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Washington, D.C. 20463

2008 APR 22 A 11: 28

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5943

DATE COMPLAINT FILED: 10/02/2007

DATE OF NOTIFICATION: 10/09/2007

LAST RESPONSE RECEIVED: 12/13/2007

DATE ACTIVATED: 12/26/2007

EXPIRATION OF SOL: 09/11/2012

COMPLAINANT:

Ursula Angell

RESPONDENTS:

Rudolph W. Giuliani

Rudy Giuliani Presidential Committee, Inc.

and John H. Gross, in his official capacity

as treasurer

Paul Singer

Take Initiative America, LLC

Californians for Equal Representation

RELEVANT STATUTES:

2 U.S.C. § 441a

2 U.S.C. § 441b

2 U.S.C. § 441e

2 U.S.C. § 441i(e)

11 C.F.R. § 109.20

11 C.F.R. § 300.2(b)

11 C.F.R. § 300.61

11 C.F.R. § 300.62

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter is based upon a complaint alleging that Presidential candidate Rudolph W. "Rudy" Giuliani and the Rudy Giuliani Presidential Committee, Inc. and John H. Gross, in his official capacity as treasurer ("Giuliani Committee"), violated the Federal Election Campaign

1 Act of 1971, as amended ("the Act") by establishing, financing, maintaining and controlling a
2 newly-created Missouri limited liability corporation, Take Initiative America, LLC, for the
3 purpose of soliciting and receiving contributions in excess of federal limits to support a ballot
4 initiative measure in California. Specifically, the complaint alleges that the Giuliani Committee,
5 through its alleged agent, Paul Singer, solicited or directed contributions to Take Initiative
6 America, LLC, in excess of the federal limits in violation of 2 U.S.C. § 441a; solicited or
7 directed contributions to Take Initiative America, LLC from impermissible sources such as
8 corporations or foreign entities in violation of 2 U.S.C. §§ 441b and 441e; coordinated with a
9 California state political committee, Californians for Equal Representation, resulting in an
10 excessive in-kind contribution to the Giuliani campaign in violation of 2 U.S.C. § 441a; and
11 conspired or aided in an effort to conceal the true source of a contribution to Californians for
12 Equal Representation in violation of California law.¹ Complainant also contends that the alleged
13 violations may involve knowing and willful conduct by the Respondents and requests that the
14 Commission refer the matter to the Department of Justice pursuant to 2 U.S.C. § 437g(a)(5)(C).
15 For the reasons set forth below, we recommend that the Commission find no reason to believe
16 that Respondents violated the Act in connection with the allegations contained in this matter and
17 close the file.

¹ The complaint and a supplement to the complaint briefly mention several other individuals and their alleged ties to the Giuliani Committee: Charles Hurth III, Steve Wark, Bill Simon, Jonathan Wilcox, Anne Dunsmore, Tony Andrade, Ed Rollins, and James V. Lacy. However, Complainant does not make any specific allegations with respect to these individuals nor are these individuals alleged to be "agents" of the Giuliani Committee. Therefore, none of these individuals was named as a Respondent in this matter and we are not making any recommendations with respect to them.

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1 **II. FACTUAL BACKGROUND**

2 On July 17, 2007, California resident Thomas Hiltachk submitted a ballot measure
3 entitled the "Presidential Election Reform Act" to the Attorney General of California to begin the
4 process of qualifying the measure for the June 2008 Primary ballot.² Complaint Attachment A:
5 Hiltachk to Galvan, Request for Title and Summary for Proposed Initiative, July 17, 2007. The
6 ballot measure sought to change the way the State of California allocates its presidential electors
7 by apportioning electors according to the popular vote winner in each congressional district
8 rather than the current statewide winner-take-all system. According to media reports, if the
9 measure qualified for the June 2008 ballot and was approved by a majority of voters in the state,
10 it would have gone into effect for the November 2008 general election, where it was expected to
11 allocate a portion of California's fifty-five electoral votes. See Bill Schneider, *Republicans Want*
12 *a Share of California Electoral Votes*, www.cnn.com, August 9, 2007 (last accessed March 17,
13 2008); Carla Marinucci, *GOP-backed bid to reform state's electoral process folding*, SAN
14 FRANCISCO CHRONICLE, Sept. 28, 2007, www.sfgate.com (last accessed March 20, 2008).

