



FEDERAL ELECTION COMMISSION
Washington, DC 20463

SENSITIVE

January 8, 1997

JAN 14 1997

EXECUTIVE SESSION

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel 

SUBJECT: Request to Place on the Agenda the General Counsel's Report
in MUR 3774

The attached General Counsel's Report updates the Commission on the investigation in this matter and contains recommendations for further discovery, including deposition subpoenas.

We request that this matter be placed on the January 14, 1997 Executive Session agenda in light of the U.S. District Court's recent order in the pending Section 437g(a)(8) suit in this matter, DSCC v. FEC, Civ. A. No. 96-2184 (JHG)(D.D.C. November 25, 1996).



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: Office of the Commission Secretary
FROM: Office of General Counsel *Rd*
DATE: January 8, 1997
SUBJECT: MUR 3774 - General Counsel's Rpt.

The attached is submitted as an Agenda document
for the Commission Meeting of January 14, 1997

Open Session _____
Closed Session _____ XXX

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Sensitive ()
Non-Sensitive ()
24 Hour Tally Vote ()
Sensitive ()
Non-Sensitive ()
24 Hour No Objection ()
Sensitive ()
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Sensitive ()
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SENSITIVE - CIRCULATE ON BLUE

BEFORE THE FEDERAL ELECTION COMMISSION

National Republican Senatorial Committee and)	
Stan Huckaby, as treasurer)	
)	
American Defense Foundation, Inc.)	
)	
Coalitions for America, Inc.)	MUR 3774
)	
National Right to Life Committee, Inc.)	
)	
Minnesota Citizens Concerned for Life, Inc.)	
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Minnesota Citizens Concerned for Life)	
Committee for a Pro-Life Congress)	
)	
Good Government Committee)	

GENERAL COUNSEL'S REPORT

I. BACKGROUND

On August 1, 1995, the Commission found reason to believe that the National Republican Senatorial Committee and Stan Huckaby, as treasurer, ("NRSC") violated 2 U.S.C. §§ 441a(f) and 441b(a) and 11 C.F.R. § 102.5(a)(1)(i) by making payments of non-federal funds to four organizations to perform GOTV activity on behalf of specific federal candidates in targeted Senate races, after having nearly exhausted its own ability to support the candidates under applicable limits of the Federal Election Campaign Act of 1971, as amended (the "Act"). The targeted races included the Georgia U.S. Senate run-off in 1992, and the 1994 general elections for U.S. Senate in Minnesota and Pennsylvania.¹ Also on August 1, 1995, the

¹ Interrogatory questions encompassing all of the NRSC's 1992-1994 non-federal payments to the four groups has revealed that other Senate races are also involved: the 1993 U.S. Senate special election and special election run-off in Texas and the 1992 Senate races in Idaho, Ohio, Oregon, North Carolina, South Carolina and Wisconsin.

Commission found reason to believe that three of the organizations, the National Right to Life Committee ("NRLC"), the American Defense Foundation ("ADF") and Coalitions for America ("CFA"), violated 2 U.S.C. § 441b(a) by making what may have constituted prohibited in-kind corporate contributions to federal candidates, the NRSC, or both, by coordinating GOTV activity with the NRSC.² The Commission also found reason to believe that the fourth organization, the Good Government Committee ("GGC"), an Alabama state political committee, violated 2 U.S.C. §§ 433 and 434 by accepting NRSC funds apparently intended to influence a federal election. However, the Commission simultaneously decided to take no further action against GGC and its treasurer in light of GGC's 1994 termination as a state committee and the small amount of funds involved. Finally, the Commission found reason to believe that Minnesota Citizens Concerned for Life, Inc. ("MCCL") and Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress and its treasurer ("MCCL PAC") violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a)(1) by using corporate and possibly other impermissible funds to pay for certain independent expenditures that were later reimbursed by MCCL PAC.

In addition to the aforementioned reason to believe findings, the Commission also approved subpoenas for written answers and documents to the NRSC, NRLC, ADF and CFA (alternatively referred to as "Respondents" or "the four main Respondents") designed to obtain information concerning the circumstances surrounding the NRSC's payments to and the use of funds by the non-profit organizations. Pending discovery, the Commission decided to take no

² The NRLC, ADF and CFA are all non-profit organizations, exempted from federal taxation under 26 U.S.C. § 501(c)(4).

action at that time with regard to Senator Phil Gramm, former NRSC Coalitions Director/Field Representative Curt Anderson and four political committees and their respective treasurers: NRL PAC, Pennsylvania Pro-Life Federation, Santorum '94 and Rod Grams for U.S. Senate Committee. Finally, based on the complaint, the Commission found no reason to believe that the Free Congress Foundation/National Empowerment Television and the Christian Coalition violated the Act.

The NRSC, ADF, NRLC, and CFA all filed responses to the Commission's subpoenas. Only the NRSC and ADF responded to the Commission's reason to believe findings. Additionally, in November 1995, the GGC sent a letter objecting to the Commission's reason to believe finding and asked that it be "deleted" or changed to a no reason to believe finding.

After examining Respondents' interrogatory responses and reviewing and coding the more than 1,600 pages of documents provided, this Office sent follow-up letters to the four main Respondents, NRLC, ADF, NRSC and CFA. These letters sought clarification of certain responses and asked Respondents to produce documents apparently overlooked or confirm that such documents did not exist. All four Respondents filed supplemental interrogatory responses and produced additional documents; however, further follow-up was necessary. Staff of this Office once again contacted counsel for ADF, CFA and NRLC and, as a result, each of these Respondents produced more documents such as calendars and tax schedules that had been missing from the original production. In all, the four main Respondents produced about 400 additional pages of documents for a total of approximately 2,000 documents; most of which were produced by ADF.

All written responses of the four main Respondents to the Commission's interrogatories and reason to believe findings are contained in Attachments 1-4 (NRSC's responses are contained in Attachment 1, ADF's in Attachment 2, NRLC's in Attachment 3 and CFA's in Attachment 4. Copies of OGC's follow-up inquiries to each Respondent are also included in each attachment). Additionally, all documents produced by the four main Respondents were Bates-stamped in the order received with documents from each respondent bearing a different series of numbers: documents produced by the NRSC bear Bates-stamped numbers beginning with the series 000, NRLC's with the series 200, CFA with the series 400, and ADF's documents begin with the series 500. Thus, all references in this report to particular documents produced by those Respondents are to the Bates-stamped number on the document. Given the length of this report and the numerous discovery documents, only Attachment 17 (Subpoenas to Produce Documents and Orders to Submit Written Answers) is being circulated with this report. The remaining attachments, as well as the Bates-stamped documents produced by the four main Respondents, are being kept in the Office of the Commission Secretary where they are readily available for examination.

In addition to the discovery review, the FEC staff investigator conducted informal interviews with several Department of Defense ("DOD") employees in connection with ADF's 1992 and 1993 military voter activities and a telemarketing firm employee who had provided a Minnesota newspaper reporter with information about a last-minute, mysteriously-funded, get-out-the-vote telemarketing campaign aimed at the 1994 Minnesota and Pennsylvania Senate races. The staff investigator also informally contacted several Georgia and Minnesota radio stations to obtain information about radio ads financed by MCCL, NRLC and their PACs in

connection with the 1992 U.S. Senate run-off in Georgia and the 1994 Minnesota Senate race. A limited number of documents were provided by the DOD employees relating to their contacts with ADF. Attachment 5. The radio stations also provided a limited number of documents such as scripts of ads placed by MCCL, invoices and political broadcast agreement forms.

Although the written discovery responses generally produced a clearer picture of Respondents' probable use of the NRSC funds, additional questions remain. As a whole, the discovery did not shed much light on the specific circumstances surrounding the recipients' solicitations of the payments and the NRSC's decision to make them, or whether there were specific communications between the NRSC and the recipients regarding use of the funds. Moreover, there is currently insufficient evidence to establish whether there is a direct nexus between the NRSC's payments and GOTV activities conducted and/or financed by CFA and NRLC in connection with specific U.S. Senate elections. Additional information is also needed about the GOTV activities. As a result, further discovery is necessary.

This report serves two main purposes: to update the Commission on responses received and investigative efforts undertaken to date, and to request approval of Subpoenas for Deposition, as well as additional Subpoenas to Produce Documents/Orders to Submit Written Answers. Before discussing the information obtained to date, we first briefly discuss in Section II the impact of the Supreme Court's decision in Colorado Republican Federal Campaign Comm. et al. v. FEC, 116 S. Ct. 2309 (1996) ("Colorado Republicans") on this matter generally and on further discovery specifically. Next, Section III begins with a general summary of the information obtained to date and then proceeds to individually discuss the responses of each of the four main Respondents -- the NRSC, NRLC, ADF and CFA -- to the Commission's reason to

believe findings and discovery requests. Although no discovery was issued to, or reason to believe response received from, MCCL, Inc. and MCCL PAC, information obtained from the NRLC as it relates to the apparent violations by those Respondents is discussed separately. GGC's request that the Commission reconsider its reason to believe finding is also discussed briefly. Finally, Section IV discusses this Office's plan for additional investigation and, accordingly, Section V contains recommendations for approval of Subpoenas for Deposition and Subpoenas to Produce Documents/Orders to Submit Written Answers.

II. IMPACT OF RECENT COURT DECISIONS ON INVESTIGATION

The reason to believe findings in this matter were based, in part, on the Commission's long-standing position that party committees, by virtue of their close relationship to candidates, were incapable of making independent expenditures. Thus, certain party expenditures attributable to clearly identified candidates were presumed to be coordinated with those candidates and were subject to limitations under Section 441a(d) (see former 11 C.F.R. §110.7(b)(4)). In June of this year, however, the Supreme Court in Colorado Republican Federal Campaign Cmtee. v. FEC, 116 S. Ct. 2309 (1996) ("Colorado Republicans"), rejected the concept of presumed coordination and held that parties could make expenditures independent of candidates which could not be subject to the limitations of Section 441a(d). Because the Court held that the expenditures at issue in Colorado Republicans were independent, it left unanswered the question of whether party expenditures which are coordinated can be limited constitutionally, and remanded the case to the lower courts to resolve that issue. Colorado Republicans at 2319.³

³ The U.S. Court of Appeals for the Tenth Circuit recently remanded the case to the District Court for further proceedings. See opinion in FEC v. Colorado Republican Federal

In light of Colorado Republicans, in this matter the Commission must, at a minimum, find evidence of actual coordination between the NRSC and the relevant candidates, their committees or their agents to pursue the Section 441a(f) violation against the NRSC for exceeding the Section 441a(d) limit.⁴ Additionally, since the constitutionality of coordinated party expenditure limits is yet to be resolved, evidence of actual coordination alone may be insufficient. In deciding that issue, the courts may address whether in-fact coordinated expenditures limited under Section 441a(d) must still meet an electioneering standard, whether that standard is no longer necessary in light of the need for actual coordination, or whether another standard, such as express advocacy, applies. Thus, in order to make a strong case for a coordinated party expenditure limit violation in this matter, it is important to look for evidence of actual coordination between the NRSC and the relevant party committees, as well as evidence that the NRSC's payments were used to finance activities that contained an electioneering message. Of course, evidence that NRSC-financed activity expressly advocated the election or defeat of a clearly identified candidate would present an even stronger case.

In addition to the Section 441a(f) finding in this matter, the Commission also found reason to believe that the NRSC violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a). These findings, based on the NRSC's use of soft money containing corporate funds to finance candidate-specific election activities through third parties, are not directly affected by the

Campaign Cmtee., Case Nos. 93-1433 and 1434 (D.C. No. 89-N-1159), United States Court of Appeals for the Tenth Circuit (September 20, 1996).

⁴ Similar evidence of coordination is necessary to pursue violations against the recipient organizations since the Section 441b(a) findings against them also were based on a theory of presumed coordination through the NRSC.

Colorado Republicans decision. Closely related to these findings, and noted as an alternative to a Section 441a(f) violation in Footnote 21 of the First General Counsel's Report in this matter, dated July 7, 1995, are possible violations of the allocation regulations, 11 C.F.R. §§ 106.5(c)(2), 106.5(g) and 104.10(b)(4), if the activity financed with the NRSC's non-federal payments qualifies as generic voter activity.⁵ The Commission has not yet made any reason to believe findings against the NRSC with regard to the allocation regulations since the information initially known about some of the recipients' NRSC-financed activities indicated they were candidate-specific and contained electioneering-type messages, thus fitting the pre-Colorado Republicans standard for coordinated party expenditures. Though additional information is needed regarding the recipients' activities, current evidence suggests that much of it at least qualifies as generic voter activity, thus triggering the allocation regulations.

The evidence necessary to establish violations of Section 441b(a), 11 C.F.R. § 102.5(a) and the allocation regulations against the NRSC differs from that required to prove a violation of the 441a(d) limit. In MUR 3670 (California Democratic Party), a recent matter involving similar activity, this Office recommended, and the Commission found, probable cause to believe that a state party committee violated Section 441b(a), 11 C.F.R. § 102.5(a) and the relevant allocation regulations based on evidence that the party committee knew that all or part of the non-federal

⁵ The allocation regulations require national party committees like the NRSC to allocate the cost of any generic voter activity between its federal and non-federal account so that the portion of such expenses attributable to federal elections is paid for with permissible funds from the federal account and appropriately reported. Pursuant to 11 C.F.R. § 106.5(c)(2), a minimum of 65% of the NRSC's generic voter costs would have to be paid for with federal funds since the primary focus of the NRSC, a Senate campaign committee, is on federal elections. See Explanation and Justification, 55 Fed. Reg. 26063 (June 26, 1990).

payments it gave to a state ballot-initiative committee would be used to conduct voter registration activities. See MUR 3670, General Counsel's Brief dated February 18, 1996 at 25-29 and General Counsel's Report dated July 2, 1996 at 3. The legal theory underlying the findings was that had the party committee conducted the voter drive itself, it would have had to partially finance it with permissible funds from its federal account and report the purpose of the expenditures. These requirements could not be avoided by giving money to a third party to conduct such a drive. MUR 3670 General Counsel's Brief dated February 18, 1996 at 25-26. Thus, following the standard used in MUR 3670, establishing violations of Section 441b(a), 11 C.F.R. § 102.5(a) and the allocations regulations against the NRSC in this matter would require evidence that the NRSC knew the recipient organizations were going to use, or were using, all or part of its non-federal funds to conduct GOTV activities.

As reflected in Section III below, there is more evidence thus far to establish soft money/allocation violations than a coordinated expenditure limit violation. Rather than simply pursue that theory of the case, however, this Office believes the best course of action, in light of developing case law, is to ascertain what evidence exists to support the varying formulations of the case and then re-evaluate the case based on the presence or absence of such evidence. As noted earlier, although the Colorado Republicans opinion concerns application of the Section 441a(d) limit, a question remains as to whether the Court's holding undermines the validity of the allocation regulations in that the statutory and regulatory scheme of the Act and regulations were premised to some degree on a presumption of coordination between parties and candidates, a presumption that is no longer viable. Although this Office believes the Commission should still apply the allocation regulations as previously interpreted, other recent cases concerning use

of corporate funds and the need for express advocacy, while not involving political party committees, make the results of this case based on a combined Section 441b(a)/allocation theory uncertain. See e.g., Maine Right to Life v. FEC, 914 F. Supp. 8 (D. Maine 1996), affirmed in Maine Right to Life v. FEC, Case No. 96-1532, U.S. Court of Appeals for the First Circuit (October 18, 1996), and FEC v. Christian Action Network, Inc., 894 F. Supp. 946 (W.D. Va. 1995), affirmed in an unpublished opinion, FEC v. Christian Action Network, Inc., Case No. 95-2600, U.S. Court of Appeals for the Fourth Circuit (August 2, 1996).

In light of the differing evidentiary standards necessary for violations of the coordinated expenditure limit and the soft money prohibitions/allocation requirements, Section III summarizes the information obtained thus far and evaluates it in light of the varying standards. In doing so, it is important to bear in mind that the initial discovery sought only limited information as to the nature and scope of contact between the NRSC and the relevant Senate campaigns because, pre-Colorado Republicans, it was not necessary to prove actual coordination between party committees and their candidates to establish a violation of the Section 441a(d) limits.

III. SUMMARY OF RESPONSES AND INVESTIGATION TO DATE

A. GENERAL SUMMARY

The initial written discovery in this matter was aimed at determining the purpose of NRSC's payments to the four organizations, how the organizations used the funds, and fleshing out the circumstances surrounding the payments, including identifying the individuals at the NRSC and at the organizations who were involved in making and soliciting the contributions. Although more is now known about the probable use of the NRSC funds and who was involved

in the solicitation and making of the payments, Respondents' discovery responses were less revealing about the circumstances surrounding the payments. This avenue is best pursued through depositions.

In addition, the number and types of documents produced by the Respondents varied greatly. For example, the NRSC provided only financial documents such as checks, check stubs and check request forms relating to its payments to the four organizations and to coordinated expenditures it made on behalf of Senators Coverdell in 1992 and Grams and Santorum in 1994. In contrast, ADF provided hundreds of documents from funding proposals to faxes with its vendors obtaining price information for its GOTV mailings. Interestingly, three of the four main Respondents -- the NRSC, NRLC and CFA -- initially produced no documents evidencing any communications between the NRSC and the recipients except for the transmittal letters accompanying the payments. ADF initially produced only two such documents. Eventually, ADF and NRLC also produced copies of calendars evidencing meetings between the organizations and NRSC officials, although the NRLC produced calendars for only selected months, none of them near the time of the payments. Moreover, none of the recipients produced any internal notes or memos referencing NRSC's payments.

The evidence adduced to date continues to suggest that the NRSC indeed made non-federal payments to the recipients in an effort to influence the elections of specific U.S. Senate elections in 1992, 1993 and 1994, primarily by financing GOTV activities.

The evidence that NRSC knew its payments were to be used to finance GOTV activities targeted to Senate races is currently strongest as to ADF, due in large part to ADF's more comprehensive document production. The NRSC's payments to ADF appear to have resulted

from written proposals by ADF outlining the specific types of GOTV activity ADF planned to undertake as part of its "Military Voter Program" ("MVP"). Indeed, two of ADF's written proposals were for GOTV activity undertaken in connection with specific U.S. Senate elections -- the 1993 special and special run-off elections for U.S. Senate in Texas. All of ADF's various GOTV activities appear to have been funded using NRSC's payments and were targeted to six specific U.S. Senate elections in the 1992 general election, to the 1992 Georgia U.S. Senate run-off and to the 1993 special and run-off elections for U.S. Senate in Texas.

