

1
2 **BEFORE THE FEDERAL ELECTION COMMISSION**
3

4)
5 In the Matter of) MUR 5635
6 ConservativeHQ.com, Inc.)
7)
8

9 **GENERAL COUNSEL'S BRIEF**

10 **I. INTRODUCTION**
11

12 ConservativeHQ.com, Inc ("CHQ") extended credit to Conservative Leadership Political
13 Action Committee ("CLPAC" or the "Committee"), providing list rental and administrative
14 services to the Committee in connection with a direct mail and Internet fundraising program
15 between July and November 2000.¹ CLPAC did not pay CHQ in full and CHQ forgave the debt,
16 which totaled \$77,425. In connection with the CLPAC fundraising program, the Commission,
17 on December 14, 2004, found reason to believe that CHQ made corporate contributions to
18 CLPAC in violation of 2 U.S.C. § 441b(a). The General Counsel is prepared to recommend that
19 the Commission find probable cause to believe that CHQ violated 2 U.S.C. § 441b(a) by making
20 \$77,425 in prohibited in-kind corporate contributions to CLPAC.

21 The Commission previously found reason to believe that CHQ's president and chairman,
22 Richard Viguerie, and affiliated company, the Viguerie Company, violated the Federal Election
23 Campaign Act of 1971, as amended (the "Act"), and admonished them in an earlier Matter
24 Under Review ("MUR") involving similar prohibited corporate contributions. *See* MUR 3841.
25 Accordingly, the General Counsel is prepared to recommend that the Commission find probable
26 cause to believe that CHQ's violation in this matter was knowing and willful.

¹ This matter was generated as a result of the Commission's audit of CLPAC. The Commission approved the Report of the Audit Division on CLPAC on November 18, 2004. The audit, undertaken in accordance with 2 U.S.C. § 438(b), *see* 2 U.S.C. § 437g(a)(2), covered the period January 1, 1999 through December 31, 2000. Thus, all of the facts recounted in this brief occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are to the Act as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2000 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.

1 **II. ANALYSIS**

2 **A. Background**

3 CHQ, incorporated in Virginia, provides services in support of direct mail and Internet
4 fundraising programs. CHQ's president and chairman, Richard Viguerie, also serves as the
5 moderator and commentator on CHQ's Internet website. Richard Viguerie founded the Viguerie
6 Company and retains an ownership in it. The Viguerie Company, a direct mail marketing
7 company, owns American Target Advertising, Inc. ("ATA"), a direct mail marketing agency that
8 specializes in fundraising for nonprofit entities. CHQ, the Viguerie Company, and ATA are thus
9 related through Richard Viguerie; all three extended credit to CLPAC and provided goods and
10 services to CLPAC in connection with the fundraising program.

11 CLPAC is a small multicandidate political committee that registered with the
12 Commission in 1972. Its financial activity could be characterized as low to moderate. For
13 example, total expenditures for the period 1993 through 1999 were \$280,625 and total reported
14 receipts were \$292,564 -- an average of approximately \$40,000 in receipts and expenditures per
15 year. Expenditures ranged from \$4,818 in 1993 to \$128,239 in 1998.

16 As of June 30, 2000, CLPAC reported \$464 cash on hand. Six days later, on July 6,
17 2000, it entered into a contract with ATA (the "Contract") that resulted in a direct mail,
18 telemarketing and Internet fundraising program to occur in the four months before the 2000
19 election at a cost of \$8 million. Richard Viguerie signed the Contract, and amendments to the
20 Contract, for ATA.

21 The Contract, which was styled a "no-risk" contract, provided that ATA would incur all
22 third-party invoices in its name and that CLPAC would be responsible for the costs of the
23 fundraising only up to the amount of money raised. In other words, CLPAC was not responsible
24 for paying any shortfall if the fundraising failed to raise enough money to cover its expenses.

ATA engaged a number of third-party vendors to work on the CLPAC fundraising program. A number of the third-party vendors ATA engaged were entities that were closely connected to it. For example, CHQ provided Internet fundraising services, including list rental and administrative services.