15 On August 1, 2007, Hiltachk filed a statement of organization with the California Fair
16 Political Practices Commission registering a state political committee, "Californians for Equal
17 Representation" ("CER"), as a committee primarily formed to support the Presidential Election
18 Reform Act. Complaint Attachment D: Statement of Organization, August 1, 2007. Available
19 information indicates that in addition to Thomas Hiltachk, other CER organizers included
20 Charles Bell, a partner in Hiltachk's law firm, Kevin Eckery, a Republican consultant, and Marty
21 Wilson, a campaign strategist for Sen. John McCain's presidential committee. See Morain,

² To qualify the measure for the June 2008 ballot, supporters of the initiative needed to collect 414,000 signatures of registered California voters by November 13, 2007. Dan Morain, *GOP eyes California's electoral pie*, LOS ANGELES TIMES, August 6, 2007, at B-2.

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1 *supra* note 2 and Complaint Attachment D. Between August 1 and September 10, 2007, CER
2 reported receiving contributions totaling \$1,200 from three separate contributors. Then, on
3 September 11, 2007, CER received a \$175,000 contribution that reportedly came from "TIA
4 Take Initiative America, LLC" ("TIA").

5 According to its website, TIA is a not-for-profit organization engaged in promoting lower
6 taxation and regulation on American jobs and taxpayers, defending employee paychecks from
7 politics, reforming legal and educational systems, and ensuring greater voter participation. *See*
8 <http://www.takeinitiativeamerica.org/inner.asp?z=1> (last accessed March 5, 2008). The group,
9 which incorporated in the State of Missouri on September 10, 2007, has applied for recognition
10 as a tax exempt organization under section 501(c)(4) of the Internal Revenue Code. TIA
11 Response Exhibit C: Form 1024, Application for Exempt Status. According to the group's
12 website, TIA supports three projects, one of which is Californians for Equal Representation.³
13 The TIA website does not contain any information about the group's leaders, supporters, or
14 funders and does not mention any Federal candidates. However, incorporation documents filed
15 with the State of Missouri identify Charles Hurth of Union, Missouri as the corporation's
16 organizer and registered agent. TIA Response Exhibit B: Articles of Organization for TIA LLC.
17 TIA's tax exemption application form, also filed by Charles Hurth, lists Hurth as the sole director
18 and officer, and with respect to the organization's funding, states that:

19 Take Initiative America is funded exclusively through gifts and contributions
20 from its supporters. These supporters include both individuals and corporate
21 entities that support Take Initiative America goals. Although Take Initiative
22 America is a membership organization, its members are not currently required to
23 pay a set amount of dues.
24

³ The other two projects include an effort called "First Class Education" and an initiative entitled "Protecting Employees' Paychecks from Politics."

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1 TIA Response Exhibit C. The group's website does not contain any further information. One
2 day after incorporating, TIA made the \$175,000 contribution to CER.

3 Shortly after CER received the contribution from TIA, the media began questioning the
4 source of TIA's funds and whether TIA and CER were connected to the Giuliani campaign. The
5 Giuliani campaign denied any involvement with the ballot initiative, stating "[w]e are absolutely
6 not involved in that effort" and there is "no coordination between the Giuliani campaign and any
7 statewide effort." Carla Marinucci, *Mystery man's key role in move to change Electoral College*
8 *rules*, SAN FRANCISCO CHRONICLE, Sept. 27, 2007, at A-1. A Giuliani spokesman further stated
9 that "[t]his is completely independent from our campaign, and frankly, it's not an initiative that
10 serves our campaign's best interests." Carla Marinucci, *Giuliani backer was funder of state*
11 *electoral initiative*, SAN FRANCISCO CHRONICLE, September 29, 2007, www.sfgate.com (last
12 accessed March 20, 2008).

