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May 18, 2010

Thomasenia Duncan, Esq.  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

Re: Kenneth R. Buck, Buck for Colorado, Declaration Alliance, The Campaign for Liberty, Inc., Americans for Job Security, Jerry L. Morgensen, Hensel Phelps Construction Co. and Perry L. Buck

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437g(a)(1) and 11 C.F.R. § 111.4, please accept this letter as a Complaint for violations of the Federal Election Campaign Act of 1971, as amended (herein the “Act”), and regulations of the Federal Election Commission (herein the “FEC” or the “Commission”) against Colorado U. S. Senate candidate Kenneth R. Buck (herein “Buck”), his U.S. Senate campaign committee Buck for Colorado (herein the “Buck Committee”), Declaration Alliance, a Virginia corporation (herein “Declaration Alliance”), The Campaign for Liberty, Inc., a Delaware corporation (herein “Campaign for Liberty”), Americans for Job Security, a Washington, D.C. corporation (herein “AJS”), Jerry L. Morgensen (herein “Morgensen”), Hensel Phelps Construction Co., a Delaware corporation (herein “Hensel Phelps”), and Perry L. Buck (herein “Mrs. Buck”). The foregoing individuals or entities are sometimes collectively referred to herein as the “Respondents.” Specifically, the Respondents have, individually and collectively, (a) violated the prohibition on accepting coordinated communications paid for by individuals and/or corporations as set forth in 2 U.S.C. § 441a(a)(7)(B)(i) and 11 C.F.R. §§ 114.2(b) and 109.22, (b) violated the prohibition on accepting coordinated communications paid for by federal government contractors as set forth in 2 U.S.C. §§ 441a(a)(7)(B)(i) and 441c(a) and 11 C.F.R. §§ 115.2(a) and 109.22, (c) made impermissible corporate contributions to a U.S. Senate candidate and/or a federal candidate campaign committee, and (d) in the case of Mrs. Buck, violated the individual campaign contribution limitations.

#### I. Facts

Buck is and at all relevant times has been a resident of Weld County, CO, resident at 4425 83<sup>rd</sup> Avenue, Greeley, CO 80634. His spouse, Mrs. Buck, resides with him at this same address.

Since December 30, 2008, Buck and Mrs. Buck have been the owners, as joint tenants, of a townhouse located at 3950 W. 12<sup>th</sup> Street, Unit 21, Greeley, CO 80634 (herein the “Greeley

Townhome”). See attached Exhibit A. According to the records of the Weld County Assessor, the most recent assessed value of the Greeley Townhome was \$167,852. See attached Exhibit A.

The Buck Committee is the authorized principal campaign committee for Buck, who is a candidate for the United States Senate for the State of Colorado. The Buck Committee filed its most recent FEC Form 1 Statement of Organization on December 21, 2009. See attached Exhibit B. Buck filed his most recent FEC Form 2 Statement of Candidacy on July 1, 2009. See attached Exhibit C.

FEC contribution and expenditure reports filed by Buck and the Buck Committee through March 31, 2010 are available on the Commission’s website, at <http://images.nictusa.com/cgi-bin/fecimg/?C00461368>.

Declaration Alliance is a domestic corporation incorporated in the State of Virginia on December 5, 2005. See attached Exhibit D. Upon information and belief, one of its principal agents or employees is John Hoteling, formerly of Denver, CO.

Campaign for Liberty is a domestic corporation incorporated in the State of Delaware on June 3, 2008, and is registered to do business in the State of Virginia. See attached Exhibit E. The officers and/or directors of Campaign for Liberty are Jesse Benton and Ronnie Paul. See attached Exhibit E.

AJS is a domestic not-for-profit corporation incorporated in Washington, D.C., as a 501(c)(6). See attached Exhibit F.

All three groups—Declaration Alliance, Campaign for Liberty and AJS—are well-known conduits readily accessible to candidates who can supply big donations.

