BEFORE THE
FEDERAL ELECTION COMMISSION

In the matter of:

Democratic National Committee	)	**MUR 4407**
and	)	
R. Scott Pastrick, Treasurer	)	

RESPONSE TO COMPLAINT

This memorandum is submitted by Respondents Democratic National Committee ("DNC") and R. Scott Pastrick, as Treasurer, in response to the complaint filed in this MUR. The complaint alleges that the DNC exceeded the limit on coordinated expenditures in connection with the general election campaign of a candidate for President (2 U.S.C. § 441a(d)(2)) in making expenditures for certain unspecified television advertisements referred to in a recent book by Bob Woodward entitled The Choice (1996).

The Commission should find no reason to believe that Respondents have violated the Federal Election Campaign Act of 1971 as amended (the "Act"), or the Commission's regulations, and should dismiss the complaint, for several reasons. First, the complaint does not comply with the requirements of 11 C.F.R. § 111.4 because it does not describe any violation of the Act or Commission regulations. Specifically, the complaint does not allege, or contain any factual information whatsoever indicating, that the advertisements contained an "electioneering" message that would make the costs of the advertisements, under the Commission's current regulations and rulings, subject to limitation under 2

U.S.C. § 441a(d)(2). Further, the sole evidence cited in the complaint--excerpts from The Choice--are not valid supporting documentation under section 111.4.

Second, the advertisements in question did not in fact contain any "electioneering" message. To the contrary, the advertisements in question simply promoted legislative proposals promoted by the President and the Democratic Party, and/or attacked legislative proposals made by the Republicans in Congress. Under the Commission's rulings, it is clear that the DNC advertisements did not convey an "electioneering" message and, accordingly, that the costs of these advertisements were not subject to section 441a(d) limits.

Finally, the generic DNC advertisements to which the book apparently refers did not expressly advocate the election or defeat of any candidate, which is the proper standard for determining if party communications are allocable to a particular candidate for purposes of 2 U.S.C. § 441a(d). There is no express advocacy in any of the DNC's advertisements, either under the narrow test recently adopted by several courts or under the broader definition set forth in the Commission's regulations at 11 C.F.R. § 100.22.

I. The Complaint Fails to Meet the Requirements for a Valid Complaint Under 11 C.F.R. § 111.4

A. The Complaint Fails to Set Forth Any Facts Which Describe A Violation of Section 441a(d)

The Commission's regulations provide that in order to be valid, a complaint must:

> contain a clear and concise recitation of the facts which describe a violation of a statute or regulation over which the Commission has jurisdiction.

11 C.F.R. § 111.4(d)(3). If a complaint does not comply with this requirement, and with the other requirements of section 111.4, "no action shall be taken on the basis of that complaint." 11 C.F.R. § 111.5(b). The complaint filed in this MUR does not contain a recitation of any facts which describe a violation by the DNC of 2 U.S.C. § 441a(d)(2) or of any other statutory provision or regulation.

Under the Commission's rulings, a party expenditure for a communication is subject to the limitations of section 441a(d) only if "the communication both (1) depict[s] a clearly identified candidate and (2) convey[s] an electioneering message." Advisory Opinion 1985-14, 2 CCH Fed. Elec. Camp. Fin. Guide ¶ 5819 at 11,185 (emphasis added). See also Advisory Opinion 1984-15, 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 5766; Advisory Opinion 1995-25, 2 Fed. Elec. Camp. Fin. Guide ¶ 6162 (RNC advertisements would be treated as "generic" or "administrative" expenses if they did not contain "electioneering message"). As the Commission explained in its brief submitted to the United States Supreme Court in Colorado

Republican Campaign Committee v. Federal Election Comm'n, 116 S. Ct. 2309 (1996):

> The Commission's conclusion that a particular party expenditure is "coordinated" [for purposes of section 441a(d)] rests on two subsidiary determinations - -. . . First, a party expenditure is "coordinated" only if it is attributable to a particular candidate (as distinct from "generic" appeals for support for the party's candidates as a group). . . . That determination is made on a case-by-case basis and depends upon whether the communication "(1) depict[s] a clearly identified candidate and (2) convey[s] an electioneering message."

Brief for Respondents at 23 (citing A.O. 1985-14, at 11,185).

In this case, the complaint does not identify or describe the advertisements in question, nor does it indicate when or where they were broadcast or what their contents were. There are simply no facts whatsoever in the complaint about the "message" of the advertisements, let alone any facts suggesting or indicating that the advertisements contained an "electioneering" message. Thus, the complaint simply fails to set forth any facts which describe any violation of section 441a(d) by the DNC, under the Commission's "electioneering" test.

The only factual assertion at all in the complaint with respect to the unspecified advertisements is that President Clinton "personally directed and controlled from the White House several ad campaigns that were paid for by the DNC." (Complaint at 1-2). In essence, the complaint asserts that, if the unspecified advertisements were closely coordinated with a candidate, their costs became subject to section 441a(d) limitations. That is clearly not the law under the Commission's current view.

In adopting the "electioneering" test, the Commission presumed that a party would coordinate its communications with its candidates. When that test was adopted, the Commission's regulations expressly embraced that presumption by precluding national party committees from making independent expenditures on behalf of their presidential nominees. 11 C.F.R. § 110.7(a)(5). Indeed, in first articulating the "electioneering" test in Advisory Opinion 1984-15, the Commission stated that, for purposes of determining whether expenditures are subject to limitation under section 441a(d), it makes no difference whether the expenditures are in fact coordinated with a candidate or not: "consultation or coordination with a candidate is permissible, it is not required." 1 CCH Fed. Elec. Camp. Fin. Guide ¶ 5766 at 11, 069.

The "electioneering" standard thus presumes that "party officials will as a matter of course consult with the party's candidates. . . " Brief for Respondents at 27, Colorado Republican, 116 S. Ct. 2309 (1996). By definition, then, under the Commission's view, the presence of coordination does not distinguish party expenditures which are subject to section 441a(d) limits from those which are not. Coordination is presumed in all cases. Expenditures for a communication are subject to section 441a(d) limits, in the Commission's view, "only if it is attributable to a particular candidate," which depends solely upon whether the communication depicts a clearly identified candidate and contains an "electioneering" message. Id. at 23.

In its decision in Colorado Republican, the Supreme Court held

that section 441a(d) cannot constitutionally be applied to limit party committee expenditures on behalf of congressional candidates if those expenditures are in fact independent. Colorado Republican, 116 S. Ct. at 2317. Thus the Court struck down the Commission's presumption that party committees cannot make independent expenditures. Id. at 2318-2319. The Court specifically did not address, however, the questions of (1) whether section 441a(d) can be applied to limit party expenditures which are in fact coordinated with candidates, or (2) if so, what is the proper test for determining when party expenditures count towards the section 441a(d) limits. "[W]e need not consider the Party's further claim that the statute's 'in connection with' language, and the FEC's interpretation of that language, are unconstitutionally vague." Id. at 2317, see also id. at 2319-2320.