13 When TIA refused to divulge the source of its funding, CER's main organizers –
14 Hiltachk, Eckery and Wilson – resigned and dissolved CER. Marinucci, *GOP-backed bid to*
15 *reform state's electoral process folding*. Upon announcing his resignation from the group on
16 September 28, 2007, Hiltachk called upon TIA to divulge the source of its funding, and
17 expressed dismay at TIA's failure to inform CER that it had been formed one day prior to making
18 the contribution. Eckery told the media: "There's no reason to be cute on campaign
19 contributions. We had nothing to hide and the public has every right to know." Dan Morain,
20 *GOP electoral initiative dealt major blows*, LOS ANGELES TIMES, September 28, 2007,
21 www.latimes.com (last accessed March 20, 2008). CER, which officially terminated on October
22 12, 2007, reported total contributions of \$198,172.80, including the \$175,000 contribution from

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1 TIA.⁴ CER apparently used the funds to pay costs associated with gathering signatures and did
2 not refund most of the contributions after the group folded.⁵ *See Morain, GOP electoral*
3 *initiative dealt major blows.*

4 The day after CER's officers and key members resigned, hedge fund executive Paul
5 Singer came forward as the source of TIA's \$175,000 contribution to CER. Singer, who was
6 characterized by the media as a "Giuliani policy advisor" and "Giuliani's top fundraiser" issued a
7 statement contending that he contributed to TIA because he believes in proportional voting in the
8 Electoral College and denied that his contribution was connected to the Giuliani campaign.
9 Carla Marinucci, *Giuliani backer was funder of state electoral initiative.*

10 At the end of October 2007, the media reported that another group of individuals,
11 including former Giuliani campaign fundraiser Anne Dunsmore, attempted to revive the ballot
12 initiative effort by forming a group called California Counts. Steven Harmon, *Dems see plot in*
13 *electoral vote plan*, MEDIA NEWSGROUP, October 29, 2007 (available at 2007 WLNR
14 21352593). Singer denied any involvement with the revived initiative effort. *Id.* Ultimately,
15 neither committee gathered sufficient signatures to qualify the initiative for the June 2008 ballot.

16 The complaint alleges that Paul Singer is an agent of Rudy Giuliani based upon Singer's
17 alleged roles as a policy advisor to Giuliani and Regional Finance Chair to the Giuliani
18 campaign. The complaint avers that as Giuliani's agent, Singer established, financed, maintained
19 or controlled TIA for the purpose of funding the "Presidential Election Reform Act" ballot
20 measure. As such, the complaint alleges that Singer's contribution to TIA was subject to, and far

⁴ The group also reported receiving a \$28,000 in-kind contribution from a Sacramento public relations firm.

⁵ CER's state disclosure reports indicate that it did actually refund \$6,482.20 to TIA on October 12, 2007, the day CER terminated.

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1 exceeded, the contribution limits of the Act or that, in the alternative, if the funds came from
2 Singer's company, it may have violated the source prohibitions of the Act. Complaint at 5.

3 The complaint further contends that the Giuliani campaign may have coordinated with
4 CER. This allegation is based on press accounts that supposedly quote a fundraiser for CER as
5 stating that he heard 'the Giuliani people were interested in funding the campaign.' *Id.* Thus,
6 according to the complaint, expenditures by CER may have resulted in excessive in-kind
7 contributions to the Giuliani campaign. The Complainant also submitted a supplement to the
8 complaint that provides additional information regarding the alleged "ties between the Giuliani
9 campaign and the effort to qualify the California electoral vote measure" but does not make any
10 additional allegations.

11 In response, TIA denies that it was established, financed, maintained or controlled by any
12 federal officeholder or campaign or by any agent thereof, including Rudy Giuliani, his campaign,
13 and agents acting on his behalf. TIA asserts that it was not formed solely to support the
14 California ballot initiative, but rather to support a variety of free enterprise, government reform,
15 and small business initiatives in several states. TIA Response at 2. Furthermore, the Respondent
16 contends that the complaint did not present any facts to establish that TIA was "established,
17 financed, maintained or controlled" by Giuliani or his campaign committee.

18 The response from CER denies that the group coordinated with the Giuliani campaign
19 and asserts that the articles cited in the complaint to support the coordination allegation actually
20 demonstrate that CER did not know who TIA's funders were when CER received the \$175,000
21 contribution from TIA, despite CER's diligent efforts to ascertain that information. As such,
22 CER claims that it could not have coordinated with the Giuliani Committee through TIA because
23 it had no knowledge as to whether TIA had any ties to the Giuliani campaign or any of its agents.

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1 Although not specifically alleged in the complaint, the response also denies that CER
2 communicated directly with the Giuliani campaign or any of its agents.

