



DEMOCRATIC
CONGRESSIONAL
CAMPAIGN COMMITTEE

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Chairman

December 8, 1999

Hon. Charles B. Rangel, NY
Co-Chair, Voter Participation

Hon. Frank Pallone, Jr., NJ
Co-Chair, Finance

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Lawrence M. Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

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RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
DEC 8 2 59 PM '99

Dear Mr. Noble:

This complaint alleges violations of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. §§ 431 et seq. and related regulations of the Federal Election Commission ("FEC" or the "Commission"), 11 C.F.R. §§ 100.1 et seq. by the National Republican Congressional Committee ("NRCC"), U S Family Network, the Republican Majority Issues Conference ("RMIC"), Americans for a Republican Majority, Americans for Economic Growth, Tom DeLay, Ed Buckham, Bob Mills, Dan Mattoon, Jim Ellis, Karl Gallant, Tom Davis, Dick DeVos, Betsy DeVos, Dennis Hastert, Dick Armey and J.C. Watts.

INTRODUCTION

Unwilling to obey the Act, as it clings to control of the U.S. House of Representatives, the NRCC has established a web of organizations to do what it may not do on its own. Three of these groups purport to be nonprofit organizations unregistered with the FEC, so that they might receive contributions from sources illegal under Federal campaign laws, avoid disclosing their donors, and pay for so-called "issue advocacy" entirely with soft money. The NRCC transparently intends to offload huge segments of its own activities to groups that play under more permissive rules.

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Unfortunately for the NRCC, this scheme is barred by clear and well-settled principles of Federal election law. For one thing, the facts show that these groups are affiliated with the NRCC under the Act and its accompanying regulations. They are established, financed, maintained and controlled by the very same individuals who run the NRCC. As a result, their contributions and expenditures must be aggregated with those of the NRCC, and must comply with the source restrictions and contribution limits of the Act. Moreover, even if these organizations were not affiliated with the NRCC, the Act would nonetheless bar the NRCC's effort to use these organizations to evade its own legal obligations.

To ensure the integrity of the 2000 congressional elections, the Commission should take immediate action to curtail the illegal activities of these groups. It should seek injunctive relief and the maximum civil penalties permitted by law.

DISCUSSION

An article in the December 6, 1999 issue of Roll Call revealed the existence of three outside groups funded by the NRCC and run by its operatives. Jim VandeHei, NRCC's \$500,000 Donation Linked to DeLay Advisers, Roll Call, Dec. 6, 1999, at 1. Together, they represent "an expansive web of outside organizations" all tied to the NRCC through House Majority Whip Tom DeLay, who serves both as the NRCC's primary fundraiser and as one of its top strategists. Id. All are not registered with the Commission, and instead are organized as nonprofit organizations with the Internal Revenue Service. Id.

- **U S Family Network.** The U S Family Network received \$500,000 from the NRCC on October 20, representing the NRCC's "largest single donation to an outside group this year". Id. The \$500,000 transfer was solicited by Ed Buckham, "DeLay's top political associate and former chief of staff." Id. The NRCC's executive director, Dan Mattoon, indicated that the NRCC gave the funds because Buckham could be relied upon to spend them to promote Republican Congressional candidates. Id. Mattoon said: "The family network is a group that based on our view of Ed Buckham's strengths in the family community and his political strengths will have an equally important impact in the elections, favorably for Republicans." Id. While Buckham tried to characterize himself to Roll Call as an independent fundraising consultant, the newspaper noted that he actually shares offices

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with the U S Family Network, which is nominally run by Bob Mills. Id. Mills claims that the organization is seeking tax exempt status from the Internal Revenue Organization as a § 501(c)(4) "social welfare" organization. Id.

- **Republican Majority Issues Conference (RMIC).** Buckham was "instrumental" in the creation of the RMIC, an organization nominally run by former DeLay fundraiser Karl Gallant. Id. The RMIC plans to spend as much as \$25 million on grassroots campaigns and issue advertisements in the most competitive Congressional districts, and "is considered by most GOP insiders as a DeLay operation, top to bottom." Id. DeLay himself attended the organization's first fundraiser, joined by Republican Members of Congress Dennis Hastert, Dick Armey and J.C. Watts. Id. The fundraiser was hosted by Dick and Betsy DeVos, who are major Republican contributors, on their private yacht. Id.
- **Americans for Economic Growth.** This organization is reported to be under the "complete control" of Jim Ellis, a paid NRCC consultant who also runs Americans for a Republican Majority, DeLay's so-called "leadership PAC." Id. (The DeLay PAC shares office space with Buckham and U S Family Network. Id.) Already it has run advertisements which attacked Democratic candidates while bearing a stark similarity to ads that were run by the NRCC itself and masterminded by DeLay. Id. See also Jim VandeHei and Ethan Wallison, DCCC Blasts Radio Ads, Roll Call, Nov. 4, 1999; Dave Boyer, GOP ad blitz proves edge in budget battle, Wash. Times, Oct. 29, 1999 at A1. The group reportedly is also a section 501(c)(4) organization. VandeHei, NRCC's \$500,000 Donation, at 12.

The NRCC and these organizations are affiliated under Federal law. The Act provides that "all contributions made by political committees established or financed or maintained or controlled by . . . any other person . . . shall be considered to have been made by a single political committee". 2 U.S.C. § 441a(a)(5). The Commission has consistently held that committees may be affiliated even if not all of them are registered as "political committees" with the Commission. See Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 Fed. Reg. 34,098, 34,099 (1989) (citing Advisory Opinions 1987-12, 1985-2, 1984-46 and 1982-52).