Additionally, documents produced by ADF indicate that NRSC personnel reviewed GOTV radio scripts and may have reviewed candidate questionnaires used in the 1993 Texas GOTV activities. Documents also evidence contacts between ADF and Senate campaigns in connection with the campaigns' completion of the candidate questionnaires in both 1992 and 1993. While these documents show that ADF sent candidate questionnaires to both the Democratic and Republican Senate candidates for targeted Senate races in 1992 and 1993, the only evidence of follow-up contacts for the 1992 races is with the Republican candidates.

Although less information is available regarding NRLC, current evidence is undisputed that after receiving the NRSC's November 11, 1992 \$40,000 payment, NRLC financed GOTV phone calls aimed at the Georgia run-off election after apparently ignoring the general election contest involving the same two candidates. NRLC also admitted that it passed part of NRSC's 1992 payment on to the Christian Coalition, which distributed voter guides in the Georgia run-off. As for 1994, after receiving \$175,000 in payments from the NRSC in the days before the 1994 general election, NRLC appears to have entered contracts with several vendors to conduct GOTV phone calls in connection with the Senate elections in Minnesota and Pennsylvania and

made a \$50,000 contribution to the state right to life group, MCCL, Inc., to conduct their own phone campaign for the Minnesota Senate election.

Finally, current information suggests that CFA too may have passed along the NRSC funds received in October and November 1992 to two other organizations in the form of grants. One of these organizations, the National Right to Work Committee, was actively involved in GOTV activities for the 1992 Georgia run-off.

As noted in Section II, limited information was sought in discovery to ascertain the scope and frequency of contact between the NRSC and the relevant Senate campaigns and between the recipients and the Senate campaigns. However, the NRSC generally admits that it was in daily contact with the relevant campaigns and discussed with campaign representatives and state parties how the candidates' voters or Republican voters generally would be turned out. It also acknowledges that its representatives had general conversations with the recipients "to assess the political climate and could have conducted routine briefings with them that center[ed] on which elections will be closest." Indeed, calendars produced indicate that NRSC Coalitions Director/Field Representative Curt Anderson appears to have been in regular contact with all three recipients in 1992 before the NRSC made its 1992 payments to them. And, Anderson, fresh from his stint at the NRSC, was working as a consultant to ADF on its Military Voter Program at the time ADF received NRSC's 1993 payments. Anderson was also working as a consultant for NRLC at the time NRLC received its 1994 payments from the NRSC. These facts alone establish general coordination and suggest that the opportunity for specific coordination existed: if the NRSC was in frequent contact with Senate campaigns and discussed get out the vote strategy with them and also met with the recipients, the recipients' NRSC financed GOTV

activities could have been based on information gleaned from the NRSC about candidates' specific plans, projects or needs.

B. NATIONAL REPUBLICAN SENATORIAL COMMITTEE

1. Response to Reason to Believe Findings

In its response to the Commission's reason to believe findings, the NRSC continues to characterize its non-federal payments to the four recipients as examples of arms-length donations it has historically made from its non-federal accounts to a variety of non-partisan, non-profit organizations established under section 501(c) of the Internal Revenue Code. Attachment 1 at 28-29. The NRSC states that each of its questioned payments in 1992-1994 were solicited by the recipients and donated because it approved of the group's overall positions and programs. The NRSC further states that it never asked for, or received, any guarantees that its donations to the recipients would be used for any specific purpose and denies that there was any specific understanding of how the funds would be used by the recipient groups. *Id.* at 30. It continues to point to the form transmittal letters that accompanied each donation as evidence that the donations were not given for any election-influencing purpose. *Id.* at 31. The transmittal letters suggested the donations be used for "good government activities" and stated that using the funds "in any way to influence a federal election is strictly prohibited." *Id.*

In addressing some of the facts that were the bases of the reason to believe findings, the NRSC attempts to explain away the timing of the donations -- all of which occurred in close proximity to federal elections and at a time when the NRSC had nearly exhausted its applicable Section 441a(d) limits -- as reflective of the rhythms of its fundraising cycle: it simply has more funds available closer to election day. Attachment 1 at 32. The NRSC also dismisses as "off-the

cuff,” “incorrect” and “promptly corrected” published statements by its then-Executive Director Phil Gramm that the NRSC’s 1994 payments to NRLC were made to activate pro-life voters in key states where they would be pivotal to the election. *Id.* at 33 and 41.

In addressing the legal theory of this matter, the NRSC argues that no violation of the Act or regulations occurred as long as the ultimate use of the funds did not violate the Act or the Commission’s regulations. Attachment 1 at 40 and 42. As for any possible coordination theory, the NRSC contends that there is no evidence of contacts between itself and the recipients sufficient to transform a “no-strings attached” donation into an “impermissible expenditure.” Attachment 1 at 39-40. The NRSC does acknowledge that, as a political party committee, it routinely briefs groups and individuals about upcoming elections and that the briefings “naturally center” on those races expected to be closest. *Id.* at 39; see also *Id.* at 13. The NRSC says it is uncertain whether it so briefed representatives from the recipient organizations, but contends that even if it did, such conversations were permissible since Commission’s regulations at 11 C.F.R. § 114.4(d), which prohibit coordinated voter drives, were not yet in existence. The NRSC further opines that even if such a prohibition was in effect, it is still “far from clear” that any improper coordination occurred. *See Id.* at 36-40.

The NRSC also argues that the Commission must, but has not, offered evidence that the recipients ultimately engaged in activity constituting express advocacy. Attachment 1 at 42. And, even if the recipients did so, the NRSC maintains that, in light of its asserted lack of control over the funds and the “safeguards” it took via its transmittal letters, the Commission cannot find that the NRSC committed a violation. *Id.*

2. Discovery Response

According to the NRSC, the non-federal payments it made between 1992 and 1994 to the NRLC, ADF, CFA and GGC were solicited by those organizations.⁶ Attachment 1 at 6-7. The decisions to make the payments were made by NRSC's Executive Directors (Jeb Hensarling in 91-92 and William Harris in 93-94), Deputy Executive Director David Carney (in 93-94), Political Director Paul Curcio (in 1992-1994) and with respect to the 1992 payments only, Coalitions Director/Field Representative Curt Anderson. *Id.* at 11. Both Anderson and Curcio appear to have played a role in all of the payments. As NRSC Political Director from 1991-94, Paul Curcio was involved in the decisions to make all the payments. As NRSC Coalitions Director/Field Representative in 1992, Curt Anderson, along with Curcio, was involved in the decisions to make the 1992 payments. Anderson's role with respect to the NRSC's 1993 and 1994 payments is not entirely clear. However, ADF acknowledged that Anderson worked for it as a consultant who "helped in identifying funding sources" and ADF documents show he was being paid by ADF when it received the NRSC's \$210,000 in payments in 1993. Attachment 2

⁶ The NRSC's payments to all four Respondent recipients in 1992 totaled \$584,000; payments to ADF in 1993 totaled \$210,000 and payments to NRLC in 1994 totaled \$175,000. The NRSC also revealed that it made payments to three of the same groups in 1990: \$380,000 to NRLC, \$40,000 to ADF and \$180,000 to CFA. Unlike the 1992-94 payments, some of these payments were made as early as May.

at 2 and 7. The NRLC also acknowledges that Anderson worked for it as a fundraising consultant during 1993 and 1994.⁷ Attachment 3 at 5. NRSC's 1994 payments to NRLC totaled \$185,000.

According to the NRSC, then Chairman Senator Phil Gramm had no role in approving the payments.⁸ As discussed more fully elsewhere, however, ADF documents show that ADF officials had scheduled meetings with Gramm a week before it received the NRSC's \$250,000 payment in 1992 and on the day it deposited NRSC's \$170,000 payment in 1993.

The NRSC also says all decisions to make non-federal donations, including those to the recipients, were based on various factors including the merits of oral and written proposals by the organization and the availability of funds in its non-federal account for activities "unrelated to any federal election." Attachment 1 at 61.

With respect to the recipients specifically, the NRSC maintains its payments to these groups were made for no particular purpose other than to "aid generally the groups to which the contributions were made" and states that its personnel are unable to remember any "specific

⁷ Interestingly, Anderson has served as Political Director for the Republican National Committee during the 1995-1996 election cycle. In October 1996, the RNC gave \$4.6 million in non-federal funds to Grover Norquist's group, Americans for Tax Reform and \$600,000 to the National Right to Life Committee. See Charles R. Babcock, Anti-Tax Group Got Big Boost from RNC as Election Nears, The Washington Post, Dec. 10, 1996.

⁸ When asked to clarify Gramm's role in a follow-up letter, the NRSC referred back to Gramm's April 1995 affidavit, arguing that the affidavit "clearly stated" that Gramm did not play a role in approving or disapproving any particular donation including the ones at issue. Attachment 1 at 61. However, Gramm's affidavit statement was actually narrower. He stated that "[a]lthough as Chairman I set the NRSC's policy on such donations, I did not generally approve any particular donation." This phrasing leaves open the possibility that Gramm may have approved a donation in specific circumstances.

conversations" with the recipients concerning "precisely how" any payment was to be used.

Attachment 1 at 8 and 11. The NRSC acknowledges, however, that it was aware that both NRLC and ADF planned to engage in nationwide GOTV activities. Specifically, the NRSC states that NRLC requested financial support to build its organization and said it would be making non-partisan GOTV calls to its members throughout the country. *Id.* at 8. The NRSC maintains that it did not know in which states the calls would be made or what the intended message would be. *Id.* Although the NRSC admits it had general knowledge of the type of GOTV activities NRLC wished to pursue, it asserts that it had "no specific knowledge" of NRLC's activities in Georgia in 1992 and Minnesota and Pennsylvania in 1994 and denies any involvement in them. *Id.* at 18-19.

The NRSC also admits knowing the types of GOTV activities ADF planned to conduct. According to the NRSC, Executive Director Jeb Hensarling met "casually" with ADF President Eugene "Red" McDaniel about a contribution to ADF and then met once or twice with McDaniel's son, Mike, who was ADF's Executive Director. Attachment 1 at 7. At some unspecified time, ADF provided the NRSC with a report of ADF's previous GOTV activities. These activities included voter guides, absentee ballots for active duty military personnel, and military base tours by McDaniel to encourage registration and voting. Attachment 1 at 8. The NRSC goes on to state that "[t]o the extent ADF indicated its activities were intended to increase voter participation nationally among active military personnel, without specifying particular states," the NRSC believed higher voter turnout was a "laudable goal" [emphasis added]. *Id.* at 9.

The NRSC provided almost no information about its payments to the other two recipients: CFA and GGC. The NRSC states that it has no "specific information" concerning the purpose of its payments to CFA or communications with CFA about the payments, except that CFA President Eric Licht requested the funds. Attachment 1 at 8-9. The NRSC does not describe the purpose of its \$7,000 payment to GGC on November 18, 1992, responding only that "no one at the NRSC has any recollection of any communication with GGC." *Id.* at 9. It does state, however, that Emory Folmar solicited the GGC donation from NRSC Political Director Paul Curcio. *Id.* at 6. Mr. Folmar has been the Mayor of Montgomery, Alabama since 1977 and is former Chairman of the Alabama State Republican Party and the Alabama State Republican Executive Committee. Who's Who in American Politics, 95-96, 15th ed., vol. 1 at 15 (1995).

The written discovery to the NRSC also sought to determine what sort of information may have been communicated to the recipients about any specific election activity or strategy. Again, the NRSC asserts that it has no specific recollection of any such communication.⁹ Attachment 1 at 12. It does acknowledge that it had conversations "of a general nature" with the recipients to "assess the overall political climate," conversations it says it typically conducts with interested groups. *Id.* These conversations could have included an assessment of the recipients' members and "any overall activities." *Id.*

Other than the aforementioned general discussions, the NRSC maintains its personnel are unable to remember precise dates or the substance of conversations with any of the four

⁹ The NRSC mentions only two specific conversations, both of which appear to be inconsequential: a post-election call from an NRLC official thanking the NRSC for its 1994 donations and a 1992 meeting between ADF and Dave Carney when Carney was with the Bush campaign.

recipients about the payments nor do they have any specific information or recollection of strategy discussions with the recipients.¹⁰ Attachment 1 at 6-7 and 11-12. Moreover, the NRSC appears to have no documents that would pinpoint specific dates of, or shed light on, particular conversations. Specifically, the NRSC maintains that, except for the transmittal letters accompanying its payments to the recipients, neither it nor its personnel has within their possession custody or control any "relevant" phone logs, calendars or other writings relating to, reflecting or referencing the payments and neither has any documents containing, relating to or referencing communications with the recipients regarding election activity or strategy.

Attachment 1 at 6-7 and 11-12.¹¹

¹⁰ In an effort to determine who the NRSC consulted with as to specific answers involving non-recollection of conversations or non-possession of documents, this Office asked the NRSC in a follow-up letter to identify each individual capable of furnishing testimony and each person who provided information or other input as to each response in accordance with the subpoena instructions. The NRSC failed to uniformly provide this information. For example, the NRSC identified persons capable of furnishing testimony as to Questions 2 and 4 -- concerning the NRSC's knowledge about use of the payments and its communications with the recipients about election strategy -- but failed to identify who provided it with the information on which its response was based. Instead, the NRSC answers those critical questions by identifying the person who collected information from the NRSC files.

Moreover, given the staff turnover in NRSC personnel between the time of the events in question and the time of the subpoena response, this Office asked the NRSC to identify the individuals encompassed in its use of the phrases "NRSC" and "NRSC personnel" throughout its response. The NRSC has declined to specifically identify who it consulted with respect to any of the responses, stating only that its use of those phrases includes both current and former personnel "that have been located and spoken with."

¹¹ Because the NRSC has not specified who it consulted with regard to its responses, we cannot determine who is encompassed by the NRSC's statement that neither it nor its personnel has certain responsive documents "within their possession, custody or control." For instance, when NRSC responds that "neither it nor its personnel has any relevant phone logs, calendars, or other written communication relating to the payments, we do not know whether the response includes former key NRSC personnel and, if so, which former personnel."

3. Analysis

In light of the information provided by the NRSC alone, it appears that the NRSC had general knowledge and/or understanding of how each of the recipients planned to use, and did use, the funds at issue. While the NRSC states that its payments were to aid the organizations, generally it also admits knowing that two of them, ADF and NRLC, planned to conduct nationwide get-out-the-vote efforts. More specifically, the NRSC states it knew the types of GOTV efforts these two organizations planned to undertake, but asserts it did not know in which states NRLC would make its GOTV calls or what particular states ADF would target.

Further, to the extent that the NRSC's interrogatory responses apply to all of its payments to NRLC and ADF, its assertion that it had no knowledge of particular targeted states is contradicted by the facts. At the time the NRSC made its mid-November 1992 payments to all four recipients and its two 1993 payments to ADF, the only upcoming federal elections were a U.S. Senate run-off in Georgia and a special U.S. Senate election in Texas. Moreover, as detailed in the discussion of ADF's subpoena responses below, two of the written "Military Voter Program" proposals produced by ADF specifically concern GOTV activities for the 1993 U.S. Texas special and run-off elections, and a 1992 ADF proposal outlines a GOTV program targeted to 25 specific states, 23 of which had 1992 Senate elections. It is not known at this time whether these particular proposals were presented to the NRSC; however, the available evidence strongly suggests that they were. Specifically, the NRSC's response mentions a report provided to it by ADF regarding its military voter program; ADF documents reflect meetings with NRSC officials around the time the 1992 proposal and one of the 1993 proposals appear to have been

prepared; and the proposed budget figures contained in the 1993 proposals closely correspond to the amounts of NRSC's two 1993 non-federal payments to ADF.¹²

Even though only limited information was sought regarding the NRSC's contacts with its Senate candidates, the information received is sufficient to suggest general coordination. The NRSC acknowledges that it was in daily contact with the relevant campaigns; discussed with campaign representatives and state parties how the candidates' voters or Republican voters generally would be turned out; and frequently discussed with the campaigns how the NRSC's coordinated expenditures would be used. Attachment 1 at 16. The NRSC also acknowledges that its representatives had general conversations with the recipients "to assess the overall political climate," discussions which could have included an "assessment" of the group's members and its overall activities. It also admits that it conducts routine briefings that center on which elections will be closest. In fact, the majority of the employees identified by the NRSC as having been solicited by the recipients and involved in the decisions to make the non-federal

¹² ADF's February 22, 1993 proposal for GOTV activities related to the May 1 Texas special election contains a proposed budget of \$170,500; NRSC made a \$170,000 non-federal payment to ADF on or around March 2, 1993, the same day ADF officials had a scheduled meeting with NRSC Chairman Phil Gramm. ADF's undated proposed budget for activities related to the June 5, 1993 Texas run-off election was \$58,500. This figure included \$5,000 for a motivational military base tour by Red McDaniel and \$15,500 for advertising and promotion that included radio ads, neither of which ADF appears to have done. The NRSC made a \$40,000 payment to ADF on or around May 26, 1993, twelve days after Mike McDaniel and ADF consultant Curt Anderson were scheduled to meet with NRSC officials.

The proposed budget in the 1992 proposal, one copy of which is marked "6/29 draft" was \$743,535, presumably for a GOTV campaign aimed at all 25 states listed therein. Mike McDaniels' calendar reflects a scheduled meeting with NRSC officials on that same day. The NRSC eventually donated \$250,000 to ADF on October 2, 1992, a week after a scheduled meeting with Phil Gramm. ADF appears to have scaled back its GOTV activities to six states, all of which had close Senate elections.

payments, were also among the employees involved in making NRSC's coordinated expenditures on behalf of the relevant Senate campaigns, a task requiring frequent discussions with the campaigns. These individuals include Paul Curcio, Jeb Hensarling, Bill Harris and David Carney. Attachment 1 at 13-14 and 16.