In the end, the returns were insufficient to pay the bills. A number of the vendors compromised their claims for payment, accepted partial payment and forgave debt. For its part, CHQ wrote off CLPAC bills totaling \$77,425.

B. CHQ Made Prohibited Corporate Contributions to CLPAC

The Act prohibits corporations from making contributions to political committees, 2 U.S.C. § 441b(a), and defines a contribution as any "direct or indirect payment, distribution, loan, advance, deposit, or gift of money or any services or anything of value." 2 U.S.C. § 441b(b)(2).

ATA's accounting records show that CHQ extended credit to CLPAC for list rental and administrative services. CHQ's invoices to CLPAC totaled \$83,326. Although CLPAC paid CHQ \$5,901, CLPAC never paid the remaining \$77,425 debt. Instead, CHQ wrote off the \$77,425 debt. In doing so, CHQ made a prohibited corporate contribution to CLPAC.

Commission regulations provide that a commercial vendor's extension of credit will not be considered a contribution so long as it is made in the ordinary course of business and on the same terms as those provided to non-political clients of similar risk and for an obligation of similar size. 11 C.F.R. §§ 100.7(a)(4) and 116.3(b). In determining whether an extension of credit was in the ordinary course of business, the Commission considers whether the vendor followed established procedures and past practices in making the extension of credit, whether the vendor received prompt payment in full for previous extensions of credit, and whether the

1 extension of credit conformed to the usual and normal practice in the industry. 11 C.F.R.

2 § 116.3(c).

3 The regulations further provide that a commercial vendor may forgive, or settle such
4 extension of credit for less than the full amount owed, if it has treated the debt in a commercially
5 reasonable manner and complied with the regulatory requirements for forgiving debt. 11 C.F.R.

6 § 116.4(b). A vendor can demonstrate that it has treated the debt in a commercially reasonable
7 manner by showing, *inter alia*, that: (1) the original extension of credit was proper; (2) the
8 committee has engaged in additional fundraising to satisfy the debt, reduced overhead and
9 administrative costs, or liquidated assets; and (3) that the vendor has pursued its remedies as
10 vigorously as it would pursue its remedies against a similarly-situated non-political debtor, *i.e.*,
11 that it has made oral and written requests for payment, withheld delivery of goods or services
12 until overdue debts are satisfied, imposed additional charges for late payment, referred the debt
13 to a collection service, or litigated for payment on the debt. 11 C.F.R. § 116.4(d). A creditor
14 may ask for approval of a plan to forgive or settle a debt from the Commission where the debt
15 has been outstanding for twenty-four months and the committee does not have sufficient cash to
16 pay the vendor, has receipts and disbursements of less than \$1,000 during the previous twenty-
17 four months, and has debts to other creditors of such magnitude that the vendor reasonably
18 concludes that the committee will not pay the debt owed to the vendor. 11 C.F.R. § 116.8. If a
19 vendor extends credit and fails to make a commercially reasonable attempt to obtain repayment,
20 a contribution will result. 11 C.F.R. §§ 100.7(a)(4) and 116.4(b)(2).

21 CHQ did not extend credit to CLPAC in the ordinary course of business. While a
22 longstanding relationship and a history of transactions between a vendor and a committee may
23 justify the provision of goods and services in advance of payment, CHQ and CLPAC had no

1 longstanding relationship. This was the first time CHQ transacted business with CLPAC. Thus,
2 CHQ had not received prompt payment in full from CLPAC for previous extensions of credit.

3 When CLPAC did not pay off the extension of credit, CHQ failed to make commercially
4 reasonable efforts to obtain repayment. *See* 11 C.F.R. § 100.7(a)(4). CHQ did not impose
5 additional fees for late payment, did not refer the debt to a collection service, and did not initiate
6 litigation to collect the debt. *See* 11 C.F.R. § 116.4(d).