Hensel Phelps is a domestic corporation incorporated in the State of Delaware on July 1, 1982, with corporate headquarters at 420 Sixth Avenue, Greeley, CO 80632 (970-352-6565). See attached Exhibit G. Hensel Phelps is a federal government contractor and, as such, has received substantial federal government contracts and funds, including, most recently, government “stimulus” funds. In addition, upon information and belief, in 2009, Hensel Phelps was awarded at least \$1.65 billion in federal government contracts in its own name, and another approximately \$94 million in federal government contracts in joint venture contracts with Kiewit Corporation and \$117 million in federal government contracts in joint venture contracts with Solpac Construction, Inc. d/b/a Soltek Pacific Construction Company. Upon information and belief, thus far in 2009 and 2010, Hensel Phelps has been awarded approximately \$433 million in federal government contracts.

The chairman and CEO of Hensel Phelps is Jerry L. Morgensen. See attached Exhibit H. Morgensen is a resident of Greeley, CO, and is, upon information and belief, a member of the finance or fundraising committee of the Buck Committee. In addition, Morgensen is a director and owner of Cache Bank and Trust, 4601 W. 20<sup>th</sup> Street, Greeley, CO. See attached Exhibit H. After leaving the Colorado United States Attorney’s office in about 2002, Buck worked for approximately two years for Hensel Phelps and for Morgensen in Greeley, CO.

In about March 2009, as Buck was considering his candidacy for the U.S. Senate, Buck interviewed prospective campaign consultants. During these interviews, Buck informed prospective campaign consultants and others that his friend Morgensen was prepared to spend up to \$1 million on Buck's anticipated U.S. Senate campaign, presumably as an independent expenditure. Morgensen, who accompanied Buck to some of these interviews, confirmed that he was planning to "invest" one million dollars or more in Buck's Senate campaign.

Since announcing his campaign for the U.S. Senate, and according to the attached FEC reports, Morgensen and other direct employees of Hensel Phelps and their direct family members have contributed a total of \$146,600 to Buck and/or to the Buck Committee. See Quarterly Reports, available at <http://images.nictusa.com/cgi-bin/fecimg/?C00461368>. These total campaign contributions from Morgensen and/or employees of Hensel Phelps and their direct family members constitute nearly one-fourth of the total campaign contributions received by Buck and the Buck Committee through March 31, 2010.

Upon information and belief, Buck has advised Morgensen and other potential Buck donors who are financially able to contribute more than the maximum allowable contribution of \$2,400 to make excess contributions to Declaration Alliance in care of John Hoteling. In February and March 2010, intending to benefit Buck and the Buck Committee, Declaration Alliance, with the involvement of John Hoteling, and using funds funneled to Declaration Alliance by Hensel Phelps and/or Morgensen and/or other individuals who have contributed in excess of the maximum allowable contribution limit of \$2,400 per individual, received and spent just over \$158,000 on a television ad campaign attacking one of Buck's potential primary opponents. See attached Exhibit I.

Just before that, in January 2010, intending to benefit Buck and the Buck Committee and, upon information and belief, with the involvement of John Hoteling, Campaign for Liberty used funds funneled to it by Hensel Phelps and/or Morgensen and/or other individuals who have contributed in excess of the maximum allowable contribution limit of \$2,400 per individual to spend approximately \$329,000 on a television ad campaign attacking one of Buck's potential primary opponents. See attached Exhibit J.

In the last few months, Hensel Phelps and/or Morgensen and/or other individuals, intending to benefit Buck, upon instructions from Buck, have made additional contributions in excess of the maximum allowable contribution limit of \$2,400 to AJS. Upon information and belief, these contributions in excess of allowable contributions limits were funneled to AJS upon instructions from John Hoteling.

In April 2010, intending to benefit Buck and the Buck Committee, AJS, using funds funneled to it by Hensel Phelps and/or Morgensen and/or other individuals who have contributed in excess of the maximum allowable contribution limit of \$2,400, received and spent at least \$294,000 on a television ad campaign and promotional campaign literature promoting Buck for the U.S. Senate.

According to an article in the April 13, 2010, edition of The Denver Post, Buck's U.S. Senate campaign manager, Walt Klein, announced that AJS had "taken more than \$300,000 in

[television] ads out to support Republican Senate hopeful Ken Buck,” and that “[t]he pro-Buck ads should start running on most Denver network stations, in Colorado Springs and in Grand Junction this week through April 23.” See attached Exhibit K, which also is available at <http://blogs.denverpost.com/thespot/2010/04/13/virginia-based-political-group-to-run-pro-buck-ads/>. The AJS television ad touts Buck as a conservative candidate for the U.S. Senate who will fight to control federal government spending. The AJS television ad also encourages viewers to call Buck and tell him to keep fighting for taxpayers who have had it with federal government spending. The television ad may be viewed at: <http://www.youtube.com/user/ajssavejobs#p/a/u/0/9b5bSxL6DR4>. Clearly, Mr. Klein had advance knowledge and information about this AJS television ad buy, thus demonstrating an improper coordinated expenditure by AJS.