The NRSC does not provide names of any employees who discussed GOTV strategies with the campaigns. See Attachment 1 at 15-16. However, the fact that the NRSC discussed such information with the campaigns and its top officials met with the recipients to discuss their overall activities, makes it plausible that the recipients' NRSC-funded GOTV activities were based on information gleaned from the NRSC about the candidates' plans, projects or needs.

The NRSC declined to respond to one of the interrogatory sub-parts that could lead to more specific information regarding its contact with candidates. Specifically, the NRSC refused to identify the individuals at some of the campaigns with whom it regularly communicated concerning coordinated party expenditures, GOTV activity and voter guide distributions, contending that such information was outside the scope of the Commission's interrogatory. Attachment 1 at 64; see also *Id.* at 15-16. The NRSC stated that it would provide such information "when served with the appropriate Subpoena from the Commission." *Id.* This Office believes this information is within the scope of the original interrogatory. However, in light of the need for further information of this nature as a result of Colorado Republicans and discovery responses implicating other campaigns, this Office recommends that an additional Order to Submit Written Answers be issued to the NRSC, as opposed to moving to subpoena enforcement at this time. This recommendation is discussed further in Section IV.

In its reason to believe response, the NRSC characterizes its payments as arms-length transactions, made as part of a historical pattern of contributions to a variety of non-profit, non-partisan groups for "general purposes," when it had excess funds available. This characterization is controverted by several facts discussed below. More specific facts are discussed in connection with the particular recipients. However, the following general observations help to put the NRSC's payments in perspective.

First, the timing and pattern of the NRSC's non-federal payments, when viewed as a whole, strongly suggest that the NRSC intended to do through other organizations what it could not do itself and was not simply making general purpose donations to many types of non-profit groups. The foregoing is especially compelling considering that the purpose of a national Senate committee is to help elect a party's Senate candidates. The NRSC gave \$340,000 in non-federal funds to three of the four Respondent recipients within the six week period preceding the 1992 general election; \$122,000 to all four recipients in the two weeks preceding the 1992 Georgia run-off; \$210,000 to ADF in the two-month period preceding the 1993 special U.S. Senate election and run-off in Texas; and \$175,000 to NRLC the week before the 1994 general election. Two of the recipients run strong get-out-the-vote programs; the third is an organization that makes grants to such groups; and the fourth was a state political committee connected to a Southern mayor who formerly served as a top state party official. The only other non-federal donation the NRSC reported to non-profit groups during that entire three year period

as a \$50,000 contribution to the Fair Government Foundation, an organization started by Senator Coverdell after his 1992 election.¹³

The NRSC attempts to explain away the timing of its payments by asserting that it typically has more excess funds available closer to election day. This is not consistent, however, with the timing of most of the payments at issue. A review of the "O" index of the NRSC's non-federal reports indicates that the NRSC generally had more money in its non-federal account at other times in 1992 and 1994 than it did when it made the donations.¹⁴ Indeed, the non-federal account had between \$1-3 million more cash on hand in the early months of 1992 when the NRSC's Curt Anderson met with officials from ADF and NRLC than when it made the payments to those groups. Had the NRSC wished to make contributions for the general purposes of the organizations, unrelated to any federal election, presumably it could have done so at any one of these meetings.

¹³ In response to the Commission's Order, the NRSC provided a list of other non-partisan, tax-exempt organizations to which it has made non-federal payments since January 1, 1990. The only organization it listed besides the groups at issue in this matter is "Vote America" a group ADF identifies as one of its former donors. The NRSC did not list the Christian Coalition as one of its recipients although we know from MUR 3669 that it made \$64,000 in payments to that organization in 1990 from at least two non-federal accounts.

¹⁴ As noted later in the report, 1992 calendars produced by ADF and NRLC show officials at one or both of those organizations had scheduled meetings with Curt Anderson on January 28, February 4 and 25, March 17, April 2, and June 29. According to the "O index," the cash on hand for NRSC's non-federal account was \$3.4 million on January 30, \$4 million on February 29, \$4.9 million on March 30 and \$5.2 million on June 30. In comparison, the NRSC had \$2.4 million on hand at the beginning of October 1992 around the time it made the first of the 1992 payments to the recipients and \$1.7 million as of the reporting period beginning October 15 when it made the remaining 1992 payments.

Similarly, a review of the "O index" for NRSC's non-federal reports for the 93-94 cycle shows that the NRSC had more cash on hand from April to August 1994 than it did at the beginning of the reporting period during which it made the \$175,000 in contributions to NRLC.

Furthermore, a review of the "O" index for NRSC's 91-92 federal account shows that it lacked sufficient federal funds to engage in generic voter activities itself -- a factor which further supports the inference that the NRSC's non-federal payments were intended to benefit federal elections. As of October 14, 1992, the end of the 1992 pre-general election reporting period, the NRSC's federal account had a cash-on-hand balance of \$43,470. In contrast, the NRSC's non-federal payments to ADF and NRLC during that period totaled \$275,000. Thus, had the NRSC itself conducted GOTV activities similar to those conducted by ADF and NRLC, it would not have had sufficient federal funds to pay for them or at least, it would have had to significantly scale back those activities.¹⁵ The NRSC's federal account may have had sufficient cash-on-hand during the October 15-November 23, 1992 post-general election reporting period to cover \$187,000 worth of generic voter activity -- the total amount of its non-federal payments to all four recipients in this period -- as the NRSC ended that period with a cash-on-hand balance of \$474,814. However, the federal account was also carrying a significant amount of federal debt, varying between \$2.3 million as of October 14, 1992, to \$6.3 million as of December 31, 1992. In fact, the NRSC was not debt free until July 1994 and its cash-on-hand did not exceed its debt until November 1993. Finally, the NRSC ended the 1994 post-general reporting period, during which time it made \$175,000 in non-federal payments to NRLC, with only \$142,207 cash on hand.

¹⁵ Under the allocation formula applicable to national Senate party committees, the NRSC would have had to use federal funds to pay for at least 65% of any generic voter drive activity and 100% of any other expenditures or disbursements made on behalf of a clearly identified federal candidates. 11 C.F.R. §§ 106.1(a) and 106.5(c).

Interestingly, the NRSC's reason to believe response avoids any mention of its knowledge about how the recipients would spend its funds. It asserts repeatedly that it has no liability under the Act because the transmittal letters accompanying the payments warned the recipients that using the money "in any way to influence a federal election" was prohibited. As any major political party committee should be aware, however, under the Act and Commission regulations, the standard for determining what activity is reportable and which must be financed with permissible funds differs depending on the entity engaged in the activity. Corporations, especially tax-exempt corporations like most of the recipients, are able to engage in election-related activity that falls short of express advocacy or coordinated activity, without having to use permissible funds or report their activity. However, as a political party committee, much more of the NRSC's activities are reportable since its purpose is to help elect U.S. Senators. Under such circumstances, the content of NRSC's form transmittal letters are of little import. See FEC v. Massachusetts Citizens for Life, 479 U.S. 238, 243, 249 (1986) (disclaimer on newsletter that newsletter was not an endorsement of candidates did not negate the fact that newsletter expressly advocated election of pro-life candidates).

C. AMERICAN DEFENSE FOUNDATION

1. Response to Reason to Believe Finding

In its response to the Commission's reason to believe finding, ADF admits that it solicited and received financial support from the NRSC for its military voter program ("MVP"), a program it regularly conducted to encourage registration and voter turnout among military personnel and dependents. Attachment 2 at 12. It further acknowledges that it informed the NRSC that it would conduct a non-partisan program to increase military voter participation. Id.

at 16-17. However, ADF contends it did not violate the Act or the Commission's regulations because none of the MVP materials it has provided to the Commission expressly advocates the election or defeat of any federal candidate, advocates the support of any political party or solicits contributions for any federal candidate. *Id.* at 13-14.

Additionally, ADF contends that its GOTV activities generally complied with the Commission's then-existing regulations governing non-partisan voter registration and GOTV drives, set forth at 11 C.F.R. § 114.4(b)(2)(i).¹⁶ Attachment 2 at 13. Specifically, ADF states that the MVP materials it provided to the Commission: (1) contained no reference to any particular federal candidate or depicted all candidates for a particular federal office without favoring one candidate over another; (2) made no reference to a political party or included the political affiliation of all candidates who were depicted; and (3) was limited to urging voting and registration and describing the means and places of voting and registration. *Id.*

In apparent reference to the candidate questionnaires it prepared in connection with its MVP, ADF also maintains it complied with the Commission's then-existing voter guide regulations set forth at 11 C.F.R. § 114.4(b)(5)(i), even though ADF states that, as a non-profit corporation, it was not bound by such guidelines. Attachment 2 at 14-15. According to ADF, all questions were directed to all candidates for a particular seat and each candidate was given equal time to respond. ADF also represents that the completed questionnaires provided verbatim responses from each candidate, did not suggest or favor any position on the issues covered, expressed no editorial opinion concerning the issues and did not indicate support for or

¹⁶ ADF's citations are to the version of these regulations in existence in 1992 and 1993, the time of the relevant activities at issue. These regulations were subsequently amended.

opposition to any candidate or political party. Moreover, ADF maintains that it does not work in a particular geographic area and says it makes its material available to all military personnel. *Id.*

ADF's main contention appears to be that no violation of the Act occurred absent evidence that its activities contained express advocacy regardless of whether a political party funded them. Attachment 2 at 15 and 17. However, ADF also briefly addresses the issue of coordination. Although ADF acknowledges that it solicited and used NRSC's funds for GOTV activities and that it informed the NRSC of how it would use the funds, ADF maintains that it alone conceived, designed and executed the MVP program. It further asserts that neither the NRSC nor any candidates "determined how to conduct" its MVP program. *Id.* at 16-17.

ADF also offers a legal objection to any charge that it impermissibly coordinated its activities with the NRSC or its candidates. With apparent reference to the citation in the Factual and Legal Analysis to proposed Commission regulations banning voter drives coordinated with political parties, ADF contends that the Commission cannot "enforce on past conduct of ADF . . . a totally new limitation extrapolated from proposed regulations" Attachment 2 at 15. According to ADF, no Commission advisory opinion, regulation or enforcement proceeding provided it with any advanced warning that it could not coordinate GOTV drives with a partisan organization. *Id.* at 15-16.

Based on its response, ADF opines that the Commission should terminate this matter without further action.

2. Response to Discovery & Analysis

ADF admits that it sought and obtained financing from the NRSC for its Military Voter Program, described as a voter registration and GOTV program for military personnel. According

to tax returns produced by ADF, the MVP appears to be jointly operated by ADF, a 501(c)(4) organization and its related organization, the American Defense Institute, a 501(c)(3) organization. See generally Doc. Nos. 501016-501060. Eugene "Red" McDaniel, a retired navy captain and former Prisoner of War (POW), is the president of both organizations.¹⁷ McDaniel's son, Michael H. McDaniel, was the Executive Director of both organizations until 1994.

Attachment 2 at 2.

According to ADF, the MVP has existed in some form since 1984. The original goal of the program was to establish a worldwide voter program for U.S. military personnel. Funding limitations prevented such a comprehensive program. Attachment 2 at 5. In past years, ADF/ADI received donations for the MVP from such groups as the Coors Foundation, McDonnell Douglas, Strake Foundation and Vote America Foundation. *Id.* at 9. In fact, the NRSC was among ADI's previous donors, contributing \$40,000 in non-federal funds to that organization in 1990. Attachment 1 at 22, and footnote 6 of this report. It is not known whether this contribution was intended for the MVP.

A review of MVP handbooks, proposals and executive summaries produced by ADF for the years 1988, 1990, 1992, 1993 and 1994 depict a program with multiple components which presumably could be tailored depending on the amount of funding received. Although there is some variations in the type of activities described in these materials, the MVP appears to have been generally comprised of four main components throughout these years. These components

¹⁷ McDaniel ran unsuccessfully in 1982 for representative in the 3rd Congressional District of North Carolina. In a 1993 Advisory Opinion, the Commission advised McDaniel that he could donate the excess campaign funds of his principal campaign committee, Friends of Red McDaniel, to ADI. AO 1983-27. At that time, according to McDaniel's Advisory Opinion request, ADI's application for tax exempt status under 501(c)(3) was pending.

are: 1) a motivational component consisting of visits by Red McDaniel to targeted military bases to spread the GOTV message and a Distinguished Speakers Cadre made up of mostly retired military officers to supplement McDaniel's base visits; 2) a promotional component consisting of the production and distribution of non partisan public service announcements (PSAs) for radio and television stations located near bases in targeted states, press releases to be sent to base and local newspapers, and planned feature articles of McDaniel and the MVP to be offered to the national military media; 3) direct voter contact consisting of mailings to military voters registered in targeted states to include Federal Postcard Application (FPCA) forms and instructions, a motivational letter from McDaniel, and some type of candidate questionnaire;¹⁸ and 4) a command/Voting Assistance Officer component involving Red McDaniel's enlisting base command cooperation in registration and GOTV campaigns and educating base Voter Assistance Officers and county election officials about the Pentagon's Voting Information Center ("VIC"). The VIC permits military voters to request ballots and obtain voter registration and candidate information via a worldwide toll-free phone number. See generally, Doc. Nos. 500001-43, 500050-58, 500330-332, 500392-394, 500794-814, and 501113-1343.

ADF contends that its MVP program was non-partisan and that MVP communications comported with the Commission's regulations for non-partisan voter drives and guides, contained no express advocacy and contained no solicitations for contributions to candidates. Accordingly, ADF maintains it did not violate the Act despite the source of the program's funding.

¹⁸ A general reference to a direct mail capability first appears in a description of the 1990 MVP Program. See Doc. No. 500332. Funding proposals for the 1992 program detail the items to be included in such mailings.

The evidence thus far, however, shows that ADF's 1992 and 1993 GOTV activities were almost exclusively funded by the NRSC and that certain activities were planned and implemented in consultation with the NRSC. As written discovery took place pre-Colorado Republicans, this Office has very little information regarding the NRSC's specific contacts with the relevant Senate campaigns and, therefore, we do not know whether ADF's GOTV activities were based on specific plans, projects or needs of Senate candidates. Nonetheless, documents produced by ADF reveal four key facts suggesting that ADF's 1992 and 1993 MVP activities were planned in consultation with the NRSC and that the opportunity for coordination existed.

The first key fact suggesting consultation and possible coordination concerns ADF's funding. Tax forms and bank statements produced by ADF show that the NRSC's payments comprised 99% of ADF's 1992 and 1993 non-interest income and were sufficient to pay for the entire Military Voter Program costs during those years. The NRSC's payments to ADF totaled \$280,000 in 1992 and \$210,000 in 1993 and each payment was made within the two months preceding U.S. Senate elections. According to ADI and ADF tax returns, those organizations jointly spent \$212,458 for the MVP in 1992 and \$194,513 in 1993.¹⁹ Second, ADF's 1992 and 1993 MVP activities were targeted to specific, close U.S. Senate races. Third, calendars produced by ADF reveal a series of meetings between ADF and key NRSC officials prior to the receipt of the payments. Finally, ADF hired former NRSC Coalitions Director/Field Representative Curt Anderson and his brother, Wes Anderson, to work on the MVP program. ADF appears to have hired Wes Anderson just after it received the NRSC's November 10, 1992

¹⁹ According to the tax returns, these figures are exclusive of overhead costs such as management and fundraising.

payment of \$30,000. Documents show that Wes Anderson assisted in MVP activities targeted to the 1992 U.S. Senate run-off in Georgia, thereby providing a familial connection through which the NRSC could have learned of specific ADF run-off activities. Curt Anderson appears to have begun working for ADF as a consultant in February 1993, the same month that ADF prepared a proposal for an MVP aimed at the Texas special election. According to the NRSC's disclosure reports, Curt Anderson's last salary check from the NRSC was paid on January 31, 1993. As Curt Anderson was so recently employed by the NRSC when he came to ADF, it is likely that he still had various contacts remaining there.

Below is a fuller discussion of what we currently know about the financing of ADF's Military Voter Program and the particular MVP activities conducted for the 1992 general election, the 1992 U.S. Senate run-off in Georgia and the 1993 U.S. Senate special and run-off elections in Texas.

a. **Overview of MVP Financing**

All four of the NRSC's 1992-93 non-federal checks were made payable to ADF and deposited into ADF's money market account. Bank statements produced for that account show that ADF had less than \$2,000 at the time it deposited the NRSC's first 1992 contribution of \$250,000 in October, 1992. In fact, a review of ADF's bank statements and tax returns shows that during 1992, ADF received only \$795 in non-interest income that was not from the NRSC. See Doc. Nos. 500206-217 and 501016-501023. Similarly, when ADF deposited the NRSC's first 1993 contribution of \$170,000 in March 1993, ADF had a balance of only \$6,893 which consisted primarily of funds from the NRSC's second payment in November 1992. In 1993,

ADF received only \$83 in non-interest income from non-NRSC sources. See Doc. Nos. 500142-754 and 501039-501045.

Bank statements and checks produced by ADF also show that ADF paid for approximately \$41,000 in direct MVP costs in 1992 and transferred most of the remaining funds to ADI. See Doc. Nos. 500206-217 and 501435-501436. ADF says these transfers were to reimburse ADI for administrative expenses and direct MVP costs that ADI had paid and for further development of the MVP program. Attachment 2 at 4. Indeed, it appears that some of these program development funds were used to pay Curt Anderson a monthly consulting fee of \$2,500 beginning in February 1993. It also appears that the salaries of those who worked on ADF's MVP activities were paid from ADI's account.

Bank statements for 1993 reveal a similar pattern. See Doc. Nos. 500142-154 and 501435-501436. The NRSC's checks were deposited into ADF's account from which it paid about \$35,000 in direct MVP expenses aimed at the 1993 Texas U.S. Senate election. The remaining funds were transferred to ADI throughout 1993. See generally Doc. Nos. 500092-500217.

b. MVP Activities for the 1992 General Election

On October 2, 1992, the NRSC made a \$250,000 payment to ADF. A copy of the corresponding check stub produced by the NRSC describes the payment as "party development." See Doc. No. 000038. Documents produced by ADF show that ADF engaged in GOTV

activities aimed at six U.S. Senate elections in 1992 and financed them with the NRSC's funds.²⁰ According to ADI's newsletter,²¹ ADF's 1992 general election activities included: a direct mailing with candidate questionnaires sent to about 90,000 military households, distribution of video and print public service announcements (PSAs) with a GOTV message to military bases in targeted states, and visits by Red McDaniel to bases in two of the targeted states to emphasize the importance of voting. See Doc. No. 500060. In connection with the base visits, ADF also arranged for several interviews of Red McDaniel with local television stations and newspapers.

