triad audit reports, raise some important questions in this regard. In the complaint in MUR 4568 the Rick Hill for Congress Committee denies having any involvement in the CR advertisements regarding Yellowtail. Yet the Triad audit report which discusses the same issues as the CR advertisement appears to have been based on a meeting with representative(s) of the Hill Committee. *See* Rick Hill audit report. CR appears to have initiated its anti-Bill Yellowtail advertising campaign, which reportedly cost more than \$100,000, shortly after the date on which Ms. Malenick received the political audit memorandum regarding the Hill Committee's needs. *See* Spreadsheet on cost of different Triad-managed advertising campaign attached to Senate Report.

The respondent committee may have supplied specific information and material, including polling data, that helped Triad focus on this race as being uniquely worthy of assistance and established the value of developing negative advertising that the campaign itself could not afford or did not wish to pursue. The reason why the campaign needed a "3rd party to expose Yellowtail" may stem from the pledge that Hill made during the spring of 1996 when the information relating to Bill Yellowtail's past indiscretions first became public. Newspaper reports at that time quoted Hill as saying "I don't think it will be appropriate for these issues to be rehashed in the fall campaign." *See* The MDC Complaint. Yet despite this promise, it appears that once the general election campaign got underway, the Hill committee devoted resources to analyzing voter reaction and response to these very same issues as indicated by the survey and polling done in August

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of 1996. Although the Hill campaign used polling information to confirm the issues of spousal abuse and shop lifting as potentially valuable tools in setting their candidate apart from Mr. Yellowtail, there is no indication that the Committee itself sponsored any ads that mentioned these topics.

The available information has raised questions as to whether Triad and CR may have provided the Rick Hill campaign with additional support beyond producing advertisements, namely the sponsorship of anti-Yellowtail phone banks. Materials in the possession of the Commission indicate that at least five Montana residents were contacted in the final weeks of the campaign by a phone bank operation apparently sponsored by CR. *See* The MDC Complaint. These voters reported that these telephone calls focused on Bill Yellowtail and the allegations of spousal abuse in his past. CR's sponsorship of such a phone bank raises questions as to whether this may have been the means by which Triad fulfilled the Hill committee's stated need for "15k for phone banks" as articulated in the audit report.

b. Fundraising Efforts

It appears from the text of the audits attached as exhibits to the Senate Report and from examples of the solicitations set forth in what Triad called "Fax Alerts," that the audits were also a source of information based on which Triad decided where to focus its fundraising resources. The Triad Fax Alerts urge the recipients to make contributions and otherwise support various Triad-recommended candidates in both the primary and general elections. *See* Triad Fax Alerts attached to Senate Report. The Rick Hill for Congress Committee is mentioned in several of the Triad Fax Alerts.

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The materials currently in the possession of the Commission indicates that the Montana congressional race, which is at the heart of MUR 4736, was mentioned in at least five Triad Fax Alerts. The Alerts solicit recipient client support for the Hill campaign and several specifically mention Bill Yellowtail's past. The October 8, 1996 Fax Alert for instance, which highlights the Montana race under the headline "Today's House Race News Flash", reports that based on the results of the September 23, 1996 Hill poll Yellowtail (who is described as a "wife beater") was ahead by 3%. The document goes on to note what it terms Yellowtail's "lack of suitability" to represent the "values of Montana" and "his disrespect for women." See 10/8/96 Triad Fax Alert. Another Fax Alert, apparently citing the results of the September 20, 1996 poll conducted by the Hill campaign, again show a 3% difference between the candidates. Bill Yellowtail is described in the publication as "...a convicted felon, wife beater and deadbeat dad." One Fax Alert states that the AFL-CIO had become so concerned about the race that they were investing \$100,000 in advertising "distorting Hill's message of pro-economic and individual freedom."

A final component of Triad's service to various congressional campaigns appears to involve assisting an unspecified portion of the donors it solicited in physically forwarding their contribution checks to the recipient campaign or organization. Indeed, Triad often concluded its Fax Alerts with the recommendations that recipients "[i]mmediately contact the TRIAD office so we know when to expect your checks and the amounts you will contribute. Because each race has unique dynamics, please contact TRIAD before determining which races to support. . . . PLEASE MAIL ALL CHECKS

TO THE TRIAD OFFICES.” See Triad Fax Alert titled “96 Primary Election Alert - July 18, 1996.”

C. ANALYSIS

Given the allegations and information in each complaint, response, and additional information from public sources, the Commission has made findings against the Rick Hill for Congress Committee and Gary F. Demaree, as treasurer, under two alternative theories regarding the status of Triad; one as a political committee which may have made excessive contributions in violation of 2 U.S.C. § 441a(a)(1); and the other as a corporation which may have made prohibited expenditures and contributions in violation of 2 U.S.C. § 441b.

1. Theory One: Triad and CR as Political Committees

From the information the Commission has obtained to date, it appears that Triad and CR made coordinated expenditures both in connection with Triad’s fundraising and CR’s advertising campaign during the 1996 election cycle which constitute in-kind contributions to the beneficiary candidates and committees, including the Rick Hill for Congress Committee, and that these in-kind contributions may have exceeded the \$1000 per election limit imposed by the Act. 2 U.S.C. § 441a(a)(7) and § 441a(a)(1)(a).⁶

⁶ Because Triad and CR never registered with the Commission as a political committee or committees, they do not meet the requirements to qualify as a multicandidate committee which can make contributions of up to \$5000. 2 U.S.C. § 441a(a)(2).