Thus, the Commission's current view of the law remains that party expenditures which are in fact coordinated with a candidate are subject to limitation under section 441a(d) only if they contain an "electioneering" message. Even if this complaint contained any valid allegation of coordination--and it does not, for reasons explained in the following section--the complaint would not describe any violation of section 441a(d), because it does not allege that the advertisements at issue contained an electioneering message. Indeed, the complaint utterly fails to set forth any facts whatsoever about the contents of the ads from which such a determination could be made. For this reason, the complaint

manifestly fails to meet the requirements of section 111.4.[1]

B. The Complaint's Allegations Are Not Supported By Any Valid Evidence

Even if the complaint's allegations of coordination were legally relevant--and they are not, as illustrated above--there is simply no valid evidence in the complaint supporting any such allegations. The only evidence cited anywhere in the complaint consists of excerpts from The Choice. However, this book is not a factual or accurate report of the events and conversations it recounts. It is not the kind of material that should treated as substantial, cognizable evidence of anything by the Commission.

The Commission's regulations require that a complaint be "accompanied by any documentation supporting the facts alleged . . ." 11 C.F.R. § 111.4(d)(4). In Agenda Document 1979-29, approved by the Commission on November 15, 1979, the General Counsel recommended that the Commission allow complaints to be based on newspaper articles, provided that the articles are "well-documented and substantial." Id. at 2. The General Counsel concluded that "[i]f the Commission should deem that a complaint and its

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[1] It follows that the complaint's separate allegation that the DNC spent illegal corporate funds on the advertising campaign also does not state any violation of the Act or Commission regulations. If the advertisements were not subject to section 441a(d), then they were expenses classifiable as administrative costs or generic voter drive costs of the DNC. The DNC was then required by the Commission's allocation regulations at 11 C.F.R. § 106.5(b), to pay for the advertisements 65% from its federal account and 35% from its non-federal account--which is exactly how the costs of the advertisements were paid. See Advisory Opinion 1995-25, 2 Fed. Elec. Camp. Fin. Guide ¶ 6162.

accompanying news article is too insubstantial to warrant investigation, the Commission can render a finding of 'no reason to believe.'" Id. at 3.

In this case, the specific excerpts from The Choice on which the complaint relies are neither well-documented nor "substantial." For example, in a letter written to the editor of The Washington Post on June 27, 1996 (attached hereto as Exhibit 1), Commission General Counsel Lawrence M. Noble asserts that an excerpt from The Choice which appeared in the Post "attributes to me a statement which I did not make. . ." The excerpts from The Choice--even if they were in any way legally relevant, which they are not--would not be sufficiently substantial, well-documented or reliable to warrant an investigation. For these reasons, the complaint fails to meet the minimal requirements of section 111.4 of the Commission's regulations and the Commission should dismiss it.

II. The DNC Advertisements Did Not Convey An Electioneering Message

While the complaint does not identify or describe even a single advertisement run by the DNC, the excerpts from The Choice presumably refer to some of the generic advertisements run by the DNC during the 1995-96 election cycle.[4] Attached hereto as Exhibit 2 is a listing of the advertisements that were run by the DNC, up

[4] The same advertisements run by the DNC were also run by various state Democratic parties. State Democratic parties also ran a number of generic advertisements not run by the DNC. The complaint does not refer to any advertisements run by state parties and this response does not address any such advertisements.

through the date the complaint was filed, and the dates on which they ran. Attached hereto as Exhibit 3 are copies of the scripts of the advertisements listed in Exhibit 2.

The costs of these advertisements were not subject to the limitations of section 441a(d). As set forth in our amicus brief submitted to the Supreme Court in the Colorado Republican case, it is the DNC's position that the "electioneering" test, as defined by the Commission, is unconstitutionally vague to the extent that the test requires investigation into the party's motives.[3] Nevertheless, it is clear from those Commission rulings in which the "electioneering" test has been applied solely on the basis of the text of party advertisements, that the DNC advertisements, attached as Exhibit 3, do not convey an "electioneering" message.

In Advisory Opinion 1985-14, the Commission considered two television advertisements proposed by the Democratic Congressional Campaign Committee. One advertisement criticized "the President and his Republican supporters in Congress" for their farm policy, and referred to a joke by President Reagan to the effect that the farm crisis should be solved by "keeping the grain and exporting the farmers." The ad concluded with the line, "Let your Republican congressman know that you don't think this is funny."

The second advertisement criticized the "President and his Republican allies in Congress" for their economic policies. The ad concluded with the line, "Let your Republican Congressman know that

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[3] We believe that section 441a(d) should be construed to apply only to expenditures which expressly advocate the election or defeat of a candidate. See section III(B) below.

their irresponsible management of the nation's economy must end--before it's too late." The Commission concluded that, as long as the advertisements did not say "Vote Democratic," they would not be considered to contain an "electioneering" message, and their costs would not be subject to section 441a(d). 2 CCH Fed. Elec. Camp. Fin. Guide ¶ 5819 at 11,186.

In Advisory Opinion 1995-25, the Commission considered advertisements proposed by the Republican National Committee ("RNC") on various legislative proposals. In response to the Commission's request, the RNC submitted texts of three examples of such advertisements. A copy of the RNC's submission is attached hereto as Exhibit 4 for ready reference. Although the RNC insisted that these submissions did not form the basis for its A.O. request, the Commission did in fact consider and discuss them:

> [Y]ou have provided the texts for three such ads--one urging support for the Balanced Budget Amendment and the other two urging that the Medicare program be saved and restructured. Two ads do not mention a Federal candidate, and all three urge support for the Republican position on the issues discussed. The third advertisement (titled "Too Young to Die") mentions President Clinton's name six times, although only in the context of Medicare policy; there is no reference to any election.

2 CCH Fed. Elec. Camp. Fin. Guide ¶ 6162 at 12,108. The Commission ruled that the costs of these advertisements should be treated as an administrative or generic voter drive expense under 11 C.F.R. § 106.5(b), and as such should be paid for by the RNC 65% from its federal account and 35% from its non-federal account.[4]

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[4] While the Commission suggested that it "does not express any opinion as to what is or is not an electioneering message," id. at 12,108 n. 1, its opinion necessarily implies that these

Like the advertisements considered in A.O. 1995-25, the DNC advertisements attached as Exhibit 3 promote specific legislative proposals. Like the advertisements in A.O. 1985-14 and 1995-25, the DNC advertisements, to the extent they mention a federal candidate, do so only in the context of legislative policy--specifically, criticizing or praising the legislative positions or actions of these individuals in their capacities as officeholders acting on such legislation. The President is mentioned, but only in his capacity as head of the Administration responsible for submitting a budget proposal. Majority Leader Dole and/or Speaker Gingrich are mentioned solely in their capacities as the majority leaders of the U.S. Senate and House, respectively.

