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MEMORANDUM

TO: Charles Sheehan
FROM: Reed & Davidson, LLP
DATE: July 16, 2007
RE: Billboards supporting Carole Migden

You requested a memorandum discussing the legal significance of billboards featuring Senator Carole Migden that have been partially paid for by Clear Channel Communications.

We have reviewed photographs of billboards that have recently appeared throughout the San Francisco area depicting a picture of Carole Migden, her campaign logo and slogan, and message regarding the war in Iraq. We have also reviewed statements made to the press by Senator Migden. It is our conclusion that, presuming the Senator's statements are accurate, Senator Migden has received an illegal "in-kind" contribution from Clear Channel Communications.

The billboards are contributions to the Migden campaign.

The billboards featuring Senator Migden are contributions to her campaign, not independent expenditures or "issue ads." Under the Political Reform Act, a payment made at the behest of a candidate is generally a contribution to the candidate. A payment is made at the behest of a candidate when it is made "in cooperation, consultation, coordination, or concert with" the candidate. 2 CCR 18225.7. On July 11, 2007, it was reported on SFBG.com that Carole Migden stated:

"My campaign paid for the printing. The money for the boards came from some sort of internal fund available to Clear Channel to pay for these things when there are boards that aren't sold. It's all perfectly legal."

This quote demonstrates that the candidate and contributor coordinated on the production of the billboards, and therefore any costs paid by Clear Channel Communications are contributions to the Migden campaign. While Migden is correct that coordination itself is not illegal, such coordination results in a contribution that is illegal if it is more than the contribution limit. Clear Channel has already contributed \$2,500 to Carole Migden. The contribution limit is \$3,600. Therefore, presuming that the value of several billboards throughout San Francisco far exceeds \$1,100, Clear Channel has made a contribution to Carole Migden in excess of the legal limits.

The billboards are not “issue ads.”

The FPPC has determined that when an expenditure is made at the behest of a candidate, as is the case here, it is not necessary for the communication to contain “express advocacy” (e.g. “vote-for” or “support”) for the expenditure to be considered a contribution to the campaign. While a communication must contain express advocacy to be considered an independent expenditure, “an expenditure that does not meet this requirement will still be a contribution if it is made at a candidate’s behest.” FPPC Advice Letter 90-173.