Calendars and expense reimbursement forms produced by ADF reveal a number of meetings between ADF and NRSC officials prior to the NRSC's \$250,000 payment. See Doc. Nos. 500829, 500316-317 and 501446-495. Some of these officials were among those employees in frequent contact with Senate campaigns by virtue of their roles in making coordinated party expenditures. ADF Executive Director Michael McDaniel had four scheduled meetings with Curt Anderson between February and September 1992.²² One of these, a June 29, 1992 meeting, took place at the NRSC, and apparently included NRSC Executive Director Jeb Hensarling and Paul Curcio. A copy of an MVP funding proposal bearing a handwritten

²⁰ The interrogatories included specific questions as to ADF's activities in connection with the 1992 Georgia U.S. Senate run-off and the 1993 Texas U.S. Senate special and run-off elections only since three of NRSC's four payments occurred just prior to those elections. However, the Commission's subpoena also asked for documents related to all four of the NRSC's payments to ADF in 1992 and 1993, which included the \$250,000 payment on October 2, 1992.

²¹ Although ADF's MVP program is described in funding proposals as a program of ADF, ADI's newsletter describes it as an ADI project. As noted earlier, tax returns for both organizations indicate that the MVP is a jointly-operated program.

²² Meetings with Curt Anderson apparently took place on February 25, March 17, June 29, and September 1, 1992.

notation stating "6/29 draft" suggests ADF may have solicited funding for the MVP at the June 29 meeting. See Doc. Nos. 500001-49. Mike McDaniel apparently met with Curt Anderson again on September 1, 1992, and a few weeks later, on September 17, 1992, both McDaniels apparently attended an NRSC reception. The following week, on September 25, 1992, both McDaniels' calendars reflect a meeting with NRSC Chairman Phil Gramm. A week later, on October 2, 1992, Mike McDaniel traveled to the NRSC for a meeting where he apparently picked up the NRSC's October 2, \$250,000 check.

The same day it received the NRSC's \$250,000 check, documents show that ADF immediately began implementing the direct mail component of the MVP by requesting military voter lists from the Department of Defense. ADF's written request, which was forwarded to the Department of Defense's Freedom of Information Act ("FOIA") Officer, sought mailing lists for service members with homes of record in sixteen states. In the FOIA request, ADF states that it plans to send a "non-partisan, motivational" letter to these military personnel reminding and encouraging them to vote and asks for expedited handling of the request. Attachment 5 at 2-3.

Although ADF requested mailing lists for voters in 16 states, ADF apparently focused its GOTV activities on Senate races in only six: Idaho, Ohio, Oregon, North Carolina, South Carolina, and Wisconsin. Four days after faxing the FOIA request, on October 7, ADF faxed letters to the Democratic and Republican U.S. Senate candidates in those six states asking them to complete a candidate questionnaire on defense-related issues. See Doc. Nos. 500588-626. ADF's letter advised candidates that the questionnaire would be mailed to service members along with instructions on voting and set a deadline of October 13, less than a week, for candidates to return the completed questionnaire for inclusion in the mailing. According to ADF

documents produced, only the Republican Senate candidates returned completed questionnaires. See Doc. Nos. 500567-591.

The Republican Senate candidate questionnaire responses were apparently included in a direct mailing ADF sent to military voters in the six targeted states since ADI's newsletter describes the direct mailing as containing a motivational letter, a candidate questionnaire and information regarding military voter registration and obtaining absentee ballots. See Doc. No. 500060. Although ADF produced copies of candidate questionnaires containing handwritten or typed responses from the Republican Senate candidates in the six targeted elections, it did not produce a copy of the motivational letter or any document indicating whether the candidate questionnaires mailed to voters included responses or non-responses of Democratic candidates.

In addition to the direct mailing, on October 22, 1992, ADF appears to have sent, via federal express, copies of a print and a 30-second video Public Service Announcement ("PSA") to Public Affairs Officers (PAOs) at fourteen bases in four of the six targeted states.²³ A copy of ADF's form cover letter to the PAOs notes that the PSAs "encourage military personnel to vote during this election year." The letter also encourages the PAOs to offer the video PSA and an accompanying press release to local civilian television stations and newspapers. Although ADF produced a copy of the form cover letter to base Public Affairs Officers and what appears to be a print PSA, it produced no copy of the video PSA. See Doc. Nos. 500502 and 500943.

Finally, a few days before the general election, on October 29 and 30, 1992, ADF President Red McDaniel apparently toured four military bases in two of the targeted states --

²³ These states were: North Carolina, South Carolina, Idaho, and Ohio. It appears that ADF also faxed the print PSA directly to base newspapers the week of October 16. In several fax cover sheets, ADF notes that copies of the PSA will be mailed since photographs do not fax well.

North Carolina, South Carolina -- as well as a base in Virginia. According to ADI's newsletter, during these visits Red McDaniel "talked and shared information" with unit and base Voting Assistance Officers and base editors and sought civilian press coverage. See Doc. No. 500060. ADF produced copies of a press release concerning McDaniel's base visits and a handwritten copy of a speech McDaniel may have given to base personnel during the visits. However, ADF produced no videotapes, audiotapes or news accounts of McDaniel's appearances even though documents show ADF requested copies of newspaper articles resulting from McDaniel's interviews with local media during the tours. See Doc. Nos. 500333-337, 5002840-285 and 500250.

ADF's contention that all of its GOTV activities were non-partisan and lacked express advocacy cannot be fully analyzed since, as noted above, it produced only some of its GOTV communications. However, those parts of ADF's GOTV communications that were produced, on their face, generally support ADF's claims. For example, the candidate questionnaires faxed to Democratic and Republican Senate candidates in the six targeted states sought yes or no responses to eight questions on issues of apparent interest to ADF. See e.g., Doc. No. 500594. It also asked candidates for a 100-word or less outline of the candidate's specific legislative agenda for the "future of the military." Among the eight issue-oriented questions was whether the candidate favored continued funding of the Strategic Defense Initiative, whether he/she supported the use of force in the Persian Gulf, whether changes in the Soviet Union justified "further defense cuts" and whether the candidate favored using "drastic cuts" in defense to pay for domestic programs. Each of the Republican Senate candidates faxed completed questionnaires to ADF which included narrative responses to the legislative agenda question.

ADF did not produce copies of any completed responses from the Democratic Senate candidates. Moreover, as noted earlier, unless the questionnaires were simply mailed to military voters in the form received from the Republican candidates, no final printed copy of any questionnaire reflecting responses or non responses of Democratic candidates was produced.

Among the other MVP communications ADF produced were copies of two press releases dated October 22 and 28,²⁴ a profile of Red McDaniel, a document that appears to be the print Public Service Announcement, a copy of an October 22, 1992 form cover letter addressed to base Public Affairs Officers forwarding the print and video PSAs, and a copy of a handwritten document captioned "EBM Speech." See Doc. Nos. 500284-85, 500504-505, 500286, 500943, 500502, and 500333-337. The press releases, the PSA and the cover letter all generally describe the MVP as a program designed to increase voting participation of military personnel. All three cite to McDaniel's POW experience as an impetus for the program. None of the documents mention a specific candidate or election and only the October 22 cover letter mentions the November 3 date of the general election.²⁵ The handwritten speech is targeted to military personnel. Like the other MVP communications, the speech relates the impact of McDaniel's POW experience on his attitude toward voting. Except for a rather cryptic remark in McDaniel's

²⁴ The October 22 release just generally describes the MVP. The October 28 release contains much of the same information but leads with a paragraph on McDaniel's planned base tours.

²⁵ The camera-ready print PSA, printed on heavy, glossy paper features two photos of Red McDaniel above which is bold faced text stating "...for over six years I couldn't vote..." and at the bottom of the page, also in bolded text, a quote by McDaniel: "Voting is Not Just a Right... it's a responsibility" and the exhortation "Defend America: Vote!" Text in the middle consists of five sentences describing McDaniel's POW experience and his resulting realization of the impact of his vote.

speech about an American president in 1968 "who ordered a bombing halt so that a candidate from his own political party could be elected President," McDaniel's speech mentions no candidate or political party. At the end of the speech, McDaniel thanks members of the military for "what you're going to do for our country on November 3, 1992." Since the ADI newsletter does not mention speeches as a part of McDaniel's base tours, it is unclear if McDaniel actually gave the speech on these tours or if he did, whether he varied from the script.²⁶

Even if all of ADF's MVP communications and activities, including those not produced such as the video PSA, prove to lack express advocacy or an electioneering message, certain facts relating to the non-speech components of ADF's activities suggest that ADF may have consulted with NRSC officials in choosing the Senate races it would target. Such consultation would establish that the NRSC had specific knowledge as to what ADF planned to do with the NRSC's funds. Moreover, ADF's meetings with key NRSC officials and its handling of candidate questionnaires raise questions as to whether ADF conducted its 1992 GOTV in coordination with Republican Senate candidates.

i. Targeting of 1992 Senate Elections

Neither ADF's interrogatory responses nor its documents offers a clear reason as to why ADF focused its GOTV activities on the six targeted Senate races. ADF's 1992 MVP funding proposal envisions an eight-part program with a proposed budget of \$743,000 aimed at 25 states. See Doc. Nos. 500001-49 and 501113-154. The description of the direct mail component of the program suggests the 1992 MVP proposal may have been initially designed as a nationwide

²⁶ The Commission's subpoena requested copies of any video or audiotapes of appearances made by ADF officials, however, no such materials were produced.

effort aimed at the 1992 presidential election since it states the mailing will include responses to a Presidential questionnaire and a comparison of the 1992 Party Platforms. See Doc. No. 500014. However, a document contained in Appendix C of the proposal, entitled "1992 Battleground States, U.S. Senate,"²⁷ suggests that, at some point, ADF tailored its proposal to the NRSC as a potential funding source. See Doc. No. 501136.

The "Battleground States" document contains military voting statistics for 25 of the 34 states holding U.S. Senate elections in 1992. The document lists the numbers of military voters and dependents of record for each state, the total number of registered voters in 1990 and the percentage of registered voters who are from military households. It also lists the results of the 1988 Presidential vote in each state and the percentage by which the Senate incumbent won the last election. These statistics presumably would help to determine the elections in which ADF could have a greater impact on military participation. See Doc. No. 501136.

The 1992 MVP proposal produced generally supports the NRSC's assertion in its discovery response that an unidentified ADF report provided to it concerned a nationwide GOTV effort. And indeed, it appears that ADF sought additional funding from at least two other sources for the MVP between the time of its June 29 meeting at the NRSC and the NRSC's October 2

²⁷ The "Battleground States" document is contained in both the "6/29 draft" version of the 1992 MVP proposal and another undated version of the proposal, except that the document bears the title "Battleground States" only in the undated proposal. Compare Doc. No. 500023 with Doc. No. 501136.

donation -- the DNC and The Dodge Jones Foundation.²⁸ However, except for a \$5,000 grant to ADI from Dodge Jones on October 9, the NRSC's \$250,000 payment was the primary funding source for the 1992 MVP.

The foregoing suggests that ADF was compelled to scale back its MVP activities from a nationwide effort costing over \$700,000 to something smaller that could be financed with the \$255,000 in funds received from the NRSC and Dodge Jones. This raises a question as to how ADF chose the six targeted races. In its interrogatory response, ADF states that McDaniel and MVP Director John Isaf generally decided how to spend MVP funds based on several factors: 1) the location of military bases, 2) the states having large concentrations of non-resident military voters, 3) elections in which ADF/ADI could have the greatest impact on military participation and 4) locations where other ADF/ADI programs were taking place. Attachment 2 at 5.

It is unclear how the six U.S. Senate elections targeted in ADF's 1992 MVP activities fit these criteria. According to news accounts, each of the six elections ADF targeted were expected to be close. See e.g., Tim Curran, *With 4 Weeks Left, GOP Senate Chances Waning, Even in N.H., Wash. and Arizona*, Roll Call, October 5, 1992; *Once Confident Republicans Struggle to Hold Ground*, Congressional Quarterly, October 24, 1992 at 3339. Indeed, in an interview with the Tulsa [Oklahoma] Tribune prior to the Republican National Convention, NRSC Executive

²⁸ About two weeks after the NRSC meeting, Red McDaniel sought a meeting with the DNC to discuss the MVP via a July 8, 1992 letter. See Doc. No. 500049. No funding was received from the DNC. The McDaniels' desk calendars also reflect a meeting with an official from the Dodge Jones Foundation on September 16, 1992. See Doc. Nos. 501464 and 501480. Apparently ADF requested a specific donation amount since the official remarks in his letter forwarding Dodge Jones' \$5,000 grant states that he realizes it is "disappointing not to receive the amount requested." See Doc. No. 500000. The Dodge Jones grant was deposited into an ADI's account rather than ADF's account.

Director Jeb Hensarling named South Carolina, North Carolina and Ohio as the Republican's best prospects of winning Senate seats and raised concerns about Republican-held seats in Oregon and Wisconsin. Jenk Jones, Jr., *Campaign '92: Republican National Convention*, The Tulsa Tribune, August 21, 1992 at 20A. Other sources cited the open Senate seat in Idaho as a tossup around the time ADF began sending its candidate questionnaires. Tim Curran, *With 4 Weeks Left...*, *supra*.²⁹ Regardless of how the targeted races fit into ADF's stated criteria, it is clear that these races were of special interest to the NRSC.

Neither ADF nor the NRSC specifically address whether they discussed particular races. The NRSC acknowledges that it generally did so with interested groups but says it has no specific information as to such discussions with ADF. Attachment 1 at 12-13. Both groups insist that the NRSC maintained no direct control over the funds.³⁰ However, the NRSC's lack of direct control is irrelevant if ADF targeted specific races based on information about the candidates' plans, projects or needs provided by the NRSC. The fact that ADF apparently met

²⁹ For the most part, the final election results supported these predictions as incumbent Senators Terry Sanford and Bob Kasten ended up losing their seats and incumbent Senators Packwood, Hollings and Glenn won with fairly slim margins of between 3 and 9%.

³⁰ ADF says the NRSC did not direct any ADF employee on the use of the funds and says it did not seek the NRSC's approval for any MVP expenditure decision. Attachment 2 at 6. The NRSC emphasize repeatedly in its response to the Commission's reason to believe findings that it maintained no control over the funds and suggests ADF would have had to "stand in its shoes" for a violation to be found. Attachment 1 at 34 and 42.

several times with key NRSC officials in the months before the October 22 payment,³¹ coupled with the fact that ADF targeted tight Senate races of special importance to the NRSC, suggests that such information could have been exchanged. Moreover, an allocation theory might only require that the NRSC had knowledge of how the funds were to be spent. In any event, further discovery is necessary to ascertain the content of these meetings, the reasons behind ADF's targeting of these particular elections, and the extent of the NRSC's knowledge of ADF's 1992 activities.

ii. Handling of Direct Mailing

ADF's documents also raise questions about ADF's handling of candidate questionnaires included in its direct mailing to military voters. Fax cover sheets and a fax journal ADF produced show that on October 7, 1992, it faxed a cover letter and blank questionnaire to both the Democratic and Republican candidates for U.S. Senate in Idaho, Ohio, Oregon, North Carolina, and South Carolina. See Doc. Nos. 500567-591 and 500595-596. The cover letter served as an introduction to ADF and ADI's military voter efforts and advised candidates that completed questionnaires must be returned by October 13 in order to be included in a mailing to members of the armed services.

Though ADF apparently faxed identical documents to the major party candidates giving them the same six-day period to reply, it appears that ADF made follow-up contacts with only

³¹ None of the interrogatories sent to the NRSC concerning its contacts with Senate campaigns address the six 1992 Senate campaigns targeted by ADF since this Office only learned of ADF's activities through ADF's interrogatory responses. Therefore, we currently have no specific information as to whether the NRSC officials who met with ADF were in frequent contact with the six campaigns. By virtue of their positions, it seems likely that Chairman Phil Gramm, Political Director Paul Curcio and Executive Director Jeb Hensarling, all of whom met with ADF, were in frequent contact with the six targeted campaigns.

the Republican candidates and accepted the completed questionnaires of some Republican candidates after its stated deadline. Three of the six Republican candidates faxed completed questionnaires to ADF by the October 13 deadline. See Doc. Nos. 500573-500575. Fax cover sheets, two undated, show that ADF made additional contacts with the campaigns of the other three Republicans. See Doc. Nos. 500627, 500587 and 500591. No documents were produced evidencing follow-up efforts with the Democratic candidates. Two of the three Republican candidates subsequently faxed ADF completed questionnaires on October 14 and 15, after the deadline; the third also faxed ADF a completed questionnaire, but the fax produced bears no fax transmittal line showing the date it was transmitted. See Doc. Nos. 500571-572 and 500576 - 577. ADF apparently contacted all six Republican candidates again after its deadline to obtain copies of their signatures, presumably to be reproduced on the printed questionnaire. See Doc. Nos. 500567-568 and 500580-585. As noted earlier, however, ADF did not produce copies of any final, printed questionnaires containing the Republican candidates' responses and comparing them to the responses or non-responses of their opponents. We also note that some of the completed questionnaires and signature pages faxed by the candidates were part of multi-page transmissions, parts of which were not included in ADF's document production.

A further question raised by ADF's document production involves the number of candidate questionnaire mailings actually sent to military voters. ADI says in its newsletter that it sent 90,000 mailers to military households in the six targeted states. See Doc. No. 500060. According to the statistics contained in Appendix C of ADF's 1992 proposal, however, the number of military voters in the six targeted states exceeded 272,000, three times the number of mailings sent. See Doc. No. 501136.