There is no reference to any election in any of the DNC advertisements. There is no reference to voting or to any other action, other than expressly or impliedly calling on Congress to support and enact the legislative proposals being discussed and on members of the public to express their support for such proposals to the Congress. Indeed, the DNC advertisements are in all material respects indistinguishable from the advertisements considered in A.O. 1985-14 and in A.O. 1995-25.

Under 2 U.S.C. § 437f(c), any advisory opinion may be relied

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advertisements did not contain an electioneering message. Otherwise, there would have been no reason for the Commission to insist that specific advertisements be submitted as examples and, had there been an electioneering message making the costs of the advertisements subject to section 441a(d), it would be a clear violation of the Commission's rules requiring that section 441a(d) communications be paid 100% from funds meeting the limitations and prohibitions of the Act, i.e., from the party committee's federal account.

upon by--

> (B) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(emphasis added). In this case, the DNC was clearly entitled to rely on Advisory Opinions 1985-14 and 1995-25 in determining that the DNC advertisements do not convey or contain an "electioneering" message. Accordingly, under the Commission's current test, the costs of these advertisements are not subject to the limitations of section 441a(d).

III. The DNC Advertisements Did Not Expressly Advocate the Election or Defeat of Any Candidate

The costs of these advertisements were not subject to the limits of section 441a(d) in any event because they did not expressly advocate the election or defeat of any candidate--which is the proper standard for determining when the costs of a party communication are subject to those limits.

A. The DNC Advertisements Did Not Expressly Advocate the Election or Defeat of a Clearly Identified Candidate

The advertisements run by the DNC during the 1995-96 election cycle did not expressly advocate the election or defeat of any candidate. There is no "express advocacy" in any of these advertisements, either under the narrow definition adopted by some courts or under the broader definition set forth in the Commission's regulation, 11 C.F.R. § 100.22.

First, it is clear that the advertisements do not meet the narrow definition set forth recently by courts in at least three circuits. In Federal Election Commission v. Christian Action Network, No. 95-2600, 1996 U.S. App. LEXIS 19047 (4th Cir., August 2, 1996) (per curiam), the court held that

> the only expenditures subject to the statutory prohibition are those that "expressly advocate" the election or defeat of a clearly identified federal candidate . . . by the use of such words as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject," . . .

Christian Action Network, No. 95-2600, 1996 U.S. App. LEXIS 19047 at *3, citing Buckley v. Valeo, 424 U.S. 1, 44 n.52 (1976). Similarly, in Maine Right to Life Committee, Inc. v. Federal Election Commission, 914 F. Supp. 8 (D. Me. 1996), the court ruled that only specific words such as those listed in Buckley footnote 52 constitute express advocacy. The court held that the Act cannot constitutionally be interpreted to authorize the Commission's regulation, 11 C.F.R. § 100.22(b), incorporating a broader definition.

Earlier, in Federal Election Commission v. Survival Education Fund, No. 89 Civ. 0347, 1994 U.S. Dist. LEXIS 210 (S.D.N.Y., Jan. 12, 1994), aff'd in part, rev'd in part on other grounds, 65 F.2d 285 (2d Cir. 1995), the court ruled that express advocacy "means the use of express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot,' 'Smith for Congress,''vote against,''defeat','reject.'" Christian Action Network, No. 89 Civ. 0347, 1994 U.S. Dist. LEXIS 210 at *6.

The texts of the DNC advertisements, attached as Exhibit 3, clearly demonstrate that these advertisements do not contain any of the words of express advocacy set forth in these cases, with respect to any candidate. Indeed, there is no reference to any election at all. Each of the advertisements defends and promotes specific legislative proposals put forward by the Clinton Administration and/or Democrats in Congress and/or criticizes specific Republican legislative proposals and/or criticizes the Republican leadership and GOP Members of Congress for their opposition to Administration/Democratic legislative proposals. None of the advertisements expressly advocate the election or defeat of any candidate under the "specific words" test adopted by the courts in Christian Action Network, Maine Right to Life or Survival Education Fund.

Nor do the advertisements contain express advocacy under the definition adopted by the Commission. Section 100.22(b) of the Commission's regulations provides that "express advocacy" includes, in addition to communications using the specific words of advocacy in relation to any candidate, a communication that--

> When taken as a whole and with limited reference to external events, such as the proximity to the election, could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because--
>
> (1) The electoral portion of the communication is unmistakable, unambiguous and suggestive of only one meaning; and
>
> (2) Reasonable minds could not differ as to whether it encourages actions to elect or defeat one more clearly identified candidate(s) or encourages some other kind of action.

None of the DNC advertisements attached as Exhibit 3 approach anywhere close to meeting this definition of "express advocacy." Every one of the advertisements promotes the balanced budget plan supported by the Clinton Administration and the Democrats, i.e., the Administration/Democratic version of the Omnibus Budget Reconciliation bill, or particular elements of it; and/or criticizes the Republicans' alternative budget plan. Some of the ads promote other Administration/Democratic legislative proposals outside the budget bill, such as the legislative proposal for deduction of college tuition put forward recently by the President.

With respect to the timing of the advertising campaign, all of these advertisements ran while the budget plan, or elements of it, were being actively considered by the Congress. The advertising campaign started, when the Medicare debate was in full swing, in August 1995--more than a year before the 1996 election. The latest of these advertisements ran more than three and one half months before the 1996 general election. The timing of the advertisements is clearly indicative of a legislative advocacy campaign, not electoral advocacy.

With respect to their content, the clear and unmistakable message of these advertisements is to encourage the public to support the position of the President and the Democrats on the budget bill and related legislative proposals. It cannot be even remotely suggested that the contents of these advertisements "have no other reasonable meaning than to encourage actions to elect or defeat the candidate in question." Id. It would be more logical

to conclude that the advertisements have no other reasonable meaning than to encourage the public to express support for the Administration/Democratic budget plan and other specific legislative proposals. For these reasons, the advertisements do not contain "express advocacy" as defined in section 100.22 of the Commission's regulations.

The DNC advertisements that ran in 1995-96 thus do not contain express advocacy, either under the narrow test recently adopted by the courts or under the broader definition set forth in the Commission's regulation.

B. Section 441a(d) Should be Construed to Apply to Party Communications Only When They Expressly Advocate the Election or Defeat of a Clearly Identified Candidate

As noted, in the Colorado Republican decision, the Supreme Court determined that there was no need to reach the issues of whether the FEC's "electioneering" test is unconstitutionally vague and, if so, the proper test for determining when the costs of a party communication are subject to section 441a(d) limits. Colorado Republican, 116 S. Ct. at 2317. We submit, however, as we did in an amicus curiae brief filed with the Court in the Colorado Republican case, that section 441a(d) should be construed to apply to party communications only when they expressly advocate the election or defeat of a clearly identified candidate. Brief for Democratic National Committee as amicus curiae at 8.