3 Singer's response avers that he made a \$250,000 donation to TIA in September 2007 on
4 his own behalf and from his personal funds with the expectation that TIA would use his money to
5 support Electoral College reform.⁶ From this contribution, TIA made the \$175,000 contribution
6 to CER. He claims that he was neither instructed nor encouraged by the Giuliani campaign to
7 make the contribution to TIA, nor did he represent to anyone that he was acting on behalf of
8 anyone but himself. Singer Response at 1. Moreover, he contends that at the time he made his
9 contribution to TIA, he was no longer the "Eastern Regional Finance Chair," a volunteer position
10 for the Giuliani Committee that he held from approximately March to July 2007. However, after
11 he relinquished his fundraising role in July 2007, Singer remained associated with the Giuliani
12 campaign as a volunteer Middle East and Economic Policy Advisor. Singer claims that he heard
13 about TIA from a fellow former Giuliani fundraiser, Anne Dickerson, who became a fundraiser
14 for TIA after she left the Giuliani campaign. According to Singer, he never discussed the ballot
15 initiative or TIA with Giuliani and never sought or received authorization to make the
16 contribution to TIA and therefore was not acting as an agent on Giuliani's behalf. Singer
17 Response at 4.

18 The response of the Giuliani Committee denies that it has ever been involved in any way
19 with TIA, either directly or through its agents. According to a sworn affidavit attached to the
20 committee's response, Singer mentioned the ballot initiative to a Senior Political Advisor to the
21 Giuliani campaign, Anthony Carbonetti, who advised Singer that "he could do as he wished with

⁶ Singer contends that his donation to TIA is consistent with his personal philanthropy and political involvement. He describes himself as "politically active" and has apparently supported ballot initiatives in the past, including a 1996 California ballot initiative in support of Proposition 209. Singer Response at 2.

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1 his time and money ... and that he could not under any circumstances seek – nor would he
2 receive – the approval or disapproval of the Campaign for this or any other independent
3 endeavor.” Giuliani Response Exhibit C: Aff. of Anthony V. Carbonetti. Thus, contends the
4 Giuliani Committee, Paul Singer was expressly forbidden from acting on the campaign’s behalf
5 when he made the contribution to TIA. Furthermore, the Giuliani Committee asserts that none of
6 the other individuals involved with TIA, including founder Charles Hurth and spokesman
7 Jonathan Wilcox, have any connections to the Giuliani campaign other than via several degrees
8 of separation through mutual Republican contacts.

9 The Giuliani Committee also denies that it coordinated with CER. According to the
10 committee, the quote from CER spokesman Marty Wilson upon which the complaint bases its
11 coordination allegation (that Wilson “heard the Giuliani people were interested [in the ballot
12 measure] and we all said our prayers that it would come in,” Complaint at 3) was an
13 unsubstantiated and untruthful rumor.

14 **III. LEGAL ANALYSIS**

15 **A. Restriction on Federal Candidates’ Raising and Spending Non-Federal Funds**

16 Under the Act, as amended by the Bipartisan Campaign Reform Act of 2002, Public Law
17 107-155, 116 Stat. 81 (2002) (“BCRA”), Federal candidates and officeholders, agents of Federal
18 candidates and officeholders, or entities directly or indirectly established, financed, maintained,
19 or controlled by, or acting on behalf of, Federal candidates or officeholders (collectively,
20 “covered persons”), may not solicit, receive, direct, transfer, or spend funds in connection with
21 an election for Federal office unless the funds are subject to the limitations, prohibitions, and
22 reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A); 11 C.F.R. § 300.61. Nor may these
23 covered persons solicit, receive, direct, transfer or spend funds in connection with an election

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1 other than an election for Federal office, unless the funds do not exceed the amounts permitted
2 with respect to contributions to candidates and political committees under 2 U.S.C. § 441a(a)(1),
3 (2), and (3), and do not come from sources prohibited under the Act. 2 U.S.C. § 441i(e)(1)(B);
4 11 C.F.R. § 300.62.