No information is currently known about how ADF selected the questions contained in the questionnaire. Documents produced include various drafts of the questionnaire showing changes primarily in the forms of the questions asked. Those documents suggest that Mike McDaniel and a consultant, John Grotta, were involved in reviewing the questions posed in the questionnaire. See generally Doc. Nos. 500642-658.

c. 1992 U.S. Senate Run-off in Georgia

On November 10, 1992, just two weeks before the hotly-contested Georgia U.S. Senate run-off, the NRSC made a second payment to ADF of \$30,000. The accompanying check stub produced by the NRSC describes this payment as a "transfer." See Doc. No. 000044. According to ADF's interrogatory responses and ADI's newsletter, ADF's GOTV activities for the run-off included: radio ads in which Red McDaniel urged military voters to vote in the run-off election, visits by Red McDaniel to Georgia military bases to encourage military personnel to vote in the run-off election, a direct mailing to about 30,000 military personnel registered to vote in Georgia, and distribution of video and print public service announcements with a GOTV message to military bases. See Doc. No. 500060 and Attachment 2 at 30.

Documents produced by ADF, including an audiotape and a script of the radio ad, a press release announcing McDaniel's military base visits, and invoices confirm ADF's involvement in GOTV radio ads directed at the run-off as well as McDaniel's military base tour. ADF also arranged for local media interviews of McDaniel during his military base visits. Although documents show that ADF obtained video and audio-taped copies of a radio and television interview of McDaniel during the base tour, ADF says it cannot locate them. See Doc. Nos. 500279-281, 500251-252, 500259, 500266-276, 500952 and 500824.

It is currently unclear what was contained in ADF's mailing to Georgia military voters. Among the documents ADF produced was an apparent draft of a "motivational" letter written by Red McDaniel concerning the Georgia run-off and an apparent rewrite of a press release issued by DOD's Federal Voter Assistance Program ("FVAP") containing voting instructions for military personnel eligible to vote in the run-off. Although ADF identified the draft letter as having been part of its mailing, ADF counsel advised in a follow-up phone call that no one at ADF could recall whether other documents were included in the mailing. See Doc. Nos. 500309-310, 500219-220 and Attachment 2 at 30.

Finally, although ADI's newsletter states that ADF mailed print and video PSAs to Georgia military bases for use in the base newspaper and on closed circuit television, ADF did not produce copies of any cover letter to military base officials, any video PSA or any video PSA script. Federal Express receipts produced, however, confirm that ADF did mail packages to base newspapers on November 12, 1992. See Doc. Nos. 500060 and 500898-901.

As with ADF's 1992 general election activities, ADF did not produce sufficient information to ascertain whether, as claimed, all of its Georgia run-off activities were non-partisan and lacked express advocacy: it has been unable to verify what its direct mailing consisted of, no copies of the video PSAs apparently mailed to base newspapers was produced, and no copies of Red McDaniel's interviews with local media or other information regarding his Georgia base tours was produced.

Once again, however, those parts of ADF's GOTV communications that were produced contain neither express advocacy nor an electioneering message. ADF produced a copy of an audiotape containing a 30-second radio ad along with a script entitled "Military Vote -- Public

Service Announcement.” See Doc. No. 500281. The ad, targeted to a military audience, features Red McDaniel who identifies himself as having served in the U.S. Navy for 27 years and relates how he was unable to vote for 6 years when he was a POW. McDaniel goes on to urge military members to “[p]lease remember to vote on Tuesday November 24th in Georgia’s runoff election” and instructs military personnel to contact their Voting Assistance Officer to obtain an absentee ballot. At the end, a narrator notes that the ad is paid for by ADF. Interestingly, the only difference between the script and the tape is that the script exhorts listeners to “vote . . . in Georgia’s run-off election for U.S. Senate” whereas the audiotape merely asks listeners to “vote . . . in Georgia’s runoff election.”³² Georgia’s run-off election included an election for state Public Commissioner as well as the U.S. Senate. Invoices show an ad was broadcast on ten Georgia radio stations between November 19 and November 24, 1992. See Doc. Nos. 500259 and 500266-276.

The draft “motivational” letter identified by ADF as having been mailed to Georgia military voters is addressed “Dear Friend” and signed “Eugene McDaniel, Captain, USN (Retired)” but bears no signature and is not on letterhead.³³ See Doc. No. 500309. In the letter’s opening paragraphs, McDaniel urges the recipient to “exercise one of your most important freedoms -- your vote in Georgia’s U.S. Senate run-off election November 24th.” McDaniel goes on to relate the impact of his experience as a prisoner of war on his attitude toward voting and opines that “when we vote, we choose between those who will make laws to

³² A cassette made of the audiotape is available in the OGC Docket office.

³³ Curiously, neither ADI’s Winter 1993 bulletin nor a description of ADF’s 1992 MVP efforts in a 1993 MVP proposal mentions a mailing made in connection with the Georgia run-off election.

keep our nation strong and free -- or those who would weaken our nation and eat away at our freedoms. In this run-off election your vote could mean the difference." No candidate names are mentioned and the letter ends with a reminder to vote in the Senate run-off election on November 24.

A second document, which may have been included in the mailing, is a rewrite of a news release that was faxed to Red McDaniel on November 6 from the FVAP Office. See Doc. No. 500310. The FVAP release informs military voters of the need for run-off elections in Georgia for U.S. Senate and Public Service Commissioner and gives instructions on voting by absentee ballot. See Doc. Nos. 500219-220. An apparent rewrite of the FVAP release, also produced by ADF, mentions only the Georgia U.S. Senate run-off and contains additional information as to who is eligible to vote in the run-off but is otherwise the same as the FVAP release. See Doc. No. 500310.

The only other document produced relating to ADF's Georgia run-off activities is a November 16, 1992 press release concerning Red McDaniel's November 18-20 Georgia military base tour. See Doc. Nos. 500256-257. The release states that the tour is intended to motivate military personnel to vote in the Senate run-off election, contains an itinerary and generally describes ADF's Military Voter Program. It does not name the Senate candidates. It appears from fax cover sheets that this release was part of a press packet mailed to civilian media between November 16 and 18 in an effort to line up interviews of McDaniel during the tour. See Doc. Nos. 500946-970.

Again however, even if all of ADF's Georgia run-off activities contained no electioneering message or express advocacy, certain non-speech factors, discussed below,

suggest that the NRSC intended that its payment finance ADF run-off activities aimed at the Georgia run-off and that the NRSC may have been aware of at least some of those activities.

First, the NRSC's contribution to ADF and the other recipients came at a time when the NRSC had nearly exhausted its own contribution and coordinated expenditure limits for the Republican candidate, Senator Paul Coverdell. Moreover, as of October 15, 1992, the beginning of the post-general election period, the NRSC's federal account had only \$43,470 cash-on-hand and a \$2.3 million debt suggesting that even if it wanted to, it had insufficient federal funds to pay for generic voter activities or any GOTV activities similar to those undertaken by the recipients. Additionally, ADF apparently decided to conduct MVP activities aimed at the Georgia run-off election just as it received a payment from the NRSC even though it ignored the Georgia general election contest between the same two candidates only a few weeks earlier.

Second, although ADF officials' desk calendars do not reveal any meetings between ADF and NRSC officials prior to the November 10 contribution, Mike McDaniel's calendar does reflect a meeting on that day with Wes Anderson, identified by ADF as Curt Anderson's brother. Within days of receiving the NRSC's payment, ADF appears to have hired Wes as an intern and ADF's documents show that he worked on the Georgia run-off activities.³⁴ See Doc. Nos. 500946-970 and 501482. Wes Anderson's work on ADF's activities for the run-off provided an avenue through which the NRSC could have learned of ADF's specific activities.

³⁴ ADF does not state when Wes Anderson began working as an intern, however, a notation on Mike McDaniel's desk calendar for November 16, 1992 states "Wes Anderson starts." It is unclear whether Wes Anderson received any remuneration for his services as none of the MVP-related checks ADF produced are payable to him.

ADF's documents also raise the possibility that the NRSC may have provided ADF with copies of a videotape used in ADF's Georgia run-off activities. A November 12, 1992 memo from ADF Director of Public Affairs John Isaf to Wes Anderson directs Wes to obtain phone, fax, and mailing information for the Georgia military bases targeted for a visit by McDaniel so that these materials could be sent to them by federal express. The memo refers Wes Anderson to a sample package for the "necessary ingredients" and states that "3 of the 6 VHS tapes have an NRSC sticker on them that somehow have to be taken off and replaced by an ADI label." See Doc. Nos. 500254-255.

The only VHS tape mentioned in the documents is the PSA videotape that the ADI newsletter states was sent to Georgia military bases. See Doc. No. 500060. Federal Express airbills show that ADF sent packages to seven military bases on November 12. See Doc. Nos. 500898-90. However, no copies of a videotape or a cover letter were produced. Moreover, none of the MVP checks produced by ADF shows any production or dubbing costs for a videotape. See Doc. Nos. 500062-91 and 500819-843. In contrast, invoices for both production and dubbing costs were produced for videotapes ADF made in connection with the Texas special election discussed below. The absence of costs for such a tape, together with the memo reference to tapes bearing NRSC stickers, suggests that the NRSC may have provided ADF with some type of tape for its Georgia GOTV activities. If so, this suggests the NRSC had direct knowledge of this run-off activity.

The possibility of participation by others in ADF's Georgia run-off activities is also suggested by invoices and checks relating to ADF's radio ads. The only financial documents ADF produced for the ads was an invoice from, and an \$8,000 check to, a media consulting firm.

The invoice appears to cover only the cost of the media time. See Doc. Nos. 500259 and 501435. None of the other checks or invoices produced reflect production costs for the ads raising the possibility that someone else paid for the production of the ads or provided them to ADF.

A final fact not probative of the NRSC's knowledge of ADF's activities but raising questions regarding the non-speech component of ADF's direct mail activity is the discrepancy between the number of names requested by ADF in its FOIA request to the Department of Defense and the number of letters ADF says it mailed. A November 9, 1992 letter from Red McDaniel to the DOD FOIA officer requests a magnetic tape of "the approximately 63,000" military members with homes of record in Georgia so that ADI can send them a motivational letter and instructions on voting in the Senate run-off.³⁵ Attachment 5 at 9. However, ADF says it mailed the motivational letter to approximately 30,000 military personnel registered to vote in Georgia. Attachment 2 at 30. Any targeting of the recipients of ADF's GOTV mailing based on party affiliation would make the mailing suspect. See e.g., 11 C.F.R. § 114.4(d)(3)(1996).

d. **1993 Special and Run-off Elections for U.S. Senate in Texas**

On March 2, 1993, the NRSC made its third payment to ADF in the amount of \$170,000. The NRSC's check stub and check request form indicate the check is for "party-building" and indeed it appears those are the types of activities ADF undertook in connection with the May 1, 1993 Texas special election for U.S. Senate. See Doc. No. 000048. Had the NRSC undertaken such activities itself however, it would have had to use permissible funds since the only election

³⁵ This document was not produced by ADF but was obtained from the Department of Defense.

scheduled on that date was the Senate election. Instead, the NRSC appears to have paid ADF to undertake GOTV activities on its behalf using non-federal funds.

Documents produced by ADF, including ADI's Spring 1993 newsletter, indicate that ADF/ADI used the NRSC's funds to finance many of the same types of GOTV activities for the Texas special election as it did for the two prior elections in 1992. See Doc. Nos. 500059 and 500878-88. These activities included: direct mailings to about 200,000 Texas military households consisting of a candidate questionnaire and an official application to register and request an absentee ballot, a promotional component whereby ADF sent camera ready print and video PSAs to Texas military bases for printing in base newspapers and broadcast on base closed circuit television, an eight-base tour by Red McDaniel to promote voting during the week of April 19, and advance work to line up interviews with civilian media during McDaniel's visits. In addition, this time ADF also sent the 30-second video PSA directly to the Public Affairs Divisions of 26 Texas television stations requesting that the ads be aired through May 1, the date of the special Senate election. See Doc. Nos. 500403-427.

ADF's special election mailing consisted of two separate mailers: one scheduled to be sent as soon as possible after March 11 and the other by April 15. See Doc. No. 500670. Both mailers included a two-page foldout candidate questionnaire and a motivational letter from McDaniel urging recipients to vote in the May 1 special U.S. Senate election. The difference between the two mailers is that the first urged recipients to register and request an absentee ballot by March 30, as well as vote in the special election. It also contained a Federal Postcard Application Registration form to request an absentee ballot and instructions for completing and

mailing the form.³⁶ See Doc. Nos. 500557-566. The second mailer contained none of the registration and absentee ballot materials and merely urges the recipients to vote in the May 1 Senate election. See Doc. Nos. 501007-013. Invoices indicate that the first mailer was sent to 142,000 households and the second to 51,000. See Doc. No. 500845. It is unclear how or why ADF pared down the second mailing.³⁷

The candidate questionnaire on its face is issue oriented. See e.g., Doc. Nos. 500558B and C. It consists of five "yes" or "no" questions ascertaining the candidate's position on issues such as the ban on homosexuals serving in military, the use of force in the Persian Gulf, continued funding and deployment of SDI and support for \$134 billion in defense reportedly proposed by President Clinton. Three Republican and two Democratic candidates are listed on the questionnaire with "yes" "no" or "did not respond" noted for each of the questions. *Id.* The only responses listed are for Republican candidates. Since ADF's fax journal shows it faxed the questionnaire to both the Republican and Democratic candidates, the Democratic candidates' failure to respond does not in itself raise questions concerning coordination with the Republican candidates. See Doc. Nos. 500734-738. However, as discussed below, other documents raise questions regarding the non-speech components of the candidate questionnaire.

³⁶ 140,000 application forms were provided to ADF by the Federal Voting Assistance Program of the Department of Defense as a result of a March 5, 1993 meeting between Red McDaniel and John Isaf and Director Phyllis Taylor and Deputy Director John Usehold. See Attachment 5 at 1.

³⁷ ADI's Spring 1993 newsletter makes reference to a single "mailer" received by "over 200,000 military households" rather than two mailings of about that number as indicated by the invoices. See Doc. No. 500059. ADF's FOIA request to DOD for a mailing list of "service members with homes of record in Texas" puts the number of active and reserve Texas service members at 295,000. See Doc. No. 500782.

The motivational letters mailed with the special election questionnaire are nearly identical to the draft letter produced for the Georgia run-off. See Doc. Nos. 500560 and 501008. Neither the letter nor the other materials included in the mailings contain express advocacy although they clearly urge recipients to vote in a specific U.S. Senate election. And, of course, the special election candidate questionnaires clearly identify specific candidates running in that election. See generally, Doc. Nos. 500557-566 and 501007-013.

ADF also produced a copy of the 30-second videotape PSA distributed for the special election as well as apparent copies of scripts for a special election PSA. See Doc. No. 500431. The videotape features Red McDaniel standing in front of the Capitol introducing himself as a retired Navy veteran and former POW. The tape is clearly directed toward members of the military as McDaniel continues, "as a member of the armed forces you defend America by serving. Now defend America by voting. Please remember to vote in the Texas special election for the U.S. Senate Saturday May 1st." The trailer features a message to "VOTE" and a disclaimer that the video is paid for by the American Defense Foundation. The script produced is identical to the videotape.

ADF received a fourth payment of \$40,000 from the NRSC on May 26 and undertook similar GOTV activity for the June 5 special election run-off in Texas. See Doc. No. 000054. According to the documents produced, ADF sent a direct mailing to about 80,000 Texas voters urging them to vote in the run-off and mailed a PSA videotape regarding the run-off to the same 26 Texas television stations that received the special election video PSA. See e.g., Doc. Nos. 500321, 500340, 500385-386 and 500351-376.

ADF produced what appears to be two drafts of the cover letter for the run-off mailing as well as a copy of a letter and candidate questionnaire apparently sent in that mailing. See Doc. Nos. 500384, 500349, 500340 and 500386. The candidate questionnaire for the run-off compares the responses of Republican candidate Kay Bailey Hutchison to ADF's five issue-oriented questions with the non-response of Democratic candidate Robert Krueger. The motivational cover letter is similar to the cover letter sent with the special election mailings. ADF did not produce a copy of the videotape PSA for the run-off election but a run-off script produced is identical to the special election PSA script except for the name and date of the election.

Two main factors distinguish ADF's 1993 MVP activities from its 1992 activities. First, ADF prepared written funding proposals specifically for the May 1 Texas special election and June 5 run-off, thereby evidencing that the NRSC knew specifically what ADF planned to do with the NRSC's funds. See Doc. Nos. 500783-792 and 500392-394. Second, Curt Anderson, NRSC's former Coalitions Director/Field Representative, was working as a consultant with ADF at the time it undertook its 1993 GOTV activities. Documents produced show that Curt Anderson began working for ADF in February 1993, immediately after receiving his last NRSC check on January 31, 1993.³⁸ Indeed, checks produced show that Anderson began receiving a \$2,500 monthly check from ADF at the beginning of March for work done in February, and received a \$2,500 check every month thereafter through December 1993. See Doc. Nos. 500850-851.

³⁸ An April 5, 1993 letter from Eugene McDaniel to Curt Anderson thanks Anderson for work he did on the MVP in February and March and offers to retain him as a consultant "until a mutually agreed upon time" at a rate of \$2,500 per month. See Doc. No. 500850.

More specifically, documents show that around the time Anderson began working with ADF, it apparently prepared a funding proposal for MVP activities aimed at the Texas special election. A proposal, dated February 22, 1993, describes a multi-component GOTV program which includes a direct mailing, base visits by McDaniel, and a promotional component consisting of print, radio and television PSAs. See Doc. Nos. 500783-792. The proposal also contains two budget options: one for \$170,550 and another that includes an additional reminder mailing for \$214,750. A little more than a week after the proposal date, on March 3, 1993, Mike McDaniel's calendar reflects a meeting with NRSC Chairman Phil Gramm.³⁹ See Doc. No. 501486. The NRSC's canceled check indicates that ADF deposited the \$170,000 contribution check that same day. See Doc. No. 000051.

ADF also produced an undated funding proposal for MVP activities aimed at the Texas run-off. See Doc. Nos. 500392-394. The proposal describes an MVP program to include a direct mailing to 100,000 households, additional military base visits by McDaniel, and promotional activities consisting of the distribution of print PSA and already-produced video PSAs to civilian and military media outlets. ADF's proposed budget for these activities is set at \$58,500 with the largest share of the cost, \$38,000, to cover the direct mailing.