In Buckley v. Valeo, 424 U.S. 1 (1976), the Court found that, while contribution limitations impose only a "marginal restriction

upon the contributor's ability to engage in free communication," 424 U.S. at 20-21, limits on expenditures "represent substantial . . . restraints on the quantity and diversity of political speech." 424 U.S. at 19. The Court found that the government's interest in preventing the reality or appearance of corruption by the influence of campaign contributions on candidates' actions is "sufficient to justify the limited effect" of contributions on First Amendment freedoms. Id. at 29. The Court then proceeded to analyze the Act's limitation on independent expenditures by individuals and groups "relative to a clearly identified candidate."

First, the Court found that "in order to preserve the provision against invalidation on vagueness grounds," this provision "must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Id. at 44. Only then did the Court address the question of whether, "even as thus narrowly and explicitly construed," the limitation "impermissibly burdens the constitutional right of free expression." Id. at 44. The Court found that the "absence of pre-arrangement and coordination" of independent expenditures "undermines the value to the candidate," thereby "allev[iating] the danger" of corruption. Id. Therefore, the governmental interest in preventing corruption does not justify the more substantial restraint on free expression imposed by limits on independent expenditures. Buckley, 424 U.S. at 47. See Colorado Republican, 116 S. Ct. at 2313.

In fact, parties engage in a wide range of communications. Party spending for some of these communications is akin to a contribution for purposes of the Buckley analysis. However, many party communications represent the party's own political expression and are clearly entitled to the degree of constitutional protection Buckley afforded to independent expenditures. Many party communications simply promote the party, its ideas, positions or message broadly, rendering any link to specific candidates too diffuse to present even the perceived threat of undue influence. That is true notwithstanding the fact that there may be some degree of coordination arising from the party's unique need and right to communicate and coordinate with its own candidates.

Section 441a(d) must be narrowly construed, then, to avoid impinging on those party expressions which are entitled to a high degree of First Amendment protection but which do not fall into the area of speech intended to be regulated. The Court supplied such a construction in Buckley, through application of the "express advocacy" standard. Buckley, 424 U.S. at 44. This narrowing construction, intended to distinguish between issue discussion and electoral advocacy, is equally effective in distinguishing between party communications that are sufficiently linked to a particular candidate to be treated as mere contributions to the candidate, and expressions which more broadly promote the party, its themes, ideas or positions, and therefore are akin to protected expenditures.

1. Many Party Communications Should Be Entitled to the High Degree of Constitutional Protection Accorded to

Independent Expenditures

Political parties expend their funds on a wide array of communications. These range from communications which can clearly be considered, for purposes of this Court's analysis in Buckley, to be akin to contributions to those which, under that analysis, should be accorded the same high degree of protection as expenditures.

At one end of the continuum, political parties may pay for communications that are contracted for or directly requested by a single candidate, and are made for the direct and specific benefit of that candidate. These expenditures are clearly like contributions, in that they do not implicate the party's own expression, and thus "do not in any way infringe the [party's] freedom to discuss candidates and issues;" rather, they "involve[] speech by someone other than the contributor." Id. at 21. This sort of party spending is properly regarded as a kind of " 'speech by proxy' that . . . is not the sort of political advocacy that this Court in Buckley found entitled to full First Amendment protection." California Medical Ass'n v. Federal Election Comm'n, 453 U.S. 182, 196 (1981).

At the other end of the continuum lie a variety of communications that formulate and promote the party's ideas, programs and themes. Parties develop policy ideas and positions, not only in the adoption of their formal platforms, but on an ongoing basis. Both the DNC and the Republican National Committee ("RNC"), for example, have sponsored a number of policy councils

and other policy development projects. Cf. David E. Price, Bringing Back the Parties 263-79 (1984). Parties are also involved in promoting their policies and positions by urging support for, or opposition to, legislation. The RNC, for example, recently requested guidance from the FEC with respect to a planned program of advertising concerning legislative proposals such as the balanced budget debate and welfare reform that were being considered by the Congress. Advisory Opinion 1995-25, Fed. Election Camp. Fin. Guide (CCH) ¶ 6162 (1995). And the DNC and some Democratic state parties have recently run advertisements on the balanced budget debate, including the advertisements apparently at issue in the complaint filed in this case. The DNC has in the past undertaken other advertising campaigns to promote legislative proposals or positions. See generally Herbert E. Alexander & Anthony Corrado, Financing the 1992 Election 295-96 (1995).

Similarly, both the Democratic and Republican committees publish bulletins, brochures and other communications that promote their respective parties' positions on legislative and other public policy issues (e.g., the DNC's "Daily Briefing" and the RNC's weekly "Monday Briefing"). In the same vein, the RNC sponsors a television program, "Rising Tide," in which party officials and leaders discuss such issues and promote Republican views and positions. See Stephen Seplow GOP-TV: Plugged in to party line, Philadelphia Inquirer, A1 (Oct. 31, 1995).

These activities may or may not include reference to a clearly identified candidate. Often these party communications refer to

the positions or views of legislative leaders who may be candidates for re-election. For example, party discussions of legislative and policy issues may criticize the leaders of the opposing party for their views on, or actions with respect to, such issues.

This type of communication is clearly entitled to the same degree of protection that the Court in Buckley accorded to expenditures, because limiting the amount parties can spend for such communications would "impose substantial restraints on the quantity of political speech." 424 U.S. at 39. In formulating and promoting policy positions, and supporting or opposing legislation, the parties are engaged in expressions "at the core of the First Amendment," Federal Election Comm'n v. National Conservative Political Action Comm. ("NCPAC"), 470 U.S. 480, 493 (1985). This is all the more significant because "a major purpose of the Amendment was to protect the free discussion of governmental affairs, . . ." Buckley, 424 U.S. at 14 (citing Mills v. Alabama, 384 U.S. 214, 218 (1966)).

Further, such expressions as well as "generic" communications promoting Democratic Party themes cannot be considered mere "proxy speech." California Medical Ass'n, 453 U.S. at 196. Rather, they are expressions by the party itself, reflecting the party's collective judgment about what to say and when and how to say it. In this sense they do "communicate the underlying basis for the support" of the party and its candidates and thus directly implicate the party's "freedom to discuss candidates and issues." Buckley, 424 U.S. at 21.

Finally, these communications also directly implicate the parties' associational rights. "[F]reedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by. . . freedom of speech." NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 460 (1958). This "freedom of association protected by the First and Fourteenth Amendments includes partisan political organization." Tashjian v. Republican Party, 479 U.S. 208, 214 (1986). In addressing legislative and policy issues, and promoting the party and its themes and principles, the parties function as organizations which serve to amplif[y] the voice of their adherents. NCPAC, 470 U.S. at 494 (citing Buckley, 424 U.S. at 22).

Thus, while some party communications can logically be treated as contributions, many others must be considered akin to expenditures, entitled to the same high degree of constitutional protection, in the first instance, as the limitations on expenditures of individuals and groups considered in Buckley.

2. Many Party Communications Do Not Implicate the Purpose of the Statute Notwithstanding Some Degree of Coordination with Candidates

"[P]reventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances." NCPAC, 470 U.S. at 496-97. The purpose of the Act, including section 441a(d) is--

> the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office.