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Among the consequences of affiliation is the sharing "of a common contribution limit with regard to all contributions they make or receive." Id. at 34,101. In other words, if a donor has given the NRCC his or her annual limit of \$20,000, that donor would be unable to contribute any funds to the other organizations during that calendar year. See id.; see also 2 U.S.C. § 441a(a)(1)(B). Every dollar that each of these organizations spends in coordinated expenditures on a congressional race would result in excessive spending by the NRCC in that election, assuming that the NRCC and other Republican party committees together spend the maximum amount. See 2 U.S.C. § 441a(d). Finally, by making contributions or expenditures in connection with Federal elections, as they are clearly designed to do, the outside groups themselves incur registration and reporting obligations with the Commission. See 2 U.S.C. §§ 431(4)(A), 433(a).

Commission regulations establish several possible tests for affiliation, which include the following:

- one organization has the authority or ability to direct or participate in the governance of another, through informal practices or procedures, 11 C.F.R. § 100.5(g)(4)(ii)(B);
- one organization has the authority or ability to control the officers or decisionmaking employees of another, id. § 100.5(g)(4)(2)(C);
- the organizations have had common or overlapping membership, officers or employees which indicates an ongoing relationship between them or the creation of a successor entity, id. §§ 100.5(g)(4)(2)(D)-(F);
- one organization provides funds in a significant amount to another, or arranges for such funds to be provided, id. § 100.5(g)(4)(2)(G); and
- one organization or its agent had an active or significant role in the formation of another, id. § 100.5(g)(4)(2)(H).

Every single one of these tests is satisfied by the organizations discussed here. Each of them is effectively run by Tom DeLay, perhaps the most powerful Republican in the House of Representatives and by all accounts the NRCC's top fundraiser and strategist. The groups' representatives claim that the lack of a formal relationship exculpates them from liability under the Act. VandeHei, NRCC's \$500,000 Donation,

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at 12. For example, the head of the RMIC told Roll Call that "GOP leaders can raise money for the group and attend fundraisers as long as they don't instruct [the RMIC] where to spend its money." Id. But this ignores the Commission's long-standing and explicit direction that informal practices and procedures are enough to establish affiliation. See 54 Fed. Reg. at 34,100.

It is clear that the NRCC, through DeLay and consultants such as Buckham and Ellis, has the authority to control the decisionmakers of these groups. The web of DeLay operatives and NRCC consultants running these organizations all point to an ongoing relationship and the creation of an entity affiliated with the NRCC. The NRCC's brazen transfer of \$500,000 to the U S Family Network – reportedly its largest in 1999 to any such group – shows its pattern of providing funds in significant amounts to these organizations, as does its apparent practice of directing Republican Members of Congress to give money to and raise funds for the RMIC.

These facts suggest a pattern of illegal, excessive and undisclosed contributions and expenditures by these groups and, ultimately, by the NRCC. Yet even if these groups were found not to be affiliated with the NRCC, there would still be a violation of the Act. The NRCC is required by law to pay for its get-out-the-vote activities, including issue advocacy, either entirely with federal funds (that is, with funds raised within the limits and source restrictions of the Act) or with a mix of federal and nonfederal funds. See 11 C.F.R. § 106.5. See also Advisory Opinion 1995-25. However, the Commission has long asserted – and a Federal court recently agreed – that a party committee may not transfer funds to an organization unregistered with the Commission in order to evade § 106.5's allocation requirement. FEC v. California Democratic Party, Civ. S-97-0891 (E.D. Cal. Oct. 3, 1999).

This is exactly what the NRCC did when it transferred the \$500,000 to the U S Family Network. In a moment of candor, NRCC executive director Mattoon said: "In 1996 and 1998, we were disappointed and frustrated that the conservative base was not energized to turn out [voters] for our candidates. So we thought that in 1999 that it made sense that we help these groups . . . This is a group that . . . will be very strong players in the next campaign." VandeHei, NRCC's \$500,000 Donation, at 12. Not content to pay for over a third of its get-out-the-vote and issue advocacy efforts with soft money, as the law permits, the NRCC simply transferred funds to an outside group so that it could conduct the same activities entirely with soft money. Both the Commission and a Federal district court have held that this is against the law.

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For all these reasons, we call upon the Commission to conduct an immediate and complete investigation to determine the scope of the violation by the NRCC and these outside groups. That investigation should also include a determination of whether other entities, including Republican Members of Congress, candidates, contributors, local party committees, and others, knowingly and willfully participated in a scheme to violate the Act. If such an effort is uncovered, then the undersigned requests that the Commission impose a substantial civil penalty, seek an immediate court injunction against further illegal activities, and require a full accounting from each group for all its contributions and expenditures. Swift action is essential, because these groups' activities unlawfully deprive the complainant and other voters of critical information protected by Federal election law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Plouffe", is written over a horizontal line.

David Plouffe
Executive Director
Democratic Congressional Campaign
Committee

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STATE OF District of Columbia

County of X)

SUBSCRIBED AND SWORN to before me this 8th day of December 1999.

Denise A. Outlaw
Notary Public

My Commission Expires:

Denise A. Outlaw
Notary Public District of Columbia
My Commission Expires: July 15, 2004

