# AGENDA DOCUMENT NO. 16-39-A

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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**AGENDA ITEM**
**For Meeting of 9-15-16**

**MEMORANDUM**

TO: The Commission

FROM: Daniel Petalas
Acting General Counsel

BY: Kathleen Guith KG
Acting Associate General Counsel for Enforcement

Jin Lee JL
Attorney

SUBJ: MUR 5635 (The Viguerie Company, *et al.*)
Request for Guidance on Interpretation of Conciliation Agreement

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## I. INTRODUCTION

The Office of General Counsel received a request for guidance on behalf of three corporations — The Viguerie Company, American Target Advertising, Inc., and ConservativeHQ.com (collectively "Corporations") — regarding a conciliation agreement they entered into with the Commission in 2005 to resolve MUR 5635.[1] In MUR 5635, the Commission settled with the corporations after finding probable cause to believe that they made prohibited corporate contributions to the Conservative Leadership Political Action Committee ("CLPAC")[2] by absorbing costs related to fundraising services they performed for CLPAC, and by using third-party, non-banking lenders to finance the costs of postage for fundraising mailings.[3] The Corporations now "ask[] whether FECA, as it has been interpreted by federal courts since the Conciliation Agreement was executed a decade ago, would apply to certain types of future contracts, and if so, how it would apply."[4] In particular, the Corporations argue that current law

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[1] The request itself was styled as a request for an advisory opinion, but in the past, questions about conciliation agreements entered into by the Commission have been handled as enforcement matters, and the submitter is aware that we intend to handle the request accordingly.

[2] CLPAC was also a party to the Conciliation Agreement but does not appear to be a party to this request.

[3] *See* Certifications, MUR 5635 (Sept. 20, 2005) (finding probable cause) and (Dec. 14, 2005) (approving Conciliation Agreement and closing file).

[4] Letter from William J. Olson to Adav Noti at 1 (May 11, 2016) ("Request").

allows a corporation to make contributions to Independent Expenditure-Only Committees ("IEOPCs") and Non-Contribution Accounts maintained by Hybrid Committees ("Carey accounts"), and they should, therefore, be allowed to engage in the activities proscribed by the cease and desist clauses contained in the Conciliation Agreement.[5] Because current law permits corporations to make unlimited contributions to IEOPCs and non-connected committees with non-contribution accounts, it is permissible for the Corporations to enter into no-risk contracts with independent expenditure-only political committees and with non-connected committees with non-contribution accounts, and to use third-party, non-banking lenders on behalf of such committees. Accordingly, we recommend that the Commission find that the relevant cease and desist clauses of the MUR 5635 Conciliation Agreement do not apply to agreements or transactions involving IEOPCs or Carey accounts, and so notify the Corporations.

## II. BACKGROUND

The Viguerie Company ("TVC") is a Virginia corporation that specializes in fundraising for nonprofit entities. TVC owns American Target Advertising ("ATA"), also a Virginia corporation, that provides direct mail marketing services. ATA's chairman is Richard Viguerie, who serves as the moderator and commentator on an internet website operated by ConservativeHQ.com. CLPAC is a multicandidate committee that is registered with the Commission and is not authorized by any candidate.

On January 18, 2002, the Commission authorized an audit of CLPAC. On November 18, 2004, the Commission approved the Final Audit Report of CLPAC ("FAR"), which made numerous findings concerning CLPAC's acceptance of corporate and excessive contributions and its failure to properly report its activities. According to the FAR, CLPAC entered into no-risk contracts with ATA, where ATA would incur the liabilities for all third-party invoices in ATA's name and CLPAC would be responsible for fundraising costs "only to the extent of the amount of money raised." FAR at 14. In addition, two individuals and a corporation that did not qualify as a financial institution improperly provided loans to finance postage costs for CLPAC's direct mail program. *See* FAR at 18. CLPAC's fundraising underperformed, and expenses for the direct mail fundraising program exceeded revenues, yet CLPAC was not obligated to pay for any of the outstanding costs. FAR at 15; Agreement at ¶ IV.8. Consequently, the FAR concluded that Respondents made almost $4 million in prohibited contributions to CLPAC. FAR at 18.