Federal Election Commission v. Democratic Senatorial campaign Committee, 454 U.S. 27, 41 (1981). In Buckley, the Court held that "[t]he absence of prearrangement and coordination. . . with a candidate," in an independent expenditure alleviates the danger of corruption. 424 U.S. at 47.

In Colorado Republican, the Court declined to rule that all party communications which are in fact coordinated in some way with candidates automatically implicate the statutory purpose. To the contrary, the Court suggested that:

> [P]arty coordinated expenditures do share some of the constitutionally relevant features of independent expenditures. But many such expenditures are also virtually indistinguishable from simple contributions (compare, for example, a donation of money with direct payment of a candidate's media bills). . . .

116 S. Ct. at 2320. Finding the issue to be "complex," and not squarely presented in the case before it, the Court deferred the question of whether and under what circumstances in-fact party coordinated party expenditures may be limited. Id.

The Court's reticence was well-founded because not all party expenditures that are coordinated with candidates implicate the statutory purpose. Parties have a unique need to communicate and coordinate with their candidates. Such communications are with candidates not only in their capacities as persons seeking election to office, but also in their roles as party officials, leaders and spokespersons.

Sponsoring a television show promoting the party's position on issues, for example, may naturally feature party leaders who are officeholders -- and candidates -- as spokespersons for the party.

Advertising, brochures, leaflets and other materials promoting the party's platform or positions on legislative or policy issues may require obtaining information and views from legislators who may also be candidates. "Generic voter drive" activity may appropriately involve consultation with party leaders, who are officeholders and/or candidates, about which constituencies should be given priority in voter registration efforts, or what themes should be featured in materials or advertising urging the public to "vote Democrat" or "vote Republican."[5]

Parties have not only an inherent need, but also a unique associational right, to communicate and coordinate with their candidates. See Colorado Republican, 116 S. Ct. at 2322-23 (Kennedy, J., concurring in the judgment and dissenting in part). Limiting the ability of parties to communicate with their own leaders, including candidates, burdens the right of the party to "identify the people who constitute the association." Democratic Party of the United States v. Wisconsin ex rel. La Follette, 450 U.S. 107, 122 (1981). If the right of a party to select its "standard-bearers," free from interference by the state, is a

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[5] Indeed, all of a party's activities may necessarily be coordinated with a candidate where officeholders who are or may be candidates actually serve as party officials, with broad responsibility for determining the party's priorities, message and programs. For example, the chairs of the congressional and senatorial campaign committees, Republican and Democrat, are Members of the House of Representatives and Senate, respectively, and national party committees may be led by officeholders as well. Senator Christopher J. Dodd currently serves as general chairman of the DNC and then-Senator Paul Laxalt formerly served as general chairman of the RNC.

protected form of freedom of association, parties must be free to work with and communicate with those candidates. See Eu v. San Francisco County Democratic Central Comm., 489 U.S. 214, 224 (1989).

It does not follow, from the parties' unique need and right to coordinate with candidates, that all party communications implicate the statutory purpose of preventing contributors from exerting undue influence. Party communications promoting positions on legislation and issues, as well as generic communications urging support for the party and promoting its principles and themes, may as noted above, be coordinated with one or more candidates and may refer to or use as spokespersons the party's own leaders or criticize opposition figures (thereby referring to a "clearly identified" candidate). Yet such expressions inherently benefit the party as a whole; their benefit is not limited to any one particular candidate. The threat of "undue influence" over a candidate effectively disappears, because the potential link between any one contribution to the party and the benefit to any one candidate becomes attenuated or dissolves altogether. These kinds of communications, therefore--while entitled to the highest degree of constitutional protection--do not trigger the congressional concern underlying section 441a(d).

3. Limiting the Scope of Section 441a(d) to Express Advocacy Is Necessary to Avoid Its Invalidation As Unconstitutionally Vague

As noted above, section 441a(d) potentially reaches

substantial areas of coordinated party communication that represent the party's own, protected political speech, but which do not bear a sufficiently close relationship to the purpose of the section notwithstanding some coordination with candidates. Party committees cannot, under the First Amendment, be required to guess at what point along the broad spectrum the limits of section 441a(d) will apply. "[S]tandards of permissible statutory vagueness are strict in the area of free expression." NAACP v. Button, 371 U.S. 415, 432 (1963). Where a vague statute 'abut[s] upon sensitive areas of basic First Amendment freedoms,' it 'operates to inhibit the exercise of [those] freedoms.' Uncertain meanings inevitably lead citizens to "'steer far wider of the unlawful zone' than if the boundaries of the forbidden areas were clearly marked." Grayned v. City of Rockford, 408 U.S. 104, 109 (1972) (footnotes and citations omitted). In this case, unless section 441a(d) is narrowly construed, party committees will be forced to steer wide even of those activities that are constitutionally protected but do not fall with the core area sought to be regulated.

This problem of vagueness is precisely the one addressed by the Court in the first stage of its analysis of expenditure limits on groups and individuals in Buckley. The Court held that such a limitation "must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." Buckley, 424 U.S. at 44. In adopting that construction, the Court was concerned that the limitation might otherwise inhibit

discussions of issues and candidates that are constitutionally protected but do not fall squarely into the area of congressional concern:

> [T]he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially, incumbents, are intimately tied to public issues involving legislative proposals and governmental actions.

Id. at 42. The Court thus sought to "distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons." Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 249 (1986).

To be sure, the situation of political parties is different than that of other groups since all of a party's activities are, in a sense, political in nature. In Buckley, the Court found that it was not necessary to apply FECA's disclosure requirements only to party committee expenditures "expressly advocating" election or defeat of a candidate, since all party expenditures were intended to be subject to disclosure--and could, therefore, "be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related." 424 U.S. at 79.

But disclosure requirements present a far less significant burden on parties than limits on expenditures. "Unlike the overall limitations on contributions and expenditures, the disclosure requirements impose no ceiling on campaign-related activities." Id. at 64. While all party expenditures are subject to disclosure under the FECA and the Commission's rules, as explained above, the Court has never suggested that section 441a(d) could apply to all

party communications and the Commission has never sought to apply it so broadly.

To the extent that party communications involving substantial First Amendment rights do not implicate the relevant statutory purpose, they are indeed equivalent, as a matter of constitutional analysis, to "independent" expenditures by other kinds of organizations. See Colorado Republican, 116 S. Ct. at 2320. Accordingly, to avoid the same problem of vagueness and overbreadth the Court found to be presented by the individual and group expenditure limit in Buckley, section 441a(d) must be construed to apply only to those coordinated party communications that "expressly advocate" the election or defeat of a clearly identified candidate. Id. at 44. Just as the "express advocacy" standard was found necessary to ensure that the limit on individual and group spending would not inhibit issue discussion by such individuals and groups, so too would that standard serve to ensure that the limit on party spending does not infringe on those analogous areas of party activity that are subject to a high degree of constitutional protection and do not fall into the "core area sought to be addressed by Congress. Id. at 79.

The "express advocacy" standard effectively limits the application of section 441a(d) to those instances where party spending is directly and "unambiguously related to the campaign of a particular federal candidate." Id. at 80. It would encompass those instances of party "proxy speech," i.e., merely providing funds as a candidate directs for her own specific election benefit,

which can legitimately be treated for constitutional purposes as mere contributions to the candidate. At the same time, it would eliminate the risk that parties would be inhibited from engaging in those activities which represent their own, protected expression--for example, discussion of issues, policies, legislation, promoting the party as a whole--and in which the governmental interest in avoiding "undue influence" over any particular candidate is highly attenuated or non-existent because the benefit of the activity is widespread and diffuse, and not sufficiently linked to any particular candidate.

Section 441a(d) clearly cannot be constitutionally applied to all coordinated party communications. To avoid its invalidation on grounds of overbreadth and vagueness, its scope should be limited to those party communications that "expressly advocate" the election or defeat of a clearly identified candidate.

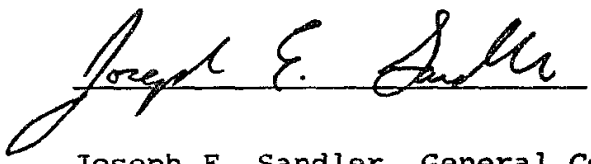
For the reasons set forth above, section 441a(d) should be construed to apply to party communications only when such communications expressly advocate the election or defeat of a clearly identified candidate. The DNC advertisements that ran in 1995-96 do not contain such express advocacy, either under the narrow test recently adopted by the courts or under the broader definition set forth in the Commission's regulation. Accordingly, the costs of those advertisements were not subject to the limitations of section 441a(d).

CONCLUSION

For the reasons stated above, the Commission should (i)

dismiss the complaint on the grounds that it fails to meet the minimal requirements of section 111.4 of the Commission's rules or, (ii) in the alternative, find no reason to believe that the DNC has violated the Act or the Commission's regulations and should dismiss the complaint.

Respectfully submitted,



Joseph E. Sandler, General Counsel
Neil P. Reiff, Deputy General Counsel
Democratic National Committee
430 S. Capitol Street, S.E.
Washington, D.C. 20003
(202) 863-7110

Attorneys for Respondents Democratic National Committee and R. Scott Pastrick, as Treasurer

Date: August 16, 1996

EXHIBIT 1

Not What I Said

Wash. Post. 6/27/96

In excerpting Bob Woodward's book "The Choice," The Post attributes to me a statement which I did not make and which does not appear in the book. Specifically, I would never say that "no presidential candidate should be deeply involved in his party's advertising." The law presumes that a candidate may be involved in his party's advertising, though the ramifications of that involvement on spending and contribution limits may raise difficult legal and factual questions.

In addition, the excerpt quotes me as saying that "we have forgotten the lessons of Watergate," but omits the book's disclaimer that I was not referring to any specific factual situation in this presidential election. My real concern is that some courts are giving short shrift to the long-recognized compelling government interests that gave rise to the campaign finance laws.

The continuing debate about the campaign finance laws deals with issues central to our democracy. If the debate is be meaningful and constructive, it is important that we are accurate and avoid oversimplification in the quest for easily understandable analysis.

LAWRENCE M. NOBLE
General Counsel
Federal Election Commission
Washington

EXHIBIT 2

GENERIC ADVERTISEMENTS RUN BY THE DNC

ADVERTISEMENT	DATES RAN
"PROTECT"/"MORAL"	8/16-8/31/95
"EMMA"	10/3-10/17/95
"SAND"	10/19-11/1/95
"WITHER"	11/2-11/8/95
"FAMILIES"	11/3-11/10/95
"THREATEN"	11/10-11/16/95
"FIRM"	11/17-11/21/95 11/24-11/30/95
"PEOPLE"	12/8-12/14/95
"CHILDREN"	12/16-12/29/95
"SLASH"	1/10-1/16/96
"SLASH"/"TABLE"	1/18-1/24/96
"TABLE"	1/26-2/1/96
"SUPPORTS"	4/12-4/18/96
"DEFEND"	6/26-7/2/96
"VALUES"	6/26-7/2/96
"ENOUGH"	7/3-7/16/96

EXHIBIT 3

DNC - 01 - :30 "Protect"

Medicare. Lifeline for our elderly.

There is a way to protect Medicare benefits and balance the budget.

President Clinton. Cut government waste. Reduce excess spending. Slow medical inflation.

The Republicans disagree. They want to cut Medicare $270 billion.

Charging elderly $600 more a year for medical care. $1,700 more for home care.

Protect Medicare benefits or cut them? A decision that touches us all.

DNC - 02 - :30 "Moral"

As Americans, there are some things we do simply and solely because they're moral. Right. And good.

Treating our elderly with dignity is one of those things.

We created Medicare not because it was cheap or easy. But because it was the right thing to do.

The Republicans are wrong to want to cut Medicare benefits.

And President Clinton is right to protect Medicare....

....right to defend our decision, as a nation, to do what's moral, good and right by our elderly.

(3)

"Emma"

Preserving Medicare for the next generation: the right choice. But what's the right way?

Republicans say double premiums, deductibles. No coverage if you're under 67.

270 billion in cuts -- but less than half the money reaches the Medicare trust fund.

That's wrong.

We can secure Medicare without these new costs on the elderly.

That's the President's plan.

Cut waste. Control costs. Save Medicare. Balance the budget.

The right choice for our families.

DNC - -- - :30 "Sand"

There are beliefs and values that tie Americans together.

In Washington, these values get lost in the tug of war.

But what's right matters.

Work, not welfare is right. Public education is right. Medicare is right. A tax cut for working families is right.

These values are behind the President's balanced budget plan -- values Republicans ignore. Congress should join the President and back these values.

So instead of a tug of war, we come together and do what's right for our families.

DEMOCRATIC NATIONAL COMMITTEE
COMMERCIAL COPY
Time: :30
November 2, 1996
"Wither"

Finally we learn the truth about how the Republicans want to eliminate Medicare.

First...Bob Dole.

"I was there, fighting the fight, voting against Medicare, one of 12-because we knew it wouldn't work- in 1965."

Now...Newt Gingrich on Medicare.

"Now we don't get rid of it in round one because we don't think that that's the right way to go through a transition, but we believe it's going to wither on the vine."

The Republicans in Congress.

They never believed in Medicare.

And now, they want it to wither on the vine.

(6)

DNC - -- - :30 "Families"

Our families need Medicare. But now we learn the truth.

Gingrich: "Now we don't get rid of it in round one because we don't think that that's politically smart, we don't think that's the right way to go through a transition, but we believe it's going to wither on the vine."

And now the Republicans in Congress want the President to cut a deal and just let Medicare whither on the vine.