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The information available to date appears to raise questions as to whether the Rick Hill for Congress Committee and Gary F. Demaree, as treasurer, accepted excessive contributions from Triad and CR in the form of the Triad fundraising efforts (including the Triad Fax Alerts) and the CR anti-Bill Yellowtail advertising campaign, both of which appear to have been coordinated expenditures based on information learned through Triad's "political audit" of the Rick Hill campaign. 2 U.S.C. § 441a(a)(7). Given what is known about the costs associated with these efforts, the available information suggests that if Triad and/or CR is a political committee, the Rick Hill for Congress Committee and Gary F. Demaree, as treasurer, may have accepted, and failed to report, in-kind contributions which exceeded the \$1000 limit established by the Act. 2 U.S.C. § 441a(f).

2. Theory Two: Corporate Contributions

If Triad and CR ultimately are not found to be political committee(s), the available information suggests that Triad, CR and Carolyn Malenick, as the principal officer of Triad, either made or facilitated prohibited corporate contributions to various beneficiary candidates and committees, including the Rick Hill for Congress Committee, in violation of 2 U.S.C. § 441b.

The information currently available also raises questions as to whether the Rick Hill for Congress Committee and Gary F. Demaree, as treasurer, accepted contributions that were facilitated by Triad using its corporate resources in violation of 2 U.S.C. § 441b and 11 C.F.R. 114.2(f). Corporations are prohibited from using their resources or facilities to engage in fundraising activities in connection with any federal election, other

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than specific exceptions made for separate segregated funds, which do not apply in this case.⁷ 11 C.F.R. § 114.2(f)(1).

The available information suggests that the Rick Hill for Congress Committee may have accepted in-kind contributions from Triad and other contributions that were facilitated by Triad. First, the Triad Fax Alerts appear to represent a fundraising effort designed to help different candidates for federal office that was planned, organized and carried out by Triad's employees, apparently at the direction of Triad management, and with corporate resources for which Triad apparently did not receive advance payment. Second, Triad sent fundraising solicitations for specific candidates named in the Triad Fax Alerts to a list of its clients without receiving advance payment for the use of that list. Finally, Triad may have acted as a corporate conduit by collecting and forwarding checks for different candidates mentioned in its Fax Alerts.⁸

⁷ Examples of prohibited corporate facilitation include ordering or directing subordinates to plan, organize or carry out fundraising projects as part of their work responsibilities using corporate resources unless the corporation receives advance payment for the fair market value of such services. 11 C.F.R. § 114.2(f)(2)(i)(A). Another example of prohibited facilitation is to use a corporate list of customers, clients or vendors to solicit contributions, unless the corporation receives advance payment for the fair market value of the list. 11 C.F.R. § 114.2(f)(2)(i)(C). A third example of prohibited corporate facilitation is to collect and forward contributions earmarked for a candidate, unless such activity is conducted by a separate segregated fund. 11 C.F.R. § 114.2(f); § 114.2(f)(3).

⁸ The current record does not contain evidence that Triad received compensation for the services it provided in connection with each campaign, much less compensation equivalent to the normal and usual charge for such services. Triad's statements suggest that it is exempt from the prohibition on acting as a conduit, because it was acting as an agent of the donor. The Commission believes that Triad's position is incorrect as a matter of law. The exemptions to the definition of the term "conduit or intermediary" provided for agents is limited to persons or entities that represent a recipient organization, and do not apply to groups purporting to represent a donor. *See* 11 C.F.R. § 110.6(b)(2)(i).

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The information available to date appears to raise questions as to whether the Rick Hill for Congress Committee and Gary F. Demaree, as treasurer, accepted prohibited corporate contributions or facilitation in connection with the Triad fundraising efforts (including the Triad Fax Alerts) and the CR anti-Bill Yellowtail advertising campaign, both of which appear to have been coordinated expenditures based on information learned through Triad's "political audit" of the Rick Hill campaign. 2 U.S.C. § 441a(a)(7).

3. Conclusions

The available information suggests that the CR/CREF anti-Bill Yellowtail advertising campaign was a coordinated expenditure that resulted from information that the Hill Committee provided to Triad during the "political audit" of its campaign. Further, it appears that the Hill Committee may have received uncompensated fundraising assistance from the Triad Fax Alerts and may also have been the beneficiary of a CR sponsored phone bank operation. Thus, the Hill Committee appears to have violated the Act by accepting what can alternatively be characterized as excessive in-kind contributions or prohibited corporate contributions from Triad and its affiliates.

The Hill Committee's failure to report the cost of the CR/CREF political advertising, the Triad fundraising assistance and the phone bank operation as in-kind contributions may constitute a violation of 2 U.S.C. § 434. Further, given reports that the anti-Yellowtail ad campaign cost more than \$100,000 and that the Triad fundraising assistance may have cost more than \$1000, there is reason to believe that the Hill Committee accepted excessive contributions in violation of 2 U.S.C. § 441a(f).

Under the alternative theory Triad, CR and CREF made prohibited corporate contributions to the Hill Committee. By accepting the Triad, CR and CREF in-kind

contributions, the Hill Committee appears to have accepted prohibited corporate contribution in violation of 2 U.S.C. § 441b.

For the reasons set forth above, there is reason to believe that the Rick Hill for Congress Committee and Gary F. Demaree, as treasurer, violated 2 U.S.C. § 434 by failing to report the Triad, CR and CREF contributions; that they violated 2 U.S.C. § 441a(f) by accepting excessive in-kind contributions from Triad, CR and CREF; and under the alternative theory, that they violated 2 U.S.C. § 441b by accepting prohibited corporate contributions.