The Audit Division referred some of its findings for enforcement to this Office, which recommended that the Commission find reason to believe that Respondents violated 52 U.S.C. § 30118(a). In December 2005, after making a probable cause finding, the Commission entered into a Conciliation Agreement with the Corporations

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[5] The corporations submitted an initial letter on May 11, 2016, which restricted its request to IEOPCs; it sent a second letter on June 13 that expanded the scope of its inquiry to Non-Contribution Accounts maintained by "Hybrid Committees" ("Carey accounts"). *See* Request; Letter from William J. Olson to Jin Lee (June 13, 2016) ("Supp. Request").

and CLPAC to settle the violation. As part of the agreement, Respondents agreed to "cease and desist from using 'no-risk' contracts in future agreements with political committees as defined currently in the Act," and to "cease and desist from using third-party, non-banking lenders to finance the cost of postage for mailings on behalf of political committees as defined currently in the Act." Agreement ¶ V.1.b. and c.

## III. DISCUSSION

Respondents seek the Commission's guidance as to the appropriate interpretation of the cease and desist clauses described above in light of changes in campaign finance law since the execution of the Agreement. Respondents note that when they entered into the Agreement in 2005, the law prohibited all corporate contributions. Request at 3. However, as a result of decisions such as *Citizens United v. FEC*, 558 U.S. 310 (2010) and *Speechnow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), and the Commission's recognition of independent expenditure-only political committees in Advisory Op. 2010-11 (Commonsense Ten), corporations may now make independent expenditures and may make contributions to independent expenditure-only political committees. In addition, a non-connected committee may accept a corporate contribution so long as the committee deposits such contribution into a separate, non-contribution account, which retains funds used for financing independent expenditures, other advertisements that refer to a federal candidate, and generic voter drives. *See FEC Statement on Carey v. FEC, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account* (Oct. 5, 2011) (citing *Carey v. FEC*, 791 F. Supp.2d 121 (D.D.C. 2011)) ("*Carey* Guidance"). Citing these changes in law, Respondents request that the Commission find that the cease and desist clauses described above do not apply to Respondents' agreements involving independent expenditure-only political committees and non-connected committees that maintain non-contribution accounts. *See* Request at 4; Supp. Request at 2.

Based on the circumstances, we believe that it is appropriate for the Commission to find that the relevant cease and desist clauses in the MUR 5635 Conciliation Agreement do not apply where any in-kind contributions resulting from the activity would be solely attributable to an IEOPC or a non-connected committee's non-contribution account, because such in-kind contributions are not unlawful. As discussed above, corporations may now make unlimited contributions to an IEPOC and a non-connected committee's non-contribution account engaging solely in activity that is independent of candidates and their authorized committees.[6] Consequently, we believe that corporations may lawfully enter into no-risk contracts and may use third-party, non-banking lenders to finance the cost of postage for mailings on behalf of those committees, as long as no impermissible corporate contributions result from the agreement or activity.

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[6] *See* AO 2010-11 at 3 (citing *Citizens United*, 558 U.S. at 365; *Speechnow.org*, 933 F.3d at 692-96); *Carey* Guidance.

and as long as any such permissible in-kind contributions that result from those transactions are properly reported in the recipient committee's disclosure reports.[7]

Further, we find no compelling reason, under these circumstances, to justify continued application of the relevant cease and desist obligations to activity that is now lawful, particularly where corporate entities that are not parties to the Agreement are not subject to the same restrictions.[8] And indeed, the relevant cease and desist clauses explicitly apply to "future agreements with political committees *as currently defined in the Act*."[9] To the extent that the legal landscape subsequently changed to allow unlimited corporate contributions for independent activity, and led to the creation of a subset of political committees for which the core violation in MUR 5635 is eliminated, we believe it is appropriate for the Commission to advise the Corporations that the obligations in the Agreement do not apply where in-kind contributions are made solely to IEPOCs and a non-connected committee's non-contribution account.[10]

## IV. RECOMMENDATIONS

1. Find that paragraphs V.1.b of the Conciliation Agreement does not prohibit The Viguerie Company, American Target Advertising, Inc., and ConservativeHQ.com, Inc. from entering into "no-risk" contracts in future agreements where in-kind contributions are made solely to independent expenditure-only political committees or a non-contribution account of a non-connected committee.

2. Find that paragraphs V.1.c of the Conciliation Agreement does not prohibit The Viguerie Company, American Target Advertising, Inc., and ConservativeHQ.com, Inc. from using third-party, non-banking lenders to finance the cost of postage for mailings where in-kind contributions are made

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7 Non-connected committees, however, are limited to accepting corporate funds only for activities that are financed by the non-contribution accounts. *See Carey*, 791 F. Supp.2d at 131, 136.