No deal. The President will veto any bill that cuts Medicare benefits, education or harms the environment.

The President believes we must do our duty by our parents and provide our children with opportunity.

DEMOCRATIC NATIONAL COMMITTEE
COMMERCIAL COPY
Time: :30
November 10, 1996
"Threaten"

The truth on Medicare.

"Now we don't get rid of it in round one because we don't think that that's the right way to go through a transition, but we believe it's going to wither on the vine."

Medicare. Wither on the vine.

But President Clinton will veto any bill that cuts Medicare benefits, education or the environment.

Now, Republicans threaten to close the government down if the President won't cut Medicare and education.

No deal. The President will do right by our elderly and our children. Threat or no threat.

DEMOCRATIC NATIONAL COMMITTEE
COMMERCIAL COPY
Time: :30
November 17, 1996
"Firm"

The Constitution.

Presidents have used the power it gives them to protect our values.

That's why the 42nd President is standing firm for his balanced budget plan.

The President's balanced budget protects our elderly. The Republicans in Congress cut Medicare $270 billion.

The President's balanced budget plan secures opportunity for our children. Republicans cut education 30 billion.

That's why the President is vetoing the Republican budget.

Standing up...for we the people.

DEMOCRATIC NATIONAL COMMITTEE
COMMERCIAL COPY
Time: :30
December 8, 1996
"People"

Belle is doing fine. But Medicare could be cut.

Nicholas is going to college -- but his scholarship could be gone.

The stakes in the budget debate.

Joshua's doing well -- but help for his disability could be cut.

President Clinton. Standing firm to protect people.

Matthew bought a house -- but will the water be safe to drink?

Mike has a job -- but new taxes in the Republican budget could set him back.

President Clinton says balance the budget -- but protect our families.

DEMOCRATIC NATIONAL COMMITTEE
COMMERCIAL COPY
Time: :30
December 16, 1996
"Children"

America's children.

7 million. Pushed toward poverty by higher taxes on working families.

4 million children get substandard health care.

Education -- cut $30 billion; environmental protection gutted.

That's the sad truth behind the Republican budget plan.

The President's 7 year balanced budget protects Medicare...education...and gives working families with children a tax break.

It's our duty to America's children -- and the President's plan will meet it.

COMMERCIAL COPY
TELEVISION
Date: January 10, 1996
Time: :30
Democratic National Committee
"Slash"

America's children.

Millions pushed toward poverty by higher taxes.

Over a million get substandard health care.

Education -- cut 30 billion. Environmental protection gutted.

Drastic Republican budget cuts.

But the President's plan protects Medicare, Medicaid, education, environment. And even Republican leaders agree, it balances the budget in 7 years.

Congress should not slash Medicare and Medicaid -- it should balance the budget and do our duty to our children.

DEMOCRATIC NATIONAL COMMITTEE
COMMERCIAL COPY
TELEVISION
January 18, 1996
"Table"

The Gingrich Dole budget plan.

Doctors charging more than Medicare allows. Head Start, school anti-drug help slashed. Children denied adequate medical care. Toxic polluters let off the hook.

But President Clinton has put a balanced budget plan on the table protecting Medicare, Medicaid, education, environment.

The President cuts taxes and protects our values.

But Dole and Gingrich just walked away.

That's wrong.

They must agree to balance the budget without hurting America's families.

COMMERCIAL COPY
TELEVISION
Date: April 12, 1996
Time: :30
Democratic National Committee
"Supports"

The Dole Gingrich attack ad has the facts all wrong.

President Clinton supports tax credits for families with children.

But when Dole and Gingrich insisted on raising taxes on working families, huge cuts in Medicare, education, cuts in toxic cleanup -- Clinton vetoed it.

The President's plan:

Preserve Medicare.
Deduct college tuition.
Save anti-drug programs.

But Dole /Gingrich vote no-- no to America's families.

The President's plan -- meeting our challenges. Protecting our values.

COMMERCIAL COPY
TELEVISION
DATE: June 13 1996
TIME: :30
Democratic National Committee

"Defend"

Protecting families.

For millions of working families, President Clinton cut taxes.

The Dole/Gingrich Budget tried to raise taxes on 8 million.

The Dole/Gingrich Budget would have slashed Medicare $270 billion.

Cut college scholarships.

The President defended our values. Protected Medicare.

And now, a tax cut of $1500 a year for the first two years of college.

Most community colleges free. Help adults go back to school.

The President's plan -- protects our values.

COMMERCIAL COPY
TELEVISION
DATE: June 27, 1996
TIME: :30
Democratic National Committee

"Values"

American Values.

Do our duty to our parents.

President Clinton protects Medicare.

The Dole/Gingrich budget tried to cut Medicare $270 billion.

Protect families.

President Clinton cut taxes for millions of working families.

The Dole/Gingrich budget tried to raise taxes on 8 million of them.

Opportunity.

President Clinton proposes tax breaks for tuition.

The Dole/Gingrich budget tried to slash college scholarships.

Only President Clinton's plan meets our challenges, protects our values.

COMMERCIAL COPY
TELEVISION
DATE: June 26, 1996
TIME: :30
Democratic National Committee

"Enough"

Another negative Republican ad.
Wrong.

President Clinton increased border patrols 40% to catch illegal immigrants.

Record number of deportations. No welfare for illegal aliens.

Republicans opposed protecting U.S. workers from replacement by foreign workers.

The Dole/Gingrich budget tried to repeal 100,000 new police.

Dole/Gingrich tried to slash school anti-drug programs.

Only President Clinton's plan protects our jobs, our values.

EXHIBIT 4

Republican
National
Committee

David A. Norcross
General Counsel

August 9, 1995

N. Bradley Litchfield, Associate General Counsel
Office Of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Supplement To
AOR 1995-25

AOR 1995-25

Dear Mr. Litchfield:

This is in response to your letter dated August 3, 1995 seeking additional information relating to the Republican National Committee's ("RNC") advisory opinion request on the issue of allocating costs for certain legislative advertising. You have requested that we provide specific examples of the communications that we propose to air.

We have no specific examples of communications that serve as the basis for the RNC's request.

The RNC's request relied on specific assumptions relating to its planned media advertising campaign on certain legislative issues. Based upon those assumptions, the RNC sought clarification from the Commission as to the proper allocation of its federal and non-federal funds to pay for such legislative ads. The draft opinion prepared by the Office of the General Counsel properly framed the issue and based its conclusion on the validity of the assumptions presented. The RNC was not nor is it now seeking approval of specific scripts. The Commission, through the advisory opinion process, should not require submission of *specific* examples of scripts that the RNC, or any other organization, plans to air. Simply stated, the RNC was seeking guidance on whether it needed to allocate the costs of its planned legislative ad campaign on the usual

administrative 60/40 split, or whether these ads could be totally subsidized by "soft dollars." The RNC was not asking whether a specific ad was candidate "advocacy" or "electioneering," requiring attribution to a candidate under the contribution or party spending limits. The basic assumption underlying the request was that the ads would not be attributable to candidates.