5 The Act and its implementing regulations are silent as to whether ballot initiatives are “in
6 connection with an election” so as to be subject to the limitations under 2 U.S.C. § 441i(e)(1)(A)
7 and (B). In recent MURs and Advisory Opinions, the Commission has split on the question of
8 whether ballot initiatives can, under certain circumstances, be considered “in connection with an
9 election.” *See, e.g.*, Advisory Opinions 2007-28 (McCarthy/Nunez) and 2005-10 (Doolittle), and
10 MUR 5367 (Issa). In any event, the Commission need not reach that question here, because it
11 does not appear that the Respondents in this matter violated 2 U.S.C. § 441i(e)(1)(A) and (B)
12 since the Giuliani Committee did not “solicit, receive, direct, transfer, spend or disburse funds”
13 for the “Presidential Election Reform Act” ballot initiative. As discussed below, the available
14 evidence indicates that neither Rudy Giuliani nor his authorized committee raised or spent funds
15 for the ballot initiative; Paul Singer was not acting as Giuliani’s agent when he contributed to
16 TIA; and Giuliani did not establish, finance, maintain or control TIA such that its activities
17 would be imputed to Giuliani.

18 1. Giuliani and the Giuliani Committee did not raise or spend funds for the ballot
19 initiative
20

21 There is no information to suggest that Giuliani or his authorized committee solicited,
22 received, directed, transferred, spent, or disbursed funds – federal or nonfederal – to support the
23 “Presidential Election Reform Act.” The complaint does not specifically allege that the Giuliani

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1 Committee itself raised or spent funds to support the ballot initiative, and all available
2 information leads to the conclusion that it did not. *See supra* pp. 3-9; Singer Response Exhibit
3 A: Declaration of Paul E. Singer. Furthermore, Giuliani has stated that he did not publicly
4 support the ballot initiative and, prior to the September 29, 2007 revelation that Paul Singer was
5 the source of TIA's funds, media coverage of the ballot initiative did not mention any ties to the
6 Giuliani campaign. *See* Kevin Yamamura, *Dems Attack Plan to Divide Electoral Votes*, THE
7 MODESTO BEE, Oct. 8, 2007, at A-1. As such, the facts do not support a conclusion that Giuliani
8 or his authorized committee directly raised or spent funds in support of the "Presidential Election
9 Reform Act."

10 2. Paul Singer was not acting as Giuliani's agent when he contributed to TIA

11 The available information indicates that Paul Singer was acting solely on his own behalf
12 – and not as an agent for Giuliani or the Giuliani Committee – when he made a \$250,000
13 contribution to TIA in September 2007. In implementing BCRA, the Commission defined
14 "agent," as "any person who has actual authority, either express or implied," to act on behalf of a
15 Federal candidate or officeholder. 11 C.F.R. § 300.2(b). The Commission made clear that under
16 BCRA, an agent "does not apply to individuals who do not have any actual authority to act on
17 their [principal's] behalf, but only 'apparent authority'" to do so. Explanation and Justification,
18 67 Fed. Reg. 49063, 49082 (July 29, 2002); *see also* Explanation and Justification, 71 Fed. Reg.
19 4975, 4977-4980 (Jan. 31, 2006). The Commission also made clear that a principal may only be
20 held liable under BCRA for the actions of an agent when the agent is acting on behalf of the
21 principal. *See* 67 Fed. Reg. at 49083. "[I]t is not enough that there is some relationship or
22 contact between the principal and agent; rather, the agent must be acting on behalf of the
23 principal to create potential liability for the principal. This additional requirement ensures that

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liability will not attach due solely to the agency relationship, but only to the agent's performance of prohibited acts for the principal." *Id.*

In this matter, the Giuliani Committee has presented information – in the form of a sworn affidavit – that Singer was expressly informed that he was *not* authorized to act on behalf of the Giuliani campaign when he contributed his own funds to TIA. Giuliani Response Exhibit C: Aff. of Anthony V. Carbonetti. Singer also explicitly stated that he was acting on his own behalf and not for the Giuliani Committee when it made the \$250,000 contribution to TIA, and he further stated that he has never represented to anyone that he made the donation on behalf of the Giuliani campaign. Singer Response Attachment A: Declaration of Paul E. Singer. Although the complaint attempts to establish that Singer had an agency relationship with the Giuliani Committee by virtue of his role as a Regional Finance Chair and policy advisor for the committee, these contacts are not sufficient to establish that Singer was acting on behalf of the Giuliani Committee when he made the contribution. At the time Singer made the contribution to TIA in September 2007, Singer had already been removed from his fundraising role three months earlier, and his role as policy advisor did not include any activities related to fundraising. As such, it does not appear that Paul Singer was an agent of the Giuliani Committee when he made the contribution to TIA.