8 *See Horne v. Flores*, 557 U.S. 433, 446 (2009) (a party may seek relief from an order by demonstrating "a significant change in either factual conditions or in law....") (citing *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992)). *See also Milliken v. Bradley*, 433 U.S. 267, 282 (1977) (federal court decree would "exceed appropriate limits" if it sought to eliminate a condition that does not violate federal law or "does not flow from such a violation.").

9 Conciliation Agreement at ¶ V.1.b. and c. (emphasis added).

10 The Commission has previously reconsidered conciliation agreements in closed matters. Most recently, in MUR 3620, the Democratic Senatorial Campaign Committee ("DSCC") submitted a request to modify a conciliation agreement executed in 1995, arguing that changes in the law concerning national party expenditures rendered certain ongoing remedial measures in the agreement obsolete. The Commission, rather than modifying the agreement, made a finding that the DSCC "has fulfilled its obligations under the Conciliation Agreement and is relieved from satisfying the remedial measures contained in paragraph VI.2." Certification, MUR 3620 (Nov. 16, 2012). Our recommendation here is consistent with the Commission's procedural approach in MUR 3620.

solely to independent expenditure-only political committees or a non-contribution account of a non-connected committee.

3. Send the appropriate letter.

Attachments:
(1) Request
(2) Supplement Request
(3) Conciliation Agreement

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May 11, 2016
By e-mail to anoti@fec.gov
and to abell@fec.gov

Adav Noti, Esquire
Acting Associate General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: The Viguerie Company, *et al.* — Advisory Opinion Request

Dear Mr. Noti:

Our firm represents The Viguerie Company, American Target Advertising, Inc., and ConservativeHQ.com, Inc. (collectively referred to as "TVC") — all three being Virginia corporations — and files this Advisory Opinion Request ("AOR") on behalf of TVC concerning whether, and if so, how (i) the Federal Election Campaign Act, 52 U.S.C. §§ 30101, *et. seq.* ("FECA") and (ii) a Conciliation Agreement signed a decade ago under authority of that law apply to certain types of contracts that TVC would like to execute in the near future.

Specifically, TVC signed a December 2005 Conciliation Agreement with the FEC and a political committee which is not involved in this AOR.[1] A copy of the Conciliation Agreement is attached. The Conciliation Agreement resolved Matter Under Review ("MUR") 5635. This Conciliation Agreement was predicated on an understanding of the law as it existed more than a decade ado. *See* Conciliation Agreement ¶¶ 11 & 12 (set out below). This AOR asks whether FECA, as it has been interpreted by federal courts since the Conciliation Agreement was executed a decade ago, would apply to certain types of future contracts and, if so, how it would apply.

[1] The political committee was Conservative Leadership Political Action Committee (and David Fenner, in his official capacity as treasurer of that Committee) which agreed to the Conciliation Agreement.

**Conciliation Agreement of December 2005**

First, TVC had agreed in Paragraph V.1.b of the Conciliation Agreement that it would "cease and desist from using 'no-risk' contracts in future agreements with political committees as defined currently in the Act...." The Agreement described the:

> "no risk" contract in question as providing that the political committee would not be responsible for the costs of the fundraising in excess of the amount of money raised, and that the Corporate Respondents would have no recourse against [the political committee] for fundraising program losses. [Conciliation Agreement, paragraph IV.5.]

Second, TVC had agreed in Paragraph V.1.c of the Conciliation Agreement that it would "cease and desist" from "using third-party, non-banking lenders to finance the cost of postage for mailings on behalf of political committees as defined currently in the Act...."

**Advisory Opinion Request.** TVC requests the Commission to issue an Advisory Opinion that, despite the Conciliation Agreement, it may enter into (i) "no-risk" contracts with "Independent Expenditure-Only" Committees and (ii) agreements with "third-party, non-bank lenders to finance the cost of postage for mailings" by "Independent Expenditure-Only" Committees.