Commission reliance on basic assumptions in issuing advisory opinions is not uncommon, rather it is the norm. For example, just last week the Commission issued an advisory opinion to the Democratic Congressional Campaign Committee ("DCCC") relating to the reporting of allocable expenses between the DCCC's federal and non-federal accounts. The Commission did not question whether the DCCC could make such an allocation but *assumed* it could when it rendered its opinion. This was the case even though FEC regulations at 11 C.F.R. § 106.5 set forth specific allocation rules to be followed by National Congressional and Senatorial Committees. The Commission only addressed the issue presented, namely, reporting. The Commission should take the same approach with respect to the RNC's request and address the specific issue presented, that is, the allocability of legislative advertising.

Even assuming that prior approval would pass Constitutional muster the Commission should be aware that the decision to use a specific script is usually a last minute decision with the final copy being approved very close to air time. As a practical matter the FEC could never address specific communications in a timely manner, since the ads would have aired before any Commission deliberation. It would result in the Commission reviewing RNC past activity in the advisory opinion process, a procedure prohibited under the statutory scheme.

During the Commission's August 3rd discussion of the RNC's advisory opinion request, reference was made to an RNC advertisement which appeared in USA Today on Friday July 28, 1995. The inference was made that this ad was the basis of the RNC advisory opinion request. It must be stated for the record that this ad on Medicare was *not* the basis for the RNC's advisory opinion request. As earlier stated, the RNC's request was not predicated on any particular script but rather on a series of assumptions relating to the planned communications. If there is any relevance to this ad at all with respect to the RNC AOR, it is to refute any allegations that the RNC's request was hypothetical and that the RNC had no intention of producing legislative ads. Again the USA Today ad is past activity and is not properly addressed through the advisory opinion process.

Because of the Commission's apparent interest in the RNC's past legislative media advertisements, we are attaching a copy of the Medicare ad, as well as examples of other scripts which either have been used in the past or may have been under consideration. *None of the materials attached served as the basis of the RNC's advisory opinion request. They should not be viewed by the Commission as the basis for the RNC's request.*

In summary, the RNC can supply no specific examples of communications which serve as the basis for the advisory opinion request. Such information is not required in order for the Commission to issue an opinion, evidenced by the general counsel's initial draft. Based upon the assumptions provided by the RNC, the RNC respectfully requests that the Commission address the issue of whether the RNC is required to follow the Commission's allocation rules found at 11 C.F.R. § 106.5 or can the RNC pay for its legislative media ads (based on the assumptions presented) entirely out of "soft dollars."

Sincerely,

David A. Norcross

Republican
National
Committee

TITLE: "THE PROMISE"
:30

VIDEO	AUDIO
	(Announcer):
	"On election day, America sent a clear message.
American flag backdrop Slow motion dissolves of the Capitol exterior and interior, gavel, etc.	You chose Republicans who voted to change the way Congress does business.
CHYRON: Republicans: Cutting staff and committees Making Congress live by its own laws.	And on their first day in Washington, the new Republican majorities kept that promise.
	It's the first step toward smaller government, lower taxes, and more freedom.
CHYRON: Join the fight. Call 202-224-3121 to pass the Balanced Budget Amendment.	Join the fight. Help us win the next battle -- and pass the Balanced Budget Amendment.
Congress votes on January 19th. Paid for by The Republican National Committee.	Because we're doing what we promised."

Dwight D Eisenhower Republican Center • 310 First Street Southeast • Washington D C 20003 • (202) 863-8500
TDD (202) 863-8725 • FAX (202) 863-8820

Commercial

Wife reading book entitled Medicare Trustees Report

Wife: " you said that saving Medicare was too complicated Harry..."

Husband: mumbles "well..."

Wife: "You said that Medicare would always be there to protect us in our old age...

Husband: mumbles " protect us..."

Wife: " You said what do we do when the government runs out of money? Well look whose is going bankrupt now Harry? There's got to be a better way. (Pushes Harry off the couch) Harry...Harry...

Voice Over: There is a better way.

Voice Over & On Screen: Tell Congress you want to save Medicare. It's for your family... your community...for all of us.

Paid for by the Republican National Committee

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

August 17, 1995

MEMORANDUM

TO: Marjorie Emmons

FROM: Fabrae Brunson FB

SUBJECT: Partial Recirculation of AOR 1995-25

Please recirculate the attached document to the Commission. This legal sized page was inadvertently copied letter size. We apologize for any inconvenience this may have caused. The Office of General Counsel considers this a non-sensitive document.

attachment

TOO YOUNG TO DIE

MEDICARE
1965-2002

On Sunday, Medicare turns 30. But it may not live to see 37.

Medicare, you see, is going bankrupt in seven years. That's right: bankrupt.

That means no money to pay seniors' hospital bills. If you get sick, that will be your problem —because Medicare won't be there to help.

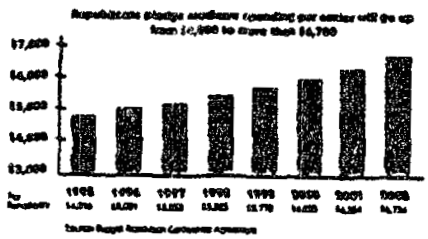
The trustees in charge of Medicare—including three Clinton Cabinet members—have warned the president and Congress that Medicare is going bankrupt in 2002. No Democrat or Republican disputes this fact.

Republicans think Medicare is too young to die. We won't let Medicare go bankrupt. And we won't let seniors go bankrupt paying for health care. That's why Republicans are saving Medicare.

Republicans pledge that Medicare spending will not be cut. Period.

Republicans pledge that Medicare spending will go up from $4,800 to more than $6,700 per senior.

Republicans pledge to increase total Medicare spending by 54%—a faster rate of growth than for any other major government program.



Republicans pledge that you can keep your existing coverage.

Republicans pledge that you can keep your own doctor.

Republicans pledge that you can even choose a new plan with better benefits.

Republicans pledge to preserve, protect and improve Medicare—so it will be there when you need it.

President Clinton knows Medicare is dying, but he has done nothing to save it. Apparently his plan is to just let Medicare go bankrupt.

If Clinton lets Medicare go bankrupt, you can keep your existing coverage—*but only for seven years.*

If Clinton lets Medicare go bankrupt, you can keep your own doctor—*but only for seven years.*

If Clinton lets Medicare go bankrupt, you can still get sick—*but only for seven years.*

If Clinton lets Medicare go bankrupt, *Medicare* won't be there when you need it.

Medicare will be gone.

☐ I agree with the Republicans that Medicare is too young to die. Please send me a free copy of the Medicare Trustees' Report and information about what Republicans are doing to save Medicare.

Name _____

Address _____

City _____

State _____ Zip _____

Phone _____

Please mail this coupon to: Please Save Medicare INC, 310 First Street, SE, Washington, DC 20003

Republicans pledge to save Medicare—because Medicare is too young to die.