7 CHQ forgave the debt within 24 months. During that 24-month period, CLPAC had
8 more than \$1,000 in receipts and disbursements. Thus, the debt was not eligible for forgiveness
9 and CHQ did not submit a debt settlement plan to the Commission for review and approval.
10 11 C.F.R. § 116.8(a). Because the debt was not incurred in the ordinary course of business, was
11 not treated by CHQ in a commercially reasonable fashion, and did not qualify for forgiveness
12 under the applicable regulation, CHQ's forgiveness of CLPAC's debt resulted in a contribution
13 by CHQ to CLPAC. Thus, there is probable cause to believe that CHQ violated 2 U.S.C.
14 § 441b(a) by making prohibited corporate contributions to CLPAC.

15 C. CHQ's Violation Was Knowing and Willful

16 The Commission previously admonished CHQ's president and chairman, Richard
17 Viguerie, and the Viguerie Company for engaging in conduct substantially similar to the conduct
18 here, both in making corporate contributions and accepting them. Based on their involvement in
19 the previous matter, the General Counsel is prepared to recommend that the Commission find
20 probable cause to believe that CHQ knowingly and willfully violated the Act by making
21 corporate contributions to CLPAC.

22 In MUR 3841, the Commission found reason to believe that the Viguerie Company
23 violated 2 U.S.C. § 441b(a) by making corporate contributions to United Conservatives of
24 America, a federal political committee, the chairman of which was Richard Viguerie. The

1 Viguerie Company provided the committee with office space, telephone services and direct mail
2 services. Initially, the committee did not pay for these services. Later, it made some payments,
3 but never paid in full what it owed. The Viguerie Company made no demand for payment, but
4 rather continued to extend credit to the committee, for up to two years. The Commission found
5 that the extension of credit was not in the ordinary course of business and not commercially
6 reasonable. In the end, the Commission sent two admonishment letters. The letter to counsel for
7 Viguerie and Associates' General Counsel, Mark Fitzgibbons, warned: "The Commission
8 reminds you that your clients' actions of making corporate contributions appear to be violations
9 of [the Act]. You should take steps to ensure this activity does not occur in the future." Letter
10 from Peter Blumberg to Mark Fitzgibbons, General Counsel, Viguerie and Associates, dated
11 April 2, 1997. The letter to Richard Viguerie as chairman of United Conservatives of America
12 warned: "The Commission reminds you that your actions of accepting corporate contributions
13 appear to be violations of [the Act]." Letter from Peter Blumberg to Richard Viguerie, dated
14 April 2, 1997. This letter, too, instructs Richard Viguerie to take steps to ensure the violation
15 does not recur.

16 The phrase knowing and willful indicates that "actions [were] taken with full knowledge
17 of all of the facts and a recognition that the action is prohibited by law." H.R. Rpt. 94-917 at 4
18 (Mar. 17, 1976) (*reprinted in* Legislative History of Federal Election Campaign Act
19 Amendments of 1976 at 803-4 (Aug. 1977)); see also *National Right to Work Comm. v. FEC*,
20 716 F.2d 1401, 1403 (D.C. Cir. 1983) (citing *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101 (D.C. Cir.
21 1980) for the proposition that knowing and willful means "'defiance' or 'knowing, conscious,
22 and deliberate flaunting' [sic] of the Act"). *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th
23 Cir. 1990).

In light of CHQ president and chairman Richard Viguerie's involvement in a previous MUR addressing substantially similar conducts as in the current MUR, there is probable cause to believe that CHQ knowingly and willfully violated 2 U.S.C. § 441b(a) when it made the prohibited corporate contributions to CLPAC described above.

III. RECOMMENDATIONS

1. Find probable cause to believe that CHQ violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to Conservative Leadership Political Action Committee.
2. Find probable cause to believe that CHQ knowingly and willfully violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to Conservative Leadership Political Action Committee.

Date

5/23/05

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel

Jonathan A. Bernstein
Assistant General Counsel

Beth N. Mizuno
Attorney

Marianne Abely by Bahl
Marianne Abely
Attorney