**Background**

**Direct Mail Contracts.** TVC employs no-risk contracts as its principal business model for its clients, which include nonprofit organizations exempt from federal income taxation under 26 U.S.C. §§ 501(c)(3) and 501(c)(4). Under those no-risk contracts, TVC's clients are obligated to pay costs of the direct mail program only out of funds raised by that program, and not from any other source of revenue. Among the features of those no-risk contracts is that either TVC or third-party postage lenders advance funds to pay for postage and any other goods or services which must be paid before the mailing is sent. Other goods and services for the direct mail program, such as printing, are generally obtained on credit. Funds raised by the direct mail program are used: (i) to repay advances for postage and other goods and services; and (ii) to pay for such goods and services as were provided on credit. If the funds raised are insufficient for these purposes, TVC guarantees payment out of its own funds, and no lenders or creditors have recourse against TVC's clients.

**Campaign Finance Law Circa 2000**. MUR 5635 arose out of a 2000 fundraising agreement entered into by TVC and Conservative Leadership Political Action Committee ("CLPAC"), a multicandidate political committee and not the authorized committee of any candidate. As the Conciliation Agreement recites, TVC incurred net losses in carrying out the fundraising program, resulting in CLPAC not being required to pay for certain goods and services received, and using non-bank loans to finance portions of its direct mail program.

The Conciliation Agreement made clear that it was based on FECA as it was understood at the time, specifically providing as follows:

> 11. The Act prohibits any corporation from making a contribution in connection with any federal election and prohibits any political committee, or other person, from knowingly accepting or receiving corporate contributions. 2 U.S.C. § 441b(a). The term "person" includes a corporation or any other organization or group of persons. 2 U.S.C. § 431(11).
>
> 12. The Act defines contributions to include loans and advances. 2 U.S.C. § 431(8)(A)(i). Excluded from this definition, however, are loans and advances made in the ordinary course of business by federally-chartered or federally-insured depository institutions. 11 C.F.R. § 100.7(b)(11).

Although TVC contended that it (i) acted in good faith and reasonably relied upon Advisory Opinion ("AO") 1979-36 in entering into the no-risk contract with CLPAC, and in charging CLPAC the usual and normal charges for their services, and (ii) followed normal standards of industry practice in such activities, TVC agreed, for purposes of the Conciliation Agreement, that it would not contest the Commission's finding that it violated the Federal Election Campaign Act of 1971 ("the Act") — and more specifically that provision of the Act, 52 U.S.C. § 30118(a), which, in 2005 when the Conciliation Agreement was negotiated and signed, prohibited corporations from making Independent Expenditures in federal elections.

**Changes in Campaign Finance Law.** Federal campaign finance law with respect to Independent Expenditures by corporations has changed significantly since the Conciliation Agreement was signed in 2005.

- In EMILY's List v. FEC, 581 F.3d 1 (D.C. Cir. 2009), the U.S. Court of Appeals for the District of Columbia Circuit held that a nonconnected political committee may solicit and receive unlimited contributions from individuals for Independent Expenditures, so long as it separates all "Independent Expenditure-Only" funds from funds that may be used for contributions to political candidates and political parties. *Id.* at 12.

- In SpeechNow.org v. FEC, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), *cert. denied*, 562 U.S. 1003 (2010), the D.C. Circuit held that the $5,000 limit on contributions by individuals to political committees — the limit imposed by 52 U.S.C. § 30116(a)(1)(C) — cannot constitutionally be applied with respect to a nonconnected political committee that makes only Independent Expenditures. *Id.* at 696.

- In Citizens United v. FEC, 558 U.S. 310 (2010), the Supreme Court expressly held that the Act's prohibition on the corporate financing of Independent Expenditures (and Electioneering Communications) was unconstitutional.

Based on these cases, in 2014, the Commission revised its regulations to remove the prohibition on Independent Expenditures by corporations.[2] Thus, the Commission has recognized that corporations and labor organizations may expend unlimited amounts of money on Independent Expenditures. *See* Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 *Fed. Reg.* 62,817 (Oct. 21, 2014); 11 CFR Part 114.

Furthermore, corporations may contribute unlimited amounts to nonconnected political committees which are "Independent Expenditure-Only" Committees. *See also* FEC Advisory Op. 2010-11 (Commonsense Ten), 2010 WL 3184269 (July 22, 2010) (a registered nonconnected political committee that makes only Independent Expenditures may solicit and accept unlimited contributions from individuals, political committees, corporations, and labor organizations to fund its Independent Expenditures).