Mike McDaniel's desk calendar and expense reimbursement forms show that he met with former NRSC Coalitions Director-turned ADF consultant, Curt Anderson, on May 14, 1993 and then traveled to the NRSC to meet with Anderson, NRSC Political Director Paul Curcio, and Executive Director William Harris. See Doc. Nos. 501488 and 500317. A little more than a

³⁹

ADF represents that Red McDaniel's 1993 desk calendar cannot be located.

week after the meeting, on May 26, the NRSC made another \$40,000 payment to ADF. See Doc. No. 00054. That payment may well have fully funded ADF's run-off activities since ADF appears to have scaled back the activities contained in its proposed budget.⁴⁰

As outlined above, current information shows that ADF's 1993 MVP program was aimed solely at federal elections, was fully funded by the NRSC with the NRSC's full knowledge of what it planned to do, and was staffed, in part, by NRSC's former Coalitions Director/Field Representative who, having just left the NRSC's employ, undoubtedly still had many contacts there. Moreover, ADF's MVP activities were undertaken after scheduled meetings with key NRSC officials including NRSC's Chairman and Political Director, both of whom were likely in contact with Republican Senate campaigns.

Additionally, other ADF documents point to specific involvement in ADF's 1993 GOTV activities by employees of the NRSC and another Republican party committee. Specifically, ADF documents produced suggest that NRSC Political Director Paul Curcio may have reviewed ADF's special election candidate questionnaire. Still other documents establish that Curcio and an employee of the National Republican Congressional Committee ("NRCC") reviewed ADF's video PSA scripts for the special and run-off elections and that the NRCC produced and picked up some of the costs for the video PSAs. The involvement of party committee employees and other facts relating to the special election candidate questionnaire and video PSAs are discussed more fully below.

⁴⁰ ADF's military base tour was budgeted at \$5,000 in its proposal. The \$15,500 budget for advertising/promotion included print and radio PSAs which ADF does not appear to have produced or distributed. Finally, invoices indicate ADF's direct mailing for the run-off was sent to only 80,000 military households rather than the planned 100,000.

i. **The 1993 Texas Special Election Candidate Questionnaire**

Among the documents ADF produced is a March 4 memo by Wes Anderson documenting ADF's February 25 fax transmittals of the candidate questionnaires to the Democratic and Republican special election candidates, as well as, reminder phone calls made prior to the March 5, 1993 deadline ADF set forth in its cover letter for completed questionnaires. The memo is supported by a fax journal establishing the fax transmissions. See Doc. Nos. 500734-738.

Interestingly, in addition to showing fax transmittals of the questionnaire to the candidates, the fax journal also shows two transmissions to the fax number of NRSC Political Director Paul Curcio about two hours before ADF began faxing the candidate questionnaires on February 25. Compare Doc. No. 500736 with Doc. No. 500433. Although ADF could have been faxing anything to Curcio, the transmission's proximity to the faxing of the candidate questionnaires raises the possibility that Curcio may have reviewed the questionnaire prior to its being sent to the candidates and may have had input into the questions selected. This is even more likely given Curcio's review of the PSA video script, as discussed below.

The fax journal and fax cover sheets show ADF initially faxed the candidate questionnaire with a cover letter to five candidates on February 25: Republicans Kay Bailey Hutchison, Jack Fields and Joe Barton and Democrats Robert Krueger and Jim Mattox. See Doc. Nos. 500744-757. As noted above, a cover letter accompanying the questionnaire requested that it be returned no later than March 5. See e.g., Doc. No. 500745. The day before the deadline, ADF sent another copy of the candidate questionnaire to Richard Fisher, a third major Democratic candidate with ties to the Perot campaign. See Doc. Nos. 500715-717. The cover

letter accompanying Fisher's questionnaire was identical to the one sent to the other five candidates, including the March 5 return deadline. According to the Texas Secretary of State's office, Fisher filed as a Democratic candidate on February 12, 1993; news account show he publicly announced his candidacy that same day. It is therefore unclear why ADF waited until one day before its deadline to send Fisher a candidate questionnaire.

Anderson's memo documenting follow-up calls to the candidates does not reflect any such calls to Fisher. See Doc. No. 500739. Nonetheless, Fisher evidently responded to the questionnaire on March 19, with a form letter outlining his policy against responding to special interest surveys. See Doc. Nos. 500704-713. It is not known whether ADF received the response before the questionnaire was typeset. However, a copy of the candidate questionnaire mailed to Texas voters includes Fisher and notes that he, like Robert Krueger, the other Democratic candidate featured, did not respond to the questionnaire.⁴¹ As noted earlier, the questionnaire mailed to voters only contained responses from the Republican candidates featured.

The candidate questionnaire mailed to military voters apparently troubled the Director of the DOD's Federal Voting Assistance Program who had provided ADF with the registration and absentee ballot applications contained in ADF's first special election mailer. In an April 29, 1993 letter sent to Red McDaniel, FVAP Director Phyllis Taylor objected that the questionnaire could be construed as partisan since it "only had responses from Republican candidates and the questions were selective in subject matter." See Doc. No. 500760. Ms. Taylor prefaces her

⁴¹ News accounts indicate Democratic candidate Jim Mattox withdrew from the race on March 10, 1993.

objection by summarizing her March meeting with McDaniel during which FVAP agreed to provide ADF with the FPCA applications free of charge. According to Taylor, she emphasized in the meeting that any FVAP activities must not "directly or indirectly endorse or selectively benefit or favor or appear to endorse or selectively benefit or favor any political organization or person." Ms. Taylor ends the letter by stating the FVAP will take into account "the sensitivities of the mailing should you make future requests of the FVAP."

In an interview with this Office, Ms. Taylor stated that she had been "extremely upset" when shown a copy of the ADF candidate questionnaire. According to Taylor, neither McDaniel nor Isaf had mentioned candidate questionnaires in their meeting about ADF's planned mailing. Taylor said she interpreted the questionnaire as "not being politically neutral." Ms. Taylor has had no further dealings with McDaniel or ADF staff since.

Red McDaniel sent a reply letter to Taylor on May 6, 1993, deeming Taylor's characterization of the questionnaire to be "entirely subjective." See Doc. Nos. 500758-759. McDaniel further contested that there was nothing selective about the questions and maintained that each candidate had been afforded the same opportunity to respond. According to McDaniel, repeated attempts were made to obtain candidate's responses and fax journals and phone logs documented these attempts.

ii. Coordination of PSA Video Production

ADF documents also establish that key political party committee employees were directly involved in producing the video PSA that ADF distributed in the special and run-off elections. Fax cover sheets produced by ADF show that the scripts and script revisions for both the run-off and special video PSAs were sent to NRSC Political Director Paul Curcio for his comment. The

first sheet, dated March 13, 1993, and addressed to Curcio from John Isaf states: "Attached is the proposed script for the Texas PSA. Call me with your comments." See Doc. No. 500434. The second, dated the same day and identically addressed, states: "Attached are revised scripts for Texas TV PSAs for special and run-off elections. Call me with your comments." See Doc. No. 500433. ADF produced copies of only two scripts for the special and run-off videos. No revisions are indicated on either. See Doc. Nos. 500430-431.

ADF also faxed the PSA video scripts to "Catherine Lorenze, NRCC, Political." See Doc. No. 500432. An invoice produced by ADF indicates that the video PSA was produced by NRCC Communications and completed on April 16, 1993. See Doc. No. 500318. The invoice also shows that ADF was not charged for the full cost of the production. Camera crew and editing services at a cost of \$905 were provided at no charge. ADF was billed and paid only \$445.20 for the videotape production which should have cost \$1,325 plus tax.

iii. Analysis

Paul Curcio's possible review of the candidate questionnaire and his actual review of the PSA video scripts further establishes that the NRSC knew how ADF was using its payments. Moreover, the involvement of party committee employees in reviewing scripts and questionnaires raises a question as to whether these activities were based on the needs, projects or plans of the party's candidate(s). The NRSC notes in its interrogatory responses that Political Director Curcio was among those in frequent contact with certain Senate candidates in 1992 and 1994. See Attachment 1 at 14-15 and 17. Since his position was the same in 1993, it is likely that he was also in contact with one or more of the candidates running in the special election in Texas at the time he reviewed ADF's scripts and questionnaire. Similarly, ADF's last-minute

mailing of a candidate questionnaire to one of the two Democratic candidates featured in the questionnaire subsequently mailed to voters suggests that all the candidates were not accorded the same opportunity to respond, thereby raising the issue of coordination. See e.g., 11 C.F.R. § 114.4(c)(5) and (c)(5)(ii)(B)(1996) and 11 C.F.R. § 114.4(b)(5)(i) and (b)(5)(i)(A) (1993).

D. NATIONAL RIGHT TO LIFE COMMITTEE

1. Response to Reason to Believe Finding

The NRLC did not respond to the Commission's reason to believe finding.

2. 1992 NRLC Activities

The NRSC made a total of \$85,000 in payments to NRLC in 1992: \$25,000 on October 2, \$15,000 on October 20 and \$45,000 on November 17. See Doc. Nos. 000001, 000007, and 000010. Neither the NRLC or the NRSC link any of these 1992 payments to a specific solicitation or meeting. In an affidavit signed by NRLC Executive Director David O'Steen, which constitutes NRLC's written response to the Commission's Subpoena and Order,⁴² O'Steen states that he and NRLC Associate Director Darla St. Martin met several times in 1992 with the NRSC's Curt Anderson to solicit donations to the NRLC's general fund "for the general purposes of the organization."⁴³ Attachment 3 at 3. O'Steen describes these general

⁴² NRLC's discovery responses are all based on David O'Steen's personal knowledge, information and belief. This Office felt that such a response was insufficient since NRLC identified as many as 16 officers and employees with knowledge of the NRSC's donations. Accordingly, we asked NRLC in our clarification letter to supplement its response. In response, O'Steen says his answers are based on consultations with others at the NRLC whom he "believed may have had specific knowledge concerning that particular matter" without further identifying those individuals. This Office believes additional information is now best pursued through deposition testimony.

⁴³ The NRSC, but not O'Steen, names Carol Long, the Director of NRL PAC, as another possible participant in the 1992 solicitations.

purposes as building NRLC's support base, adding to its list of identified pro-lifers, publishing candidate surveys and non-partisan GOTV efforts. Id. at 4. According to O'Steen, NRSC Executive Director Jeb Hensarling and Political Director Paul Curcio were present at one or more of these meetings. O'Steen also says there may have been phone calls with all three NRSC officials but does not specify who at NRLC was involved in such calls or when they occurred.

Id.

Unlike the NRSC, which disclosed no particular meeting dates with any recipient, O'Steen lists four specific dates as when "some" of the solicitations in which he was involved in took place. Attachment 3 at 4. The last of these dates is June 29, 1992, more than three months before the NRSC made its first 1992 payment to NRLC. O'Steen gives no information about solicitations in which he may not have been personally involved and says he has no information about or recollection of other dates. Id. Moreover, O'Steen's response is confined to solicitation meetings, leaving open the possibility that NRLC and NRSC officials met at other times for other purposes, such as to discuss election strategy or particular races.

Copies of O'Steen's desk calendar for selected months in 1992, produced in response to this Office's clarification letter, confirm meetings between O'Steen and NRSC officials on January 28, February 25, April 2 and June 29, 1992.⁴⁴ See Doc. Nos. 200129-132. The desk calendars also reflect a fifth scheduled meeting not listed in O'Steen's interrogatory response: a February 4, 1992 meeting with Curt Anderson and John Grotta, the mail consultant who later

⁴⁴ O'Steen's calendars shows he met with Curt Anderson at the January, February and June meetings. His notation for the April 2 meeting appears to indicate a 4:00 meeting with the NRSC but is otherwise illegible.

worked on ADF's 1992 GOTV activity. O'Steen's calendars also reflect a February 26 meeting with Curt Anderson's brother Wes who worked on ADF's GOTV activities for the Georgia run-off as an intern. O'Steen produced copies of his desk calendar for only those four months in early 1992 in which he recalled specific solicitation meetings.

O'Steen is specific about the use of only one of the NRSC's three 1992 payments: the November 17 payment of \$45,000. O'Steen states that a portion of this payment, \$25,000, was donated to the national Christian Coalition ("National CC") and the Christian Coalition of Georgia ("Georgia CC"). Attachment 3 at 4. O'Steen further states that he "may have told someone at the NRSC that NRLC could possibly make a donation to [the] Christian Coalition" but avers that he does not remember who he spoke with or the date of any such communication. Id. NRLC produced copies of the fronts of two checks and transmittal letters dated December 1, 1992, evidencing two donations: a \$10,000 check to the Georgia CC and a \$15,000 check to the National CC. See Doc. Nos. 200155-157.

O'Steen does not specifically state the purpose of the donations to the Christian Coalition. The transmittal letters accompanying each donation state that the money "is to be used for activities consistent with your charter and Section 501(c)(4) of the Internal Revenue Code" and note that O'Steen appreciates the work of each organization "on behalf of the pro-life cause." See Doc. Nos. 200155-156. No check request forms indicating a more specific purpose were produced for these checks, although NRLC did produce such forms for relevant 1994 checks. Information obtained in MUR 3669 indicates that the Georgia CC distributed voter guides in connection with the Georgia run-off election to groups who had ordered them from the National CC. See Attachment 6 at 1-8. Other documents produced in that matter also show that

the Georgia CC paid for at least some of the guide's production costs and that the National CC paid for some expenses relating to the guide. *Id.* at 9-12.

O'Steen's statement that he may have told someone at the NRSC that NRLC would make a contribution to the Christian Coalition, together with NRLC's acknowledgment that it used some of NRSC's funds for that purpose, raises the question whether the NRSC made the November 17 payment, in part, to help finance the *Christian Coalition's GOTV activities in the Georgia run-off*. Such an indirect transfer of the NRSC's funds to the Coalition through a third party may be explained by a November 1992 decision by the Christian Coalition Board of Directors not to accept donations from either political party in the future. Attachment 7 (excerpt from the March 28, 1995 Deposition of Ralph Reed in MUR 3669). The Board's decision presumably would have prevented the Coalition from directly accepting a donation from the NRSC's non-federal account in 1992.

In addition to the Christian Coalition donations, NRLC also spent \$17,372.75 on GOTV phone calls made in connection with the Georgia run-off election through a telemarketing vendor. Attachment 3 at 4. O'Steen does not specifically link this expenditure to the NRSC's November 17 payment, but the vendor invoice produced shows the GOTV phone calls began the day after the NRLC received the NRSC's payment. See Doc. No. 200090. Moreover, as noted in the First General Counsel's Report in this case, the disclosure reports of NRLC's separate segregated fund, NRL PAC, reflect no support for candidate Paul Coverdell until the November 24 run-off, despite his general election face-off weeks before against the same opponent.

NRLC produced a copy of a script used in connection with the Georgia run-off GOTV phone calls, the same script it produced in its response to the complaint in this matter. See Doc. No. 200064. As noted in the First General Counsel's Report, that script compares the positions of candidates Paul Coverdell and Wyche Fowler on "abortion on demand" and federal funding of abortions, and urges those called to vote in the run-off. It does not appear from the script that the caller was identified.

According to an invoice produced by NRLC, its telemarketing vendor, Infocision Management, made 34,282 contacts in connection with the Georgia GOTV calls. See Doc. No. 200090. NRLC produced no contract for this phone project. This Office currently has no information as to how persons contacted were selected. As discussed below, however, a contract with another vendor for a similar project aimed at the 1994 Pennsylvania Senate race shows that, in some instances, NRLC's state affiliates provided lists used to make the calls.

The information currently available suggests that NRLC may have access, through its state affiliates, to voters' party affiliation. NRLC's tax returns for 1991-1994⁴⁵ show that in each of those years NRLC operated a Voter Identification Project, described as a program to provide materials to local pro-life groups to survey registered voters on the abortion issue. See Doc. Nos. 200159, 200170, 200186, and 200202. An old copy of NRLC's Voter Identification Program

⁴⁵ The Commission's subpoena requested NRLC's tax returns for 1992 and 1994. NRLC initially produced returns covering only the first four months of 1992 and 1994 and produced those returns without any accompanying schedules. Eventually, NRLC produced returns covering all of 1992 and 1994 and some missing schedules. However, it has refused to produce a copy of Schedules attached to its tax returns identifying those who contributed more than \$5,000 toward the organization during the year. NRLC objects that the information is not relevant to any issue in this matter and that NRLC has a First Amendment privilege against disclosure of its contributors' identities. See Attachment 3 at 22-24.

manual produced in MUR 958 shows that the voter identification survey used at that time, 1989, sought political affiliation information along with information concerning a voter's abortion views. See Attachment 8 at 8-10. If the Voter Identification Program is still operated in the same way, GOTV phone calls conceivably could be targeted to voters affiliated with a particular party as well as those apt to support pro-life candidates.

NRLC's expenditures for the Georgia run-off GOTV phone calls and Christian Coalition donations equal \$42,628, an amount almost equal to the \$45,000 payment received from the NRSC on November 17, 1992. O'Steen says he is "unable to determine specifically" how the NRLC spent the remaining funds received from the NRSC, including the two payments the NRLC made in October 1992. Attachment 3 at 14-15.

Although O'Steen specifically links only the Christian Coalition donations to the NRSC's 1992 payments, he tacitly admits that the funds were used for GOTV purposes when he states that he, and possibly others, decided to use the funds based on "organizational need and the desire to educate the voters on the issues and urge their participation in the election." Attachment 3 at 4. O'Steen says he has no "other recollection" whether anyone at NRLC informed the NRSC how the payments were used. *Id.* at 4-5. Linking the NRSC's payments directly to a particular GOTV expenditure is impossible at this point since NRLC did not produce bank statements for the account into which the NRSC's funds were initially deposited. Compare Doc. Nos. 000005, 000010, 000014 with Doc. Nos. 200023-51. Indeed, a direct linkage between the payments and any particular NRLC expenditure based on bank records would likely necessitate an audit review since it appears from the bank statements which NRLC produced that it has at least three accounts.

3. 1994 NRLC Activities

The NRSC made a total of \$175,000 in payments to NRLC in 1994: \$50,000 on October 31, \$50,000 on November 1, \$60,000 on November 3 and \$15,000 on November 4. See generally, Doc. Nos. 000016-37. O'Steen avers that he had "one or more" meetings with NRSC Executive Director Bill Harris and Political Director Paul Curcio in 1993 "and/or" 1994 at which he solicited contributions to raise funds for NRLC's general purposes. Attachment 3 at 5. O'Steen states that NRL PAC Director Carol Long "and/or" Associate Director Darla St. Martin also may have attended solicitation meetings or made phone solicitations during that period. *Id.* Moreover, O'Steen says that former NRSC Coalitions Director/Field Representative Curt Anderson worked as a fundraising consultant for the NRLC in 1993 and 1994 and also solicited contributions for the NRLC. As mentioned earlier, Curt Anderson also was retained as a consultant by ADF in 1993.

The only specific solicitation meeting date cited by O'Steen, which is confirmed by a copy of his desk calendar, is one that took place on March 18, 1993, a full year and one half before the NRSC's payments.⁴⁶ Attachment 3 at 5 and Doc. No. 200133. O'Steen acknowledges NRLC may have initiated one or more meetings with NRSC officials to discuss their general funding needs, but says he has no recollection of any other meeting dates where solicitations occurred. Attachment 3 at 5. Again, O'Steen's response is confined to solicitation meetings,

⁴⁶ The March 18, 1993 meeting appears to have been totally unrelated to the payments here at issue. Indeed, the notation on O'Steen's calendar for this day, "2:00 Senate Comm TX" suggests the March 18 meeting concerned the upcoming special U.S. Senate election in Texas. See Doc. No. 200133.

leaving open the possibility that NRLC and NRSC officials met at other times for other purposes. No copies of O'Steen's 1994 desk calendar was produced.

O'Steen states that the NRSC's 1994 payments were also used for NRLC's general purposes. Attachment 3 at 5. When asked for more specific information in this Office's follow-up letter, O'Steen maintains he is unable to "determine specifically" how the payments were used but emphasizes that general purposes included GOTV efforts. Attachment 3 at 15. He also acknowledges that some of the NRSC's funds may have been used to fund "some" of the contributions NRLC made to state right to life organizations between November 1, 1994 and January 1, 1995. Id.

NRLC's contributions to state right to life groups during the aforementioned time period included a \$50,000 contribution to the Minnesota Citizen's Concerned for Life, Inc. ("MCCL") on November 4,⁴⁷ and, on November 7, contributions of \$17,000 and \$5,000 to the Oregon Right to Life and California Pro Life Council, respectively. Attachment 3 at 6 and Doc. Nos. 200052-62. According to the check request forms produced by NRLC, the \$50,000 MCCL contribution was for "special projects -- phone calls."⁴⁸ See Doc. Nos. 200061-62. No subpoenas have yet been issued to respondent MCCL in this matter. However, as part of MCCL's lawsuit challenging the Commission's "MCFL" regulations governing qualified nonprofit corporations,

⁴⁷ According to the NRLC, the MCCL treated \$5,000 of the \$50,000 contribution as a loan and repaid it on December 6, 1994. Attachment 3 at 6.

⁴⁸ Check requests forms for the November contributions to the Oregon and California right to life groups indicate they are for "special C-4 project[s]." See Doc. Nos. 200056-59. The NRLC says its 1994 contributions to state groups were to aid general activities, including voter education and GOTV activities and activities related to an assisted suicide ballot initiative in Oregon.

MCCL has acknowledged financing GOTV phone calls for the 1994 Minnesota Senate race and produced a script used in those calls. Attachment 9 (excerpts from MCCL's Reply to FEC's Opposition to Motion for Preliminary Injunction in *MCCL, Inc., v. FEC*, Case No. 3-95-1147 (D. Minn. March 1996)). The MCCL's GOTV script, described below, is identical to one produced by NRLC in connection with its own 1994 GOTV efforts. Compare Attachment 9 at 8 with Doc. No. 200066. Additional information regarding the MCCL's activities are discussed further in Section F below.

In addition to making contributions to right to life groups, NRLC also acknowledges spending \$50,000 in connection with its own GOTV phone calls for the 1994 Minnesota Senate election. Attachment 3 at 7. Again though, O'Steen does not link that expenditure to the NRSC's payments. The check and check request form produced for the Minnesota GOTV expenditure shows the calls were made through a vendor, Optima Direct of Washington, D.C. See Doc. Nos. 200067-68.

Unlike the phone script used in the 1992 Georgia Senate GOTV campaign, the script NRLC produced for the Minnesota campaign may be regarded as expressly advocating the election of Senate candidate Rod Grams. See Doc. No 200066. At a minimum, the script conveys an electioneering message, i.e., a statement designed to urge the election of a certain candidate. See Advisory Opinion 1985-14. The script, used by both the NRLC and the MCCL in their GOTV phone projects, reads as follows:

Hello. May I speak to _____?

I'm calling to remind you to vote on Tuesday in the U.S. Senate election.

There are now 4,300 abortions a day, and each abortion takes the life of a living human child.

ANN WYNIA supports abortion on demand, and ANN WYNIA supports using your tax dollars to pay for abortion.

ROD GRAMS is against abortion on demand and ROD GRAMS opposes using your tax dollars to pay for abortion.

Your vote is important. Please vote on Tuesday. Thank you.

Contrasting the Senate candidate's positions on abortion issues immediately after a statement equating abortion with the taking of a child's life, followed by an exhortation that the callee's vote is important, was clearly designed to urge targeted voters to vote for Rod Grams.⁴⁹ NRLC did not produce a contract for the Optima Direct phone bank, but if the calls were directed to identified pro life voters, the case for express advocacy is even stronger.

The NRLC also acknowledges spending \$63,544 in connection with a GOTV effort for the Pennsylvania Senate election, again without linking these expenditures to the NRSC's payments. Attachment 3 at 7. Invoices and contracts produced by the NRLC show that the Pennsylvania Senate GOTV campaign was conducted through three different vendors: Omega Communications, Inc., of Pittsburgh, PA, Optima Direct of Washington D.C. and MDS Communications of Tempe, Arizona. See Doc. Nos. 200070-85. The Pennsylvania phone calls conveyed a message virtually identical to the Minnesota calls. According to a script produced by NRLC, the Pennsylvania GOTV consisted of the following message:

Hello Mr./Mrs./Ms _____. This is (first & last name) calling for the Pennsylvania Pro-Life Federation.

There are now more than 4,000 abortions a day and each abortion takes the life of a tiny human child.

As you know, U.S. Senate candidate Rick Santorum is pro-life and opposes the use of our tax dollars to pay for abortion.

His opponent supports abortion on demand and tax funding to pay for abortion.

⁴⁹ Indeed, MCCL Executive Director Jacqueline Schwietz acknowledges in an affidavit attached to MCCL's pleadings in *MCCL v. FEC*, that MCCL's GOTV script would fit the definition of "expressly advocating" under 11 C.F.R. § 100.22(b). See Attachment 9 at 5.

Your vote is important. Please vote on Tuesday.
 God bless you and thank you for your support.

See Doc. No. 200065. The use of only Santorum's name and the reference to his challenger as simply "his opponent" further supports the characterization of this message as one advocating Santorum's election.

Although O'Steen's affidavit does not link the aforementioned GOTV expenditures to the NRSC's 1994 payments, the amount and timing of NRLC's expenditures suggest a strong link between them. First, NRLC's GOTV phone expenditures, including its \$50,000 contribution to MCCL for phone calls, total \$163,544 compared with the NRSC's \$175,000 in payments. Second, the timing of NRLC's GOTV expenditures coincide with receipt of the NRSC's payments and suggest a last-minute undertaking rather than a planned campaign. The NRSC's payments all occurred within a five-day time span between October 31-November 4. The only two vendor contracts produced for the GOTV campaigns, one with Omega for the Pennsylvania calls and the other with Optima Direct, are dated November 4, the same day the vendors initiated the calls.⁵⁰ See Doc. Nos. 200079-200085. NRLC's \$50,000 contribution to MCCL for a special phone call project was also made that day. Moreover, the fact that NRLC contracted with multiple vendors to conduct the calls further suggests a last-minute undertaking. Although contracts for GOTV phone campaigns may be ordinarily entered into at the last minute, NRLC's

⁵⁰ NRLC did not produce a contract for the Pennsylvania GOTV calls made by MDS, the third vendor used for the Pennsylvania GOTV campaign. The Optima Direct contract produced does not specify whether it is for one or multiple GOTV phone campaigns. However, in support of its Minnesota expenditures, NRLC produced a \$50,000 check payable to Optima without an accompanying invoice. In support of its Pennsylvania expenditures, NRLC produced an invoice from Optima reflecting GOTV calls for Pennsylvania and the Georgia governor's race.

expenditures must be considered in light of then-NRSC Chairman Phil Gramm's comments three months later that the NRSC's payments were made to activate pro-life voters in key states. Gramm's statement, the amount and timing of the expenditures and NRLC's use of multiple vendors suggest the expenditures were financed using the NRSC's non-federal funds.

Both the NRSC and NRLC assert that officials at the organizations have no recollection as to whether anyone at the NRSC was directly or indirectly informed of any decision regarding NRLC's use of the NRSC's 1994 payments. Both assertions of non-recollection are fairly narrowly written. The NRSC states that unidentified personnel are unable to remember "any specific conversations or dates of conversations" with NRLC representatives concerning "precisely how" any payment was to be used, and do not recall being involved in or "specifically informed" about how the payments were to be used. Attachment 1 at 11. O'Steen states that he has no recollection whether anyone at NRLC directly or indirectly informed anyone at the NRSC of any decision regarding the use of any payment. Attachment 3 at 5. Although O'Steen states in his supplemental affidavit that he consulted with others at NRLC when answering the Commission's interrogatories, it is difficult to read this particular statement as applying to anyone besides O'Steen. No documents were produced evidencing, referencing or relating to NRLC's decisions about use of the funds from the NRSC.

Finally, as is the case for NRLC's 1992 Georgia run-off GOTV efforts, this Office currently has no information regarding how the Pennsylvania and Minnesota calls were targeted. Contracts and invoices produced by NRLC suggest that the Pennsylvania calls by both Omega and Optima Direct were conducted using lists provided by the Pennsylvania Pro-Life Federation ("PPLF"), NRLC's state affiliate. The Omega contract, signed by O'Steen, expressly states that

the PPLF provided the calling list and refers to the targeted callers as "current Federation donors." See Doc. No. 200084. The Optima invoice lists the Pennsylvania calls under the heading "PA Pro-Life Federation," but NRLC paid the invoice and signed the contract. See Doc. No. 200072. As noted earlier, state affiliates participating in NRLC's Voter Identification Program may possess the political affiliation of voters identified through a voter identification survey. Thus, there is a possibility that the GOTV calls could have been targeted to voters affiliated with the Republican party making them coordinated expenditures. See e.g., 11 C.F.R. § 114.4(d)(3) (1996).

4. Summary

Both NRLC and the NRSC contend that the NRSC's 1992 and 1994 payments were intended only for NRLC's general organizational purposes, including GOTV calls. The NRSC acknowledges that it had general knowledge of NRLC's activities: it knew NRLC would be making GOTV phone calls to its members, but it denies it knew what the calls' message would be or the states in which the calls would be made. Attachment 1 at 8.

The only affirmative statement NRLC provides about the NRSC's knowledge of its activities is that the NRSC may have known that NRLC would make a contribution to the Christian Coalition in 1992; indeed it may have asked them to do so. However, as pointed out earlier, O'Steen's statement is qualified and lacks a time frame: "I may have told someone at the NRSC that NRLC could possibly make a contribution to the Christian Coalition. However, I do not remember the date of any such communication or who I may have spoken with." Attachment 3 at 4.

Beyond these general statements, both groups assert cautiously-worded denials about whether the NRSC was informed as to how the payments would be used: the NRSC states its personnel are unable to remember "specific conversations or dates of conversations" concerning "precisely how" any payment would be used, nor do they otherwise recall being "specifically" informed about how any payment was to be used. Attachment 1 at 11. NRLC's Executive Director states that he has no recollection whether anyone at NRLC informed the NRSC of any decision regarding use of the payments. Attachment 3 at 4-5.

With respect to a possible coordination theory, the available evidence suggests that NRLC and NRSC officials met or spoke to one another fairly regularly and thus had ample opportunity to share information regarding specific elections and election activities. Indeed, NRLC acknowledges various conversations and meetings with some of the same NRSC officials who were in frequent contact with the Senate campaigns at issue concerning how NRSC's coordinated expenditures were to be used, and most likely, how the candidate's voters and Republican voters would be turned out. Moreover, the NRSC acknowledges that it had conversations with NRLC about the political climate, possibly including an assessment of the groups members and overall activities, and an analysis of upcoming elections. Attachment 1 at 13 and 39. Such circumstances lend strong support for further investigation into possible specific instances of coordination.

In addition to the opportunities NRLC and NRSC officials had to share election-specific information prior to the NRSC's payments, current evidence strongly suggests that the NRSC's 1992 and 1994 non-federal payments were, in fact, used to turn out voters for Republican Senate candidates in races of particular importance to the NRSC. Indeed, some of NRLC's 1994

activities may have constituted express advocacy of candidates supported by the NRSC.

Specifically, NRLC Executive Director O'Steen acknowledges that he may have told someone at the NRSC that NRLC would make a contribution to the Christian Coalition and indeed NRLC did so, giving the Christian Coalition \$25,000 of the \$45,000 payment received from the NRSC on November 17, the week before the Georgia run-off. The Georgia CC's state director has admitted in another MUR that his group put together a run-off voter guide featuring the two Georgia Senate candidates "within a matter of days" and distributed it throughout the state.⁵¹ Attachment 6 at 3. Additionally, NRLC spent close to \$18,000 in a GOTV phone call effort aimed at the Georgia Senate race. These calls began on November 18, the same day NRLC deposited the NRSC's November payment, and continued through the day of the election. These calls, presumably made to pro-life supporters, favorably contrasted Coverdell's positions on two abortions issues with the opposing positions of his opponent. Curiously, NRLC's separate segregated fund, NRL PAC, had not supported Coverdell in either the Republican primary or primary run-off, nor did it support Coverdell in the general election when he faced the same opponent. By supporting Coverdell in the run-off, NRLC and NRL PAC helped ensure that Senate Republicans maintained their ability to sustain filibusters. See Norquist, Rock the House, p. 57.

Similarly, within days of receiving the NRSC's four payments totaling \$185,000 in the week before the 1994 general election, NRLC appears to have contracted with multiple vendors to make GOTV phone calls to pro-life voters containing a message designed to encourage

⁵¹ According to Grover Norquist, the Christian Coalition also made 40,000 GOTV calls to identified supporters in connection with the run-off. Rock the House, p. 61.

support for Republican Senate candidates in Minnesota and Pennsylvania. It also made a contribution to its state affiliate, MCCL, Inc., to do the same for the Minnesota Senate candidate. As discussed previously, the messages contained in all of these 1994 phone campaigns constitutes electioneering and, probably, express advocacy.

Evidence regarding specific meeting dates between NRLC and the NRSC around the times of the NRSC's payments is lacking due to the non-production of desk calendars for the relevant months by both the NRSC and NRLC, by the fact that NRLC confined its interrogatory responses to solicitation meetings involving O'Steen, and because of the apparent inability of unidentified NRSC employees and O'Steen to remember specific dates and conversations. Thus, as discussed in Section IV, this Office believes an additional Subpoena to Produce Documents is warranted specifically seeking desk calendars and appointment books for key NRLC employees.

Similarly, a direct nexus between the NRSC's payments and NRLC's use of those funds cannot be established from the financial information produced by NRLC. Indeed it may be impossible to establish a direct nexus based on bank records without an audit; however, a nexus might be established in other ways. For example, although NRLC's tax returns suggest that it may well have had enough funds to undertake the 1994 GOTV activities without the NRSC funds, it may not have done so without them given its fixed costs such as salaries and wages. According to those returns, NRLC took in between \$8-9 million in income in each of its fiscal years covering 1991-1994 and, it appears, ended each fiscal year with a balance of between \$1-2 million. See Doc. Nos. 200158-217. However, since the NRLC also paid between \$1-2 million in each of those years for salaries and wages (excluding payroll taxes and officers/directors'

compensation), it may not have chosen to finance the Georgia, Minnesota and Pennsylvania GOTV efforts or made contributions to the Christian Coalition absent the NRSC's payments.

E. COALITIONS FOR AMERICA

1. Response to Reason to Believe Finding

CFA did not substantively respond to the Commission's reason to believe finding. However, in response to this Office's discovery clarification letter, CFA maintains that it should not have been included in these proceedings and asserts that "continued activity against CFA would be ultra vires as well as harassment." Attachment 4 at 14-15. Accordingly, CFA opines that the Commission close this matter as to it. *Id.*

2. Summary of Discovery Response

The NRSC made two payments to CFA in October and November 1992 totaling \$90,000. See Doc. Nos. 000065-73. Both corresponding check stubs describe these payments as "transfers." In light of CFA's categorical denial that it had engaged in any election activity, discovery was limited to fleshing out the purpose and use of the payments. CFA's discovery responses suggest that CFA likely used NRSC funds to make grants to two other organizations, one of which conducted GOTV activities during the 1992 Georgia run-off. Additional discovery is needed to establish a definite link between the NRSC's payments and CFA's grants and to establish how CFA's grantees used the monies.

CFA describes itself as a "conservative umbrella organization" that sponsors meetings of leaders in conservative thought and causes, sponsors limited-viewer television programs on the National Empowerment Network (which it has since discontinued), and makes monetary grants to "conservative thought and action organizations." Attachment 4 at 1-2. As for the purpose of,

and circumstances surrounding, the NRSC's contributions, CFA states merely that its President, Eric Licht, knew NRSC Coalitions Director Curt Anderson and, in the course of conversations "over probably several years," occasionally asked if NRSC would donate to CFA inasmuch as CFA "always could use further funds for CFA's grants to conservative entities." *Id.* at 2. Mr. Anderson eventually opined that he thought he could obtain donations for CFA from the NRSC and "in due course did so." *Id.* Although CFA does not mention it, the NRSC's discovery response indicates that Curt Anderson worked for CFA as a lobbyist in 1985 and 1986 which is presumably how he and Licht were acquainted. CFA maintains it has no documents relating to any communications between Licht and Anderson other than the NRSC's checks and transmittal letters.⁵² *Id.* at 4 and 13.

a. CFA's Grants

CFA acknowledges making three grants to two organizations after receiving the NRSC's payments: the National Right to Work Committee ("NRTWC") and the League of Catholic Voters ("LCV"). Attachment 4 at 3. However, CFA stops short of admitting that it used the NRSC's funds for this specific purpose, instead maintaining that it deposited the NRSC's funds into an operating account, thereby making them fungible with other funds so that "no particular dollar was received from one source as a donation and transferred out as a grant to another entity." *Id.*

⁵² CFA initially responded that it had no records relating to "conversations" between Licht and Anderson. OGC's clarification letter pointed out that the Commission's subpoena asked for all documents relating to "communications" which included both oral and written communications and asked CFA to supplement its response if necessary. CFA's clarification is still somewhat ambiguous, but appears to state that there are no documents except the checks and transmittal letters. Attachment 4 at 12-13.

CFA's grants to the NRTWC and LCV totaled \$135,000, exceeding the NRSC's payments by \$45,000. Copies of CFA's grant checks, however, show that each grant was made the day of, or the day after, the date of the NRSC's payments as shown in the chart below (See Doc. Nos. 400008-11):

<u>Date & Amount of NRSC Payment to CFA</u>		<u>Date & Amount of CFA Grant</u>		<u>Grantee</u>
10/20/92	\$50,000	10/20/92	\$25,000	National Right to Work Cmte.
		10/21/92	\$75,000	League of Catholic Voters
11/11/92	\$40,000	11/12/92	\$35,000	National Right to Work Cmte.

An Audit Division review of the bank statements and grant checks produced by CFA⁵³ indicates that CFA had sufficient funds in its operating account to cover these grant checks without the NRSC funds and that, technically, the grants were not drawn on the NRSC's funds due to a processing delay between the date the funds were deposited and the date the deposits were credited to the operating account, a money market fund. However, given CFA's statement that it sought funds from the NRSC since it "always could use further funds for CFA's grants," it appears likely that CFA would not have made the grants but for the NRSC's payments. See Attachment 4 at 2. The grants to LCV and NRTWC were the three biggest disbursements from this CFA account during October and November 1992. See Doc. Nos. 400019-27.

CFA does not explain the purpose of its grants to LCV and NRTWC except for its broad statement that it makes monetary grants to conservative thought and action organizations, and copies of the grant checks and stubs contain no notation about the grants' purposes. See Doc.

⁵³ CFA did not produce the bank statements until asked to do so in OGC's clarification letter despite the clear document request for "all documents relating to the NRSC's payments, including . . . bank statements."

Nos. 400009-11. As discussed further below though, published accounts of NRTWC's activities indicate that NRTWC conducted several GOTV activities in connection with the U.S. Senate run-off in Georgia, suggesting that CFA's November 12, 1992 grant to it may have been used to fund these activities. Additionally, although public sources provided no clue as to LCV's 1992 activities despite its receipt of \$75,000 from CFA that year, information obtained from various sources indicates that at least two LCV officials have ties to the Christian Coalition dating back to 1992.

One possible use of the funds given to NRTWC is provided in an account of the 1992 Georgia U.S. Senate run-off by conservative activist Grover Norquist in The American Spectator. Attachment 10. In that account, Norquist states that NRTWC took out newspaper ads and sent two mailings to its Georgia membership contrasting the views of Paul Coverdell and Wyche Fowler on right to work laws. NRTWC, a Virginia non-profit corporation, is not registered as a federal political committee so we cannot determine from publicly available information whether CFA's grants were used to finance these activities. However, Reed E. Larson, NRTWC's president is also treasurer of Right to Work Political Action Committee ("RTW PAC"), which despite its name, is registered as a non-connected political committee with the Commission. RTW PAC's disclosure reports show that it supported Paul Coverdell in the Georgia U.S. Senate election, making a \$1,000 contribution to Coverdell's committee for the general election, a \$1,500 contribution for the run-off and serving as a conduit for an additional

\$70 in contributions from four individuals. The reports also show several disbursements for printing, mailing, postage and computer letters around the time of the run-off election.⁵⁴

Additional discovery is necessary to ascertain the connection, if any, between the NRSC's payments to CFA, CFA's grants to NRTWC and NRTWC's GOTV activities, particularly with regard to the Georgia U.S. Senate run-off. The timing of the NRSC's November payment to CFA and CFA's immediate grant to NRTWC, an organization supportive of the Republican Senate candidate and very active in getting out the vote for the Georgia Senate run-off, strongly suggests a connection between the two. Such an inference is made stronger in light of the NRSC's financial circumstances at the time⁵⁵ and the fact that the NRSC's other non-federal payments made during October and November also appear to have been used to finance GOTV activities as described above.

With regard to CFA's grants to LCV, no public sources provide an indication of LCV's 1992 activities, and CFA's canceled check to LCV is endorsed with only an account number. According to the Virginia Secretary of State's office, LCV, a Virginia non-profit corporation,

⁵⁴ A second unconnected political committee registered with the Commission, the National Right to Work Political Action Committee ("NRTW PAC") is an affiliate of RTW PAC. However, according to the FEC's "O" index, NRTW PAC's yearly receipts and disbursements for during the 1992 and 1994 election cycles never exceeded \$2,000.

⁵⁵ The NRSC had spent its coordinated expenditure limit on behalf of Coverdell in the general election and shortly thereafter, sought a Commission advisory opinion as to its ability to spend more. Although the NRSC's federal account had \$474,814 in cash on hand as of November 23, 1992, the day before the run-off, it also had a \$3.8 million debt, and any sort of generic voter activity for the run-off would have had to be financed with federal funds. Under these circumstances, it is not implausible that the NRSC may have sought a way to use some of its non-federal funds to benefit its candidate in the Georgia run-off where turnout was essential given Wyche Fowler's 2% lead over Coverdell in the general election.

was incorporated on July 27, 1994. Frank Nassetta, of Annandale, Virginia is its president. Similarly, a newspaper database search and a supplemental search of a local church newspaper reveal no mention of LCV until 1994. On November 3, 1994, a League of Catholic Voters/Christian Coalition voter guide was published in the Arlington Catholic Herald, a local church newspaper. The full-page guide highlights the purported issue positions of the candidates in Virginia's 1994 U.S. Senate race and in two Northern Virginia Congressional Districts races.⁵⁶

Attachment 11. Shortly after this guide appeared, Mr. Nassetta authored a November 12, 1994 letter to the editor of the Washington Times describing the newly-created LCV as a Catholic version of the Christian Coalition. Nassetta's letter advises persons interested in obtaining further information to contact LCV via a Post Office box or by calling two other individuals.

Attachment 12. According to postal authorities, Nassetta and a woman named Anne Keast are authorized to collect mail from LCV's Post Office box.

Three months before LCV's incorporation, Mr. Nassetta authored an April 7, 1994 commentary in the Arlington Catholic Herald in which he asked persons interested in forming Northern Virginia chapters of the Christian Coalition to contact him. Attachment 13. Nassetta describes the objectives of the Christian Coalition in the same way he later describes LCV's objectives: "[t]he objective is to build a permanent, non-partisan, issue-oriented grass roots organization . . . dedicated to identifying, informing and mobilizing . . . voters." Compare Attachments 12 and 13.

⁵⁶ The voter's guide contains a disclaimer that it is paid for and authorized by the Christian Coalition. An editor's note responding to reader's letters about the guide in a later issue of the Arlington Catholic Herald states that the guide was funded by the League of Catholic Voters and the Christian Coalition.

It appears that both Nassetta and Anne Keast had a connection to the Christian Coalition in 1991 and 1992. Documents produced by the Christian Coalition in response to subpoenas in MUR 3669 list Nassetta as an invitee and possible attendee of the 1991 Road to Victory Conference and Keast as an attendee of the 1992 Conference. Attachment 14. Since no public information could be found regarding LCV's 1992 activities, it is not known whether Nassetta and Keast were involved with LCV at that time.

Based on the foregoing, this Office believes additional investigation is necessary to determine why CFA gave LCV a \$75,000 grant so soon after receiving the NRSC's funds and how LCV used CFA's grant, including whether LCV passed any funds on to the Christian Coalition as the NRLC states it did in November 1992. Such an indirect transfer of the NRSC's funds to the Coalition through third parties may be explained by the Christian Coalition board of directors' decision in November 1991 not to accept donations from either political party in the future. See Attachment 7. The Coalition's decision presumably would have prevented it from directly accepting donations from NRSC's non-federal account in 1992.

b. **CFA's Sponsoring of Limited-Viewer Television Programs**

Because CFA indicated in response to the complaint that it sponsored programs on National Empowerment Television that "implicated grassroots lobbying," the Commission-approved discovery also sought information concerning the content and financing of any such programs broadcast in October and November 1992. In response, CFA produced videotapes of four hour-long television programs it co-sponsored with the Free Congress Foundation on

National Empowerment Television in October and November 1992.⁵⁷ CFA produced no information regarding the funding source or cost of these programs, stating only that it "perceive[s] no accounting method by which a dollar can be traced to a particular project." Attachment 4 at 14.⁵⁸

The videotapes produced by CFA contain NET's broadcasts of what appear to be two regularly broadcast NET programs: an October 13 and November 10 edition of "Empowerment Outreach" and an October 20 and November 17 edition of "Family Forum." Each program features a similar format: two rotating hosts who interview various guests about legislation or issues with a conservative slant in front of a small studio audience in Washington, D.C. Throughout the programs, viewers are urged to call the White House or their Congress member about various pieces of legislation and to call the program with questions for guests or to obtain information about topics discussed.

The programs' hosts and guests are individuals active in conservative groups or causes such as Americans for Tax Reform, the National Right to Life Committee, and the Heritage Foundation, as well as staffers from offices of various Republican members of Congress. The discussions center on topics such as anti-tax and anti-abortion legislation, term-limits, and issues such as "women in combat." The tone of all the programs is generally critical of a Clinton/Gore

⁵⁷ Copies of the videotapes are available in OGC's Docket office.

⁵⁸ Much of CFA's response to OGC's clarification letter suggests that the letter seeks new information. For example, regarding the funding source for the NET programs, CFA states "you now also request information as to 'the source of CFA's funding . . .'" However, all of the information sought in the clarification letter was within the scope of the Commission's subpoena for documents and interrogatory answers. For example, Question 4 of the subpoena asks CFA to "provide the date the program was broadcast and the source of CFA's funding of such program."

administration and "the Democratic Congress" but, on the whole, each of the programs lacks express advocacy of a clearly identified candidate.⁵⁹

Particular elections or candidates are mentioned in only a few instances. Two of the references could, at a minimum, constitute electioneering, but such references are isolated. In the October 20 segment of "Family Forum Live," guest William Kristol discusses the "fundamental differences between Democrats and conservatives" with the hosts and rhetorically asks, "do we really want a Democratic Congress and President?" Host Paul Weyrich quickly interrupts him however, admonishing that "[w]e do not endorse Presidential candidates here." Later, Kristol urges viewers to focus on the character of persons running for office and asks, "do you want Bill Clinton President of the United States?" The Georgia U.S. Senate run-off election is mentioned in a discussion of the upcoming Clinton/Gore administration in the November 10 segment of "Empowerment Outreach," and it is noted that a Republican win would result in 43 Republican Senate seats. Finally, in a segment of the November 17 "Family Forum Live" show billed as a discussion on the "Freedom of Choice Act Target List," NRLC official Darla St. Martin states "our candidate George Bush lost and some of our other candidates [did too]. Although quite a few won." Near the end of the same show, a caller asks about the two Republican candidates running in run-off elections in Georgia and North Dakota. Host Mike Schwartz remarks that "Coverdell is a good guy" to which Host John Dingman replies that "Fowler is a bad guy."

⁵⁹ The videotapes also indicate that at least two of the NRSC's 1992 funding recipients, CFA and NRLC, were in contact with one another a week before the U.S. Senate run-off in Georgia.

CFA's discovery responses suggest that the NRSC's funds were used for its grants to other organizations rather than to fund these NET programs. Additional information is necessary to verify this and to establish a direct nexus between the NRSC's payments and CFA's grants.

F. MCCL, INC./MCCL PAC

The Commission found reason to believe that the Minnesota Citizens Concerned for Life, Inc. ("MCCL") and its separate segregated fund, Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress ("MCCL PAC") and Jacqueline Schwietz, their treasurer, violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a) by using corporate and other impermissible funds to initially pay for independent expenditures made on behalf of several federal candidates, including Rod Grams. The reason to believe findings were based on Schedule Es filed as part of MCCL PAC's 1994 October and Pre-General disclosure reports that show payments to the MCCL General Fund for ads and phone calling which were reported as independent expenditures on behalf of federal candidates. Neither MCCL or MCCL PAC have responded to the Commission's reason to believe findings.

The \$15,476 in independent expenditure payments to MCCL General Fund include: a \$2,180.39 payment for "advertising" on behalf of Rod Grams, five payments totaling \$4,000 for "newsletter ad[s]" for Grams and four Minnesota House candidates, and two payments totaling \$9,296.05 for "expense reimbursement for phone calling" for Grams and for House candidate Gil Gutknecht made on November 17.

In response to a Request for Additional Information ("RFAI") from the Reports Analysis Division, MCCL PAC stated that its payments to MCCL General Fund were for ads placed in several publications, including MCCL's newsletter; that its purchase of the ads was "in

accordance with their [MCCL's] policy for sale of paid advertising"; and that its payments were made in a "commercially reasonable period." The RFAI response did not address the \$9,296 in payments MCCL PAC made to the General Fund on November 17 for phone calling expense reimbursements for Grams and Gutknecht.

As discussed in Section D.3 above, MCCL acknowledged in an affidavit filed in MCCL v. FEC that it made GOTV phone calls on behalf of Grams, and produced a copy of a script that is identical to that produced by NRLC in connection with its own GOTV phone campaign for Grams. Attachment 9 at 8. MCCL also avers in the affidavit that its calls for Grams were financed through its General Fund. *Id.* at 5. It is not clear from current information whether MCCL PAC's reimbursements to MCCL's General Fund were for the calls discussed in the MCCL litigation or whether MCCL financed a separate GOTV campaign for Grams. But in any case, in light of NRLC's \$50,000 contribution to MCCL on November 4 for "phone calls," it is possible that the financing of MCCL and/or MCCL PAC's GOTV phone campaign for Grams is traceable to the NRSC's non-federal payments via NRLC.

The complaint in this matter suggested that some of the NRSC's 1994 non-federal funds may have been used to finance a last-minute GOTV phone campaign conducted by Southern Education Council, an Austin, Texas telemarketing firm ("Southern"). An article in the Minneapolis Star Tribune, attached to the complaint, described the phone calls as supporting Republican Senate candidates in several states, including Grams in Minnesota. During the course of this investigation, this Office contacted the telemarketing firm employee interviewed in the Star Tribune article, Joshua Harris. Mr. Harris, who was also a part-time paid worker for the local Democratic party at the time he worked for the telemarketing firm, confirmed the basic

facts of the article: that the GOTV calls took place in early November, that the script read to respondents focused on abortion on demand and tax funding for abortions, and that calls were made to persons in several states, including Minnesota, Michigan and Tennessee, the three states named in the article. In addition to those states, Mr. Harris told our investigator that he believed calls were also made to Pennsylvania. Moreover, Harris said that the last line of the Minnesota script told people to "vote for Rod Grams for Senate." Unfortunately, Mr. Harris did not retain a copy of the script and states that he did not know who Southern's client was. Mr. Harris also said that Southern fired him after his interview appeared in the Star Tribune, telling him the client was upset.

Information from an interview with Mr. Harris appears in a recently published book, *Dirty Little Secrets: The Resurgence of Corruption in American Politics*, by University of Virginia professor Larry Sabato and Wall Street Journal reporter Glenn R. Simpson. The book's account also states that Southern employees made calls to four states, including Pennsylvania and Minnesota. However, in a paragraph quoting Harris' description of the calls, Harris does not specifically state that the script he used contained a sentence asking respondent to "vote for" a candidate. According to the book, Harris says that, after characterizing one candidate as a supporter of abortion on demand and taxpayer-funding of abortion and the other candidate as opponent, ". . . we mentioned something to the pro-life candidate's benefit, one of their accomplishments or whatever, and then we got off the phone. . ." Attachment 15. Since Sabato's interview of Harris occurred only a few weeks after the 1994 election and our interview of him took place almost a year later, the book account may be more accurate. Sabato and

Simpson also conclude that Southern's calls were probably financed with the NRSC's non-federal funds via the NRLC, but state that Southern's parent would not identify its client.

Since both the GOTV phone calls acknowledged by MCCL in its lawsuit and the phone calls reported by MCCL PAC as independent expenditures were initially paid for by MCCL's General Fund, an account with no reporting obligations, this Office is unable to determine without further discovery whether MCCL was the client who paid for the "mystery" phone bank operated by Southern or whether the financing of MCCL and/or MCCL PAC's phone calls are directly traceable to the NRSC's payments via the NRLC. The timing of NRSC's payments to NRLC and NRLC's subsequent contribution to MCCL for "phone calls," particularly in light of Senator Phil Gramm's published comments about activating pro-life voters, is suspect and strongly suggests a connection. Further, as MCCL PAC has reported some of its phone call costs as independent expenditures, it appears that at least some of the phone calling financed by MCCL and or MCCL PAC contained express advocacy.

Regardless of whether the funds used to finance MCCL and/or MCCL PAC's GOTV phone calls for Grams and other federal candidates are traceable to the NRSC, the use of funds from MCCL's General Fund, a non-federal account, to pay for phone calls constituting independent expenditures, is a violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(a) unless MCCL meets the requirements of a qualified non-profit corporation as set forth by the Supreme Court in Federal Election Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 107 S.

Ct. 616 (1986) ("MCFL").⁶⁰ Pursuant to that decision, a "qualified nonprofit corporation" unlike other corporations cannot be prohibited from using general treasury funds to finance independent expenditures. Given that a Minnesota district court recently held the Commission's MCFL regulations defining "qualified non-profit corporations" to be unconstitutional, the violations against MCCL and MCCL PAC based on MCCL's initial financing of the PAC's independent expenditures is probably not worth pursuing in light of the Commission's resources at this time. However, in order to ascertain whether there is a connection between MCCL's and MCCL PAC's GOTV activities and the NRSC's 1994 payments to NRLC, this Office believes that further inquiry is warranted.

G. GOOD GOVERNMENT COMMITTEE'S REQUