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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Nader for President 2004 and Carl M. Mayer
in his official capacity as treasurer,
Arizona Republican Party and Woody Martin
in his official capacity as treasurer,
Nathan Sproul, Sproul and Associates, Inc.,
and Steve Wark

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GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

Take no further action with respect to Nader for President 2004 and Carl M. Mayer in his official capacity as treasurer, the Arizona Republican Party and Woody Martin in his official capacity as treasurer, Nathan Sproul, Sproul and Associates, Inc., and Steve Wark; and close the file.

II. BACKGROUND

The Commission found reason to believe that the Arizona Republican Party ("ARP"), Nathan Sproul ("Sproul"), his company, Sproul and Associates, Inc., and Steve Wark ("Wark") made excessive or prohibited contributions in connection with signature gathering efforts to put Ralph Nader on the 2004 Presidential ballot in Arizona. We began an informal investigation

information provided by the Arizona and Nevada Secretaries of State showed that the size of the potential violations in this matter did not exceed \$2,500.

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1 **III. DISCUSSION**

2 A. Arizona Facts & Analysis

3 The Commission authorized an investigation to determine whether Sproul paid his
4 petition circulators to collect signatures for Ralph Nader. In May 2004, Nader for President
5 2004 ("Nader") hired JSM, Inc. ("JSM") to gather signatures to put him on the ballot in
6 Arizona. At the same time, Sproul was leading the effort to gather signatures for an Arizona
7 ballot initiative, No Taxpayer Money for Politicians ("NTMP"). According to news articles
8 published in the summer and fall of 2004, Sproul bundled his ballot initiative with the Nader
9 petitions, paying his NTMP circulators to gather signatures for Ralph Nader as well. He
10 passed the signatures on to JSM. JSM then combined the signatures Sproul supplied with its
11 own and submitted them as if they had been obtained by JSM personnel. Sproul was reported
12 to be the primary source of funds for this activity, but ARP's substantial payments to him
13 during 2004 along with a possibly evasive ARP response to the complaint raised the issue
14 whether the ARP was the ultimate source of Sproul's money.

15 In response to the Commission's reason-to-believe notification, Nader denied
16 receiving any contributions from Sproul or the ARP. Nader explained that JSM was simply
17 an independent contractor hired to collect signatures to put Ralph Nader on the ballot in
18 Arizona, Nevada, and several other states, and was not authorized to accept anything on its
19 behalf. The ARP denied hiring Sproul or his company to gather signatures. Sproul submitted
20 an affidavit stating that neither he nor his company gathered Nader signatures or paid others
21 to do so.¹

¹ The ARP and Sproul response affidavits contained one ambiguity. They denied gathering or paying others to gather signatures for "Nader for President 2004." See Letter and Affidavit of Bill Christiansen, August

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1 Nader provided specific information about its transactions with JSM. According to
2 Nader, JSM collected 20,402 signatures and Nader paid it \$1.50 per signature for a total of
3 \$30,603.² The committee explained that the remainder of the signatures filed in Arizona
4 (which it estimated at 1,100 more) were collected by volunteers. We sought and received
5 documents from the Arizona Secretary of State's Office showing that a maximum of 22,060
6 signatures were filed for Ralph Nader.³

7 Even if, as alleged, the ARP or Sproul funded signature-gathering activity and turned
8 the resulting signatures over to JSM, there was no contribution to Nader. The documents we
9 obtained during our investigation demonstrate that JSM billed Nader for all the 20,402
10 signatures it submitted and Nader paid \$1.50 for each of them. If JSM got some of those
11 signatures from the ARP or Sproul free of effort and expense, then JSM got a windfall
12 because it charged Nader the full contract price of \$1.50 per signature. Nader paid JSM for
13 all the signatures JSM submitted; thus Nader received no benefit and so accepted no
14 contribution.

15 Alternatively, the ARP and/or Sproul and his company may have procured some of the
16 signatures that JSM did not submit. If at most 22,060 signatures were filed for Ralph Nader,

15, 2005, Attachment 2; and Affidavit of Nathan Sproul, August 12, 2005, Attachment 3. The signatures at issue here were not filed on behalf of the Nader committee, but on behalf of Ralph Nader personally, as the candidate seeking access to the Arizona ballot. In response to our requests for clarification, Bill Christiansen and counsel for Nathan Sproul stated they had intended to say that they did not gather or hire anyone to gather signatures for Ralph Nader. They simply confused the candidate and his committee when they drafted their responses.

² Nader paid JSM an additional \$760 to cover printing costs with respect to its Arizona activity. See Certification of Theresa Amato, July 29, 2005, Attachment 1.

³ The State of Arizona produced two documents dated June 9, 2004, one a formal receipt of petitions stating that 21,185 signatures on 1,883 petition sheets were submitted for Nader, and the other the Nader submission letter containing an apparently less precise estimate with the figure of 22,060 signatures on 1,994 petition sheets. For purposes of our analysis, and to assist the Commission in evaluating our recommendation not to pursue this matter further, we used the larger number as it yields the largest potential violation.

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JSM accounted for 20,402 of them. That leaves at most 1,658 signatures from non-JSM sources.⁴ At \$1.50 per signature, these signatures were worth \$2,487. This value falls within the ARP's \$5,000 contribution limit and would exceed Sproul's personal \$2,000 contribution limit by \$487. If Sproul and Associates, Inc. paid for the signatures, the payment would have constituted a prohibited corporate contribution.

Given the size of the potential violation and respondents' denials, we do not believe this fact pattern warrants further investigation.

B. Nevada Facts & Analysis

The Commission found reason to believe that Wark made excessive or prohibited contributions to Nader. Wark reportedly raised \$30,000 to pay for signature gathering to qualify Ralph Nader for the Arizona ballot, and routed the money to the group, Choices for America, which turned the money over to JSM to pay it to gather signatures for Ralph Nader.

In response to the Commission's reason-to-believe notification, Wark's counsel stated that Wark was not involved in any activity in Arizona; he participated as a volunteer in the effort to get Nader on the ballot in Nevada, was not compensated for his activities, and did not provide funding for the signature gathering or collect funds from others for it. Attachment 4.

Nader denied receiving any contribution from Wark, but in light of Wark's response, we asked Nader to provide us with Nevada information. Nader responded that it hired JSM to

⁴ In fact, we have evidence that Nader was responsible for at least some of these signatures - our sample review of the petitions submitted in Arizona revealed that Nader's Arizona coordinator, Cheryl Rohrick, personally collected a number of signatures.

1 collect signatures in Nevada, and asserted that JSM's President, Jennifer Breslin, testified in a
2 Nevada state court proceeding that she received no money from Wark. We located a
3 transcript of that proceeding and verified that Ms. Breslin gave that testimony. More
4 specifically, Nader stated that it contracted with JSM for 10,500 signatures in Nevada at \$1.50
5 per signature. At the end of the collection period, the parties discovered that JSM circulators
6 had collected 1,298 more signatures than provided for by the contract. Nader decided to
7 accept the overage and the parties negotiated a price of \$.75 (half the contract price) for the
8 overage. Nader's documents confirmed it paid JSM \$16,723 for the 11,798 total signatures.⁵
9 We sought and received documents from the Nevada Secretary of State's Office showing that
10 it received a total of 11,888 signatures for Ralph Nader.⁶

11 Just as in Arizona, Nader paid JSM for all the Nevada signatures JSM submitted. If
12 Wark gave \$30,000 to JSM to fund signature gathering, then JSM got a windfall when it
13 billed Nader for all the signatures it submitted. JSM's President denied that this occurred, but
14 even if it had, no contribution to Nader would have resulted.

15 C. Conclusion

16 For the reasons discussed above, we recommend the Commission take no further
17 action and close the file in this matter.

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⁵ JSM's invoice shows additional charges of \$1,125 for miscellaneous expenses associated with the Nevada effort. See Supplemental Certification of Theresa Amato, December 9, 2004, Attachment 5.

⁶ We have no explanation for the 90 count difference between the JSM total and the total from Nevada but do not view the discrepancy as material.

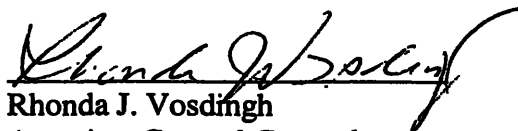
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IV. RECOMMENDATIONS

1. Take no further action with respect to Nader for President 2004 and Carl M. Mayer, in his official capacity as treasurer; the Arizona Republican Party and Woody Martin, in his official capacity as treasurer; Nathan Sproul; Sproul and Associates, Inc.; and Steve Wark.
2. Close the file.
3. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

4/17/06
Date

BY: 
Rhonda J. Vosdinger
Associate General Counsel
for Enforcement


Julie K. McConnell
Acting Assistant General Counsel


Beth N. Mizuno
Attorney

Attachments:

1. Certification of Theresa Amato, July 29, 2005
2. Letter and Affidavit of Bill Christiansen, August 15, 2005
3. Affidavit of Nathan Sproul, August 13, 2005
4. Letter from Ashley Titus, August 25, 2005
5. Supplemental Certification of Theresa Amato, December 9, 2005