Paragraph V.1.b of the Conciliation Agreement provides that ATA would refrain from entering into "no-risk" contracts with political committees in general terms, since the law at that time prohibited corporate contributions even to Independent Expenditure-only committees. Paragraph V.1.c of the Agreement provides that ATA would refrain from using third-party, non-banking lenders to finance the cost of postage for mailings for political committees, again in general terms. However, in view of changes in the law set out above, the FEC no longer has authority to prevent a corporation from making a contribution to an "Independent Expenditure-Only" Committee. Thus, there is no reason to prohibit TVC from entering into no-risk fundraising agreements or using third-party, non-banking lender loans in connection with fundraising for "Independent Expenditure Only" Committees, where the result could be that TVC, other vendors, and lenders would make, in essence, a permissible in-kind contribution by paying some of tbe expenses incurred by that Committee.[3]

Insofar as the bar on corporate contributions to "Independent Expenditure-Only" Committees has been removed, no federal law or policy would be served by imposing a bar against a corporation entering into a "no-risk" fundraising agreement or loan agreements with third-party, non-banking lenders to send mail on behalf of such a committee.

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[2] *See* FEC Agenda Document No. 14-53-A, http://www.fec.gov/agenda/2014/documents/mtgdoc_14-53-a.pdf. *See also* http://www.fec.gov/ans/answers_general.shtml#How_much_can_I_contribute.

[3] So that there be no confusion, this letter does not relate to agreements with political committees that are not "Independent Expenditure-Only" Committees.

**Commission Procedures**

Frankly, since this matter relates to one Conciliation Agreement, and specifically the responsibilities of TVC to the FEC under that agreement, we are not at all persuaded that the issue lends itself to an Advisory Opinion. It seemed to us that the simplest approach would be for the FEC to reply to this letter with its agreement with our proposed interpretation of the Conciliation Agreement. However, when we called the General Counsel's office for procedural guidance, we were advised that treating this request as an AOR was the only route available to us. Nevertheless, should use of some other more simple and efficient approach be possible, such as an amendment to Paragraph V.1.b and V.1.c of the Conciliation Agreement, please let us know.

For example, if we may submit this Advisory Opinion Request instead as a request for consideration of a legal question by the Commission,[4] we would be pleased to submit it to the Commission Secretary in that form for processing.

We look forward to your reply.

Sincerely yours,

William J. Olson

WJO:mm
Attachment

cc: Mr. Anthony Bell
Federal Election Commission

Mark J. Fitzgibbons, Esquire
The Viguerie Company

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[4] *See* "Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission," 78 *Fed.Reg.* 63203 (Oct. 23, 2013), as revised.

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June 13, 2016
By email to jlee@fec.gov

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Enforcement Division
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Federal Election Commission
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Washington, D.C. 20463

Re: The Viguerie Company, *et al.* — Request to expand Modification to Conciliation Agreement in MUR 5635 to include Non-Contribution Accounts of Hybrid Committees

Dear Ms. Lee:

Our letter dated May 11, 2016, requested the Commission to issue an Advisory Opinion approving a modification to the Conciliation Agreement resolving Matter Under Review 5635 involving our clients, The Viguerie Company, American Target Advertising, Inc. and ConservativeHQ.com, Inc. (collectively referred to as "TVC"). The reason for the modification was an intervening change in governing law which authorized the creation of "Independent Expenditure-Only" Committees.

You have advised us that, rather than using the Advisory Opinion process, you are seeking to have the Commission resolve this matter as a revision to the Conciliation Agreement at its June 30, 2016 meeting, or, at the latest, its meeting on July 14, 2016.

The purpose of this letter is to expand our request to include similar treatment for Non-Contribution Accounts maintained by Hybrid Committees, because the same change in governing law that led to the FEC's authorization of "Independent Expenditure Only" Committees later led to the FEC's authorization of Non-Contribution Accounts administered by Hybrid Committees. *See* FEC Statement on Carey v. FEC, Reporting Guidance for Political Committees that Maintain a Non-Contribution Account (Oct. 5, 2011). Since the rules which govern both are the same, we would ask that the modification of the Conciliation Agreement permit TVC to operate in the same manner with respect to both.

Specifically, our May 11 letter argues that current law would allow a corporation to make contributions to Independent Expenditure-Only Committees, it should have the ability to enter into no-loss fundraising contracts with such committees, and obtain loans for the costs of postage for mailings on behalf of such committees from corporations or individuals in excess of contribution limits. And we believe that the Commission should agree that the same principles that apply to Independent Expenditure-Only Committees would also apply to Non-Contribution Accounts maintained by Hybrid Committees which engage in independent expenditure-only projects through a Non-Contribution Account. (We confirm that we not seeking any change whatsoever with respect to contribution accounts maintained by Hybrid Committees.)