All told, the three groups—Declaration Alliance, Campaign for Liberty and AJS—spent upwards of \$781,000, that is, over three-quarters of a million dollars, on ad buys intended to benefit Buck and the Buck Committee.

According to the Buck Committee’s March 31, 2010, FEC report, on March 30, 2010, Buck loaned the Buck Committee \$100,000 to advance his campaign for the U.S. Senate. See April 2010 Quarterly Report, available at <http://images.nictusa.com/cgi-bin/fecimg/?C00461368>. According to Weld County, CO, records, on November 4, 2009, Buck and his spouse, Mrs. Buck, borrowed \$120,000 from Cache Bank and Trust, Greeley, CO, the bank owned by Morgensen. This \$120,000 loan was secured by a deed of trust on the Greeley Townhouse jointly owned by Buck and Mrs. Buck. In that the most recent assessment of the value of this real property by the Weld County Assessor was \$167,852, the loan to Buck and his spouse by Morgensen’s bank represented 71.5 percent of the value of the real property. This loan by Morgensen and his bank, Cache Bank and Trust, Greeley, CO, constitutes an additional improper contribution in excess of permissible FEC limits by a corporation, to wit: Cache Bank and Trust and/or an individual, to wit: Morgensen and/or Mrs. Buck.

As is clear from the foregoing, the Declaration Alliance, Campaign for Liberty and AJS television ad buys made for the benefit of Buck and the Buck Committee and the AJS campaign literature promoting Buck for Senate mailed to Colorado citizens were financed, upon information and belief, by Morgensen, Hensel Phelps, other contributors, Cache Bank and Trust, Greeley, CO, and/or Mrs. Buck to the extent of her joint ownership interest in the Greeley Townhouse. See attached Exhibit L. As such, these contributions constitute contributions in excess of the permissible FEC limits, impermissible coordinated campaign expenditures and prohibited corporate contributions by a major federal government contractor and/or a regulated banking institution.

## II. Relevant Law

A public communication is “a communication by means of any broadcast, cable or satellite communication . . . to the general public, or any other form of general public political advertising.” 11 C.F.R. § 100.26. When an organization pays for a public communication that is coordinated with a candidate, as opposed to an independent expenditure, the communication is considered an in-kind contribution to that candidate and is subject to the Act’s contribution

limits, prohibitions and reporting requirements. See 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.22. Therefore, only permissible sources may make coordinated communications. 11 C.F.R. § 109.22. Communications are “coordinated” if “made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate’s authorized committee, or a political party committee.” 11 C.F.R. § 109.20; see 2 U.S.C. § 441a(a)(7)(B)(i).

Corporations are prohibited from making contributions to candidates for federal office, and may not pay for communications coordinated with a candidate. 2 U.S.C. § 441b(a); 11 C.F.R. §§ 114.2(b), 109.22. Government contractors likewise are prohibited from making contributions to federal candidates and, by extension, from paying for coordinated communications. 2 U.S.C. § 441c(a); 11 C.F.R. §§ 115.2(a), 109.22. Individuals who are not otherwise prohibited from making contributions may contribute up to—but not more than—\$2,400 per election. 2 U.S.C. § 441a(a)(1)(A); 11 C.F.R. §§ 110(a), 110(b)(1).

Contributions include in-kind contributions of “anything of value,” and the provision of goods or services for less “the usual and normal charge for such goods and services” results in a contribution and, in the case of a corporation, a prohibited contribution. 2 U.S.C. §§ 431(8)(A)(i), 441b(b)(2); 11 C.F.R. §§ 100.52(a), 100.52(d), 114.2(b)(1). A commercial transaction, such as the making of a loan, is permissible only if it is “commercially reasonable” in the loan was made “in exchange for bargained for consideration of equal value.” Advisory Op. 2006-34.