3. Giuliani or the Giuliani Committee did not establish, finance, maintain or control TIA

Finally, there is no evidence that the Giuliani Committee established, financed, maintained, or controlled TIA such that its activities would be imputed to Giuliani. To determine whether a Federal candidate or officeholder directly or indirectly established, financed, maintained or controlled another entity, the Commission applies the ten factors set forth at

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1 11 C.F.R. § 300.2(c)(2)(i) through (x), as well as any other relevant factors, in the context of the
2 overall relationship between the Federal candidate or officeholder and the entity.⁷

3 The only information the complainant points to in support of its allegation that the
4 Giuliani Committee "established" TIA is that TIA was incorporated by an individual who
5 donated \$2,000 to the Giuliani campaign and who is a former political associate of another donor
6 and fundraiser for the Giuliani campaign. In sworn statements, both of those individuals deny
7 that their support of the Giuliani campaign had anything to do with TIA or the Presidential
8 Election Reform Act. See Giuliani Exhibit A: Aff. of Steven J. Wark; TIA Exhibit D: Aff. of
9 Charles Hurth III. The complaint further attempted to connect TIA to the Giuliani Committee by
10 pointing out that TIA's spokesman was the *former* spokesman for a Giuliani campaign co-chair
11 and policy advisor. However, neither of these tenuous connections is sufficient to suggest that
12 the Giuliani Committee established, financed, maintained or controlled TIA.

13 Furthermore, an analysis of the ten factors indicates that the Giuliani Committee did not
14 establish, finance, maintain or control TIA. The available information, including the sworn

⁷ Such factors include, but are not limited to: (i) Whether a sponsor, directly or through its agent, owns controlling interest in the voting stock or securities of the entity; (ii) Whether a sponsor, directly or through its agent, has the authority or ability to direct or participate in the governance of the entity through provisions of constitutions, bylaws, contracts, or other rules, or through formal or informal practices or procedures; (iii) Whether a sponsor, directly or through its agent, has the authority or ability to hire, appoint, demote, or otherwise control the officers, or other decision-making employees or members of the entity; (iv) Whether a sponsor has a common or overlapping membership with the entity that indicates a formal or ongoing relationship between the sponsor and the entity; (v) Whether a sponsor has common or overlapping officers or employees with the entity that indicates a formal or ongoing relationship between the sponsor and the entity; (vi) Whether a sponsor has any members, officers, or employees who were members, officers or employees of the entity that indicates a formal or ongoing relationship between the sponsor and the entity, or that indicates the creation of a successor entity; (vii) Whether a sponsor, directly or through its agent, provides funds or goods in a significant amount or on an ongoing basis to the entity, such as through direct or indirect payments for administrative, fundraising, or other costs, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully; (viii) Whether a sponsor, directly or through its agent, causes or arranges for funds in a significant amount or on an ongoing basis to be provided to the entity, but not including the transfer to a committee of its allocated share of proceeds jointly raised pursuant to 11 CFR 102.17, and otherwise lawfully; (ix) Whether a sponsor, directly or through its agent, had an active or significant role in the formation of the entity; and (x) Whether the sponsor and the entity have similar patterns of receipts or disbursements that indicate a formal or ongoing relationship between the sponsor and the entity. 11 C.F.R. § 300.2(c)(2).

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1 affidavit of TIA's sole and primary officer, establishes that neither Rudy Giuliani nor the Giuliani
2 Committee had a role in the formation of TIA; owns any interest in TIA; or has ever directed or
3 participated in, had the authority or ability to direct or participate in, activities or governance of
4 TIA. *See pp. 3-6 supra* and TIA Exhibit D: Aff. of Charles Hurth III. Furthermore, it appears
5 that TIA and the Giuliani Committee share no overlapping officers or employees, and do not
6 have similar patterns of receipts and disbursements. *See id.* As discussed in greater detail above,
7 it also does not appear that the Giuliani Committee caused or arranged for funds in a significant
8 amount to be provided to TIA. 11 C.F.R. § 300.2(c)(2)(viii).

9 Accordingly, it does not appear that the Respondents violated 2 U.S.C. § 441i(e)(1)(A)
10 and (B) because Rudy Giuliani, the Giuliani Committee, any agents acting on its behalf, and any
11 entities that they established, financed, maintained, or controlled did not "solicit, receive, direct,
12 transfer, spend or disburse funds" for the Presidential Election Reform Act ballot initiative. As a
13 result, it also appears that the Giuliani Committee did not solicit or direct contributions to Take
14 Initiative America, LLC, in excess of the federal limits in violation of 2 U.S.C. § 441a; or solicit
15 or direct contributions to Take Initiative America, LLC, from impermissible sources such as
16 corporations or foreign entities in violation of 2 U.S.C. §§ 441b and 441e.

17 **B. Coordination**

18 There is also no evidence of coordination between the Giuliani Committee and CER.
19 Under the Commission's regulations, any expenditures that are made in cooperation, consultation
20 or in concert with, or at the request or suggestion of a candidate or a candidate's authorized
21 committee, but that are not coordinated communications, party coordinated communications, or
22 coordinated party expenditures, are in-kind contributions to the candidate and must be reported
23 as an expenditure by that candidate. 11 C.F.R. § 109.20(b).

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1 The complaint bases its coordination allegation entirely on press accounts that supposedly
2 quote a fundraiser for CER as stating that he heard 'the Giuliani people were interested in
3 funding the campaign.' Complaint at 5. In its response, the Giuliani Committee expressly denies
4 that it coordinated with CER and includes a sworn affidavit from a Giuliani Committee staffer
5 who substantiates the Committee's position. Giuliani Response Exhibit C: Aff. of Anthony V.
6 Carbonetti. Similarly, CER also denies in its response that it coordinated in any way with the
7 Giuliani Committee and asserts that it did not even know that someone who had a connection to
8 Giuliani was the source of TIA's funds. CER Response at 2. The coordination allegation
9 contained in the complaint appears to be sufficiently refuted by the facts presented in the Giuliani
10 Committee and CER responses. As the Commission has previously stated, unwarranted legal
11 conclusions from asserted facts, or mere speculation, will not be accepted as true, and "[s]uch
12 speculative charges, especially when accompanied by direct refutation, do not form an adequate
13 basis to find reason to believe that a violation of FECA has occurred." Statement of Reasons in
14 MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, issued Dec. 21,
15 2000) (citations omitted).

16 **C. Conclusion**

17 Accordingly, we recommend that the Commission find no reason to believe that
18 Respondents Rudolph W. Giuliani, the Rudy Giuliani Presidential Committee, Inc., and John H.
19 Gross, in his official capacity as treasurer, Paul Singer, Take Initiative America, LLC, and

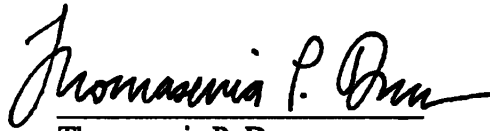
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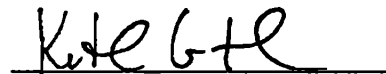
Californians for Equal Representation violated the Act in connection with the allegations contained in the complaint in this matter.⁸


IV. RECOMMENDATIONS

1. Find no reason to believe that Rudolph W. Giuliani, the Rudy Giuliani Presidential Committee, Inc. and John H. Gross, in his official capacity as treasurer, Paul Singer, Take Initiative America, LLC, and Californians for Equal Representation violated the Act in connection with the allegations contained in the complaint in this matter;
2. Approve the attached Factual and Legal Analyses;
3. Approve the appropriate letters; and
4. Close the file.

4/21/2008
Date


Thomasenia P. Duncan
General Counsel


Kathleen M. Guith
Acting Associate General Counsel for
Enforcement

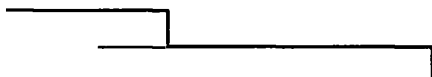
 by KB
Thomas Andersen
Acting Assistant General Counsel


Kate Belinski
Attorney

⁸ Given our recommendation to find no reason to believe, we are not recommending that the Commission refer this matter to the Department of Justice. Concerning the allegation that Respondents violated California law, the Commission does not have jurisdiction over the alleged violation. In any case, it appears that California's Fair Political Practices Commission is examining the allegation. See Carla Marinucci, *Mystery man's key role in move to change Electoral College rules*, SAN FRANCISCO CHRONICLE, Sept. 27, 2007, at A-1.

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