We trust that the expansion of our request in this way would not require any postponement of anticipated Commission action.

If you have any questions about this request, or would like any further information, we would be pleased to provide it.

Sincerely yours,

*William J. Olson*

William J. Olson

WJO:mm

cc: The Viguerie Company

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COMMISSION
OFFICE OF GENERAL
COUNSEL

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**BEFORE THE FEDERAL ELECTION COMMISSION**

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| In the Matter of | ) | |
| | ) | |
| American Target Advertising, Inc. | ) | |
| The Viguerie Company | ) | MUR 5635 |
| ConservativeHQ.com, Inc. | ) | |
| Conservative Leadership Political | ) | |
| Action Committee and David Fenner, | ) | |
| in his official capacity as treasurer | ) | |

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission (the "Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found probable cause to believe that American Target Advertising, Inc. ("ATA"), the Viguerie Company ("TVC"), and ConservativeHQ.com, Inc. ("CHQ") (collectively referred to herein as the "Corporate Respondents") violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended (the "Act").[1] The Commission further found probable cause to believe that Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer ("CLPAC" or the "Committee") violated 2 U.S.C. §§ 434(b), 441a(f), and 441b(a).

NOW, THEREFORE, the Commission and the Respondents, having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding.

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[1] All of the facts recounted in this agreement 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 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA.



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II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

**Background**

1. Respondent TVC is a corporation, incorporated in Virginia, that specializes in fundraising for nonprofit entities.

2. TVC owns ATA, a Virginia corporation that provides direct mail marketing services. ATA pioneered mass cause-related direct mail fundraising starting in 1965. ATA's chairman is Richard Viguerie, who serves as the moderator and commentator on an Internet website operated by CHQ.

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3. Conservative Leadership Political Action Committee ("CLPAC" or the "Committee") is a multicandidate political committee within the meaning of 2 U.S.C. § 431(4) and is not an authorized committee of any candidate. David Fenner is the treasurer of CLPAC. CLPAC registered as a political committee in 1972. Total expenditures for the period 1993 through 1999 were $280,625 and total receipts were $292,564 – an average of approximately $40,000 in receipts and expenditures per year. Expenditures ranged from $4,818 in 1993 to $128,239 in 1998.

4. On July 6, 2000, CLPAC entered into a contract with ATA (the "Contract") that resulted in a direct mail, telemarketing, and Internet fundraising program to occur in the four months before the 2000 election. At a later date, the parties orally agreed to amend the Contract

Representatives from ATA and CLPAC signed a written instrument reflecting this understanding on September 28 and October 11, respectively.

5. The Contract was a "no-risk" contract. It provided that CLPAC would not be responsible for the costs of the fundraising in excess of the amount of money raised, and that the Corporate Respondents would have no recourse against CLPAC for fundraising program losses.

6. ATA contracted much of the CLPAC program to other vendors, among them TVC and CHQ. ATA rented mailing lists from TVC and hired CHQ to provide Internet fundraising services. ATA also contracted with the other Respondents and vendors to provide additional services and to make advances to cover the initial cost of postage.

7. The fundraising program involved thirty-nine mailings. Fifteen of the mailings (a total of over 6 million pieces of mail) opposed the candidacy of Albert Gore, Jr. and thirteen of them (almost 4.8 million pieces of mail) opposed Hillary Rodham Clinton.

8. During the period beginning on August 5, 2000, and ending on November 7, 2000 (the date of the general election), expenses for the direct mail fundraising program exceeded revenues. As a result, ATA incurred net losses. Under the terms of the contract, CLPAC was not required to pay ATA or any of the other vendors to offset these net losses. ATA subsequently negotiated with the other vendors to reduce or eliminate all of the outstanding debts. In addition, pursuant to the terms of the amended contract, the escrow account into which contributed funds were deposited disbursed $465,000 to CLPAC out of the revenues from the direct mail program. However, ATA retained exclusive rights to market and receive all income from the housefile mailing list that was generated as a result of the direct mail program.





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9. CLPAC failed to identify the occupation and/or name of employer for 93% of the contributions it reported from January 1, 1999, through December 31, 2000. CLPAC also failed to report the purpose of 56 disbursements during the same period totaling $1,848,416. Furthermore, CLPAC initially reported debt associated with the direct mail program but then amended its reports for the 2000 calendar year to show no debt owed by the Committee to ATA or any other vendor involved in the direct mail program.

**Applicable Law**

10. The Act defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). "Anything of value" includes all in-kind contributions, i.e., "the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for such goods and services." 11 C.F.R. §§ 100.7(a)(1)(iii) and 100.8(a)(1)(iv).

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11. The Act prohibits any corporation from making a contribution in connection with any federal election and prohibits any political committee, or other person, from knowingly accepting or receiving corporate contributions. 2 U.S.C. § 441b(a). The term "person" includes a corporation or any other organization or group of persons. 2 U.S.C. § 431(11).

12. The Act defines contributions to include loans and advances. 2 U.S.C. § 431(8)(A)(i). Excluded from this definition, however, are loans and advances made in the ordinary course of business by federally-chartered or federally-insured depository institutions. 11 C.F.R. § 100.7(b)(11).

13. The Act provides that no person shall make contributions to a political committee in any calendar year, which, in the aggregate, exceed $5,000, 2 U.S.C. § 441a(a)(1)(C), and that no political committee shall knowingly accept such contributions. 2 U.S.C. § 441a(f).

14. The Act requires committees to identify contributors who make aggregate contributions of over $200 in a calendar year. 2 U.S.C. § 434(b)(3)(A). The Act requires committees to report the name and address of any person to whom the committee makes disbursements that total over $200 in a calendar year and to state the purpose of the disbursement. 2 U.S.C. § 434(b)(5)(A).

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15. According to the Act, all campaign debts and obligations must be reported in a committee's periodic disclosure filings. 2 U.S.C. § 434(b)(8). For as long as debts remain outstanding, a political committee is required to continuously report their existence until such time as they are extinguished. 11 C.F.R. § 104.11(a). All outstanding obligations are to be reported on FEC Form 3 Schedule D, with specific references to: the amounts owed; the outstanding balance as of the beginning of the reporting period; the amounts incurred during that reporting period; payments made during that reporting period; and the outstanding balance at the close of the reporting period. Committees are also required to enclose with this schedule a statement setting out the amount(s) paid and explaining the conditions under which such obligations or debts are extinguished. 11 C.F.R. § 104.3(d).

16. The Corporate Respondents contend that they acted in good faith and reasonably relied on Advisory Opinion 1979-36 and believe that, because they charged CLPAC the "usual and normal charges" for their services and followed normal standards of industry practice, they did not make a contribution to the Committee.

## Violation

V. 1. Without admitting or denying the Commission's conclusions, American Target Advertising, Inc., the Viguerie Company, and ConservativeHQ.com, Inc.:

a. will not contest the Commission's finding that they violated 2 U.S.C. § 441b(a);

b. will cease and desist from using "no-risk" contracts in future agreements with political committees as defined currently in the Act;

c. will cease and desist from using third-party, non-banking lenders to finance the cost of postage for mailings on behalf of political committees as defined currently in the Act; and

d. will pay to the Federal Election Commission an amount of Eighty-Seven Thousand, Five Hundred Dollars ($87,500).

2. Without admitting or denying the Commission's conclusions, Conservative Leadership Political Action Committee and David Fenner, in his official capacity as treasurer:

a. will not contest the Commission's finding that they violated 2 U.S.C. §§ 434(b), 441a(f), and 441b(a);

b. will cease and desist from using "no-risk" contracts in future agreements with vendors;

c. will cease and desist from using third-party, non-banking lenders to finance the costs of postage for mailings on their behalf; and

d. will pay to the Federal Election Commission an amount of Twelve Thousand, Five Hundred Dollars ($12,500).

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VI. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437(g)(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission with good cause has reason to believe that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

VIII. Respondents shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

IX. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein and any "no-risk" contracts existing prior to the date of this agreement between Respondents and any political committees as defined by the Act. No other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton
General Counsel

BY: Rhonda J. Vosdingh 12/23/05
Rhonda J. Vosdingh
Associate General Counsel
For Enforcement

Date



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FOR THE RESPONDENT:

Richard A Viguerie

(Name) Richard A Viguerie
(Position) Chairman
American Target Advertising, Inc.
The Viguerie Company
ConservativeHQ.com, Inc.

Dec. 2, 2005
Date

FOR THE RESPONDENT:

Morton C. Blackwell

(Name) Morton C. Blackwell
(Position) President
Conservative Leadership Political
Action Committee

December 6, 2005
Date

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