As noted above, expenditures for coordinated communications are contributions subject to the Act’s reporting requirements and must be reported by a political committee. See 2 U.S.C. § 441a(a)(7)(B)(i), 434; 11 C.F.R. § 109.20, 104.2.

Coordinated communications paid for by corporations or government contractors are impermissible in-kind contributions under the Act and may not be accepted by a political committee. 2 U.S.C. §§ 441b(a), 441c(a); 11 C.F.R. §§ 114.2(b), 115.2(a), 109.22. Knowing acceptance of an impermissible contribution by a political committee, or by an “officer or employee of a political committee,” is a violation of the Act. 2 U.S.C. § 441a(f).

### III. Legal Analysis

The advertisements purchased and run by Declaration Alliance, Campaign for Liberty and AJS are impermissible coordinated communications. According to Buck’s campaign manager, who clearly had advance knowledge of the AJS ad buys, the AJS television ads ran on “most Denver network stations, in Colorado Springs and in Grand Junction,” Colorado. See Attachment K. Thus, the ads are “broadcast” communications, which are “communications” under the Commission’s regulations.

The advertisements are coordinated communications because of the apparent cooperation between Declaration Alliance, Campaign for Liberty and/or AJS and Morgensen and/or Hensel Phelps and/or Mrs. Buck and/or other undisclosed contributors, on the one hand, and Buck and the Buck Committee, on the other. The statement of Buck’s campaign manager in The Denver Post article indicates that both Buck and the Buck Committee had prior knowledge of the AJS ad

buy, and that the AJS ad buy would benefit Buck and the Buck Committee. See attached Exhibit K. Moreover, Buck's campaign manager Mr. Klein had details concerning the AJS television ads, such as the amount of the ad buy, where and when the AJS television ads would be run, and the duration of the AJS television ad buy. See attached Exhibit K. This is the sort of information that could only have come from those purchasing and running the ads, namely AJS and/or Morgensen and/or Hensel Phelps and/or Mrs. Buck and/or other undisclosed contributors. Thus, the Declaration Alliance and AJS ad buys were "made in cooperation, consultation or concert with" Buck and the Buck Committee, and the ads are coordinated communications under the Act and the Commission's regulations.

As a result, expenditures by Declaration Alliance, Campaign for Liberty, AJS, Morgensen, Hensel Phelps, Mrs. Buck, and/or other undisclosed contributors constitute impermissible in-kind contributions to Buck and the Buck Committee and, in all probability, prohibited corporate contributions by a major federal government contractor and/or a regulated banking institution for the benefit of Buck and the Buck Committee. Because the Declaration Alliance, Campaign for Liberty and AJS ads were coordinated with Buck and the Buck Committee, and were not independent expenditures, the expenditures for the Declaration Alliance, Campaign for Liberty and AJS ads were in-kind contributions to Buck and the Buck Committee. The Declaration Alliance, Campaign for Liberty and AJS ads were paid for by Declaration Alliance, Campaign for Liberty, AJS, Morgensen, Hensel Phelps, Cache Bank and Trust and/or Mrs. Buck. As corporations, Declaration Alliance, Campaign for Liberty, AJS, Hensel Phelps and Cache Bank and Trust are prohibited from making contributions to federal election campaigns. Hensel Phelps is further prohibited from making such contributions owing to its status as a federal government contractor. By accepting these in-kind contributions, Buck and the Buck Committee have improperly and with knowledge accepted and benefited from campaign contributions that are prohibited by the Act and Commission regulations.

#### IV. Conclusion

Based upon the foregoing facts, Buck, the Buck Committee, Declaration Alliance, Campaign for Liberty, AJS, Morgensen, Hensel Phelps, Cache Bank and Trust and/or Mrs. Buck have violated the Federal Election Campaign Act of 1971, as amended, and the Federal Election Commission regulations. Accordingly, we respectfully request that the Commission immediately issue an appropriate cease and desist order, pursue injunctive relief, and initiate an investigation into the foregoing federal campaign contribution violations and impose the maximum penalty allowable under the law.

The foregoing is correct and accurate to the best of my knowledge, information and belief.

Respectfully submitted,

Charles R. Grice, Jr.  
(303)840 2313

Sworn to and subscribed to me this \_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
Notary Public

My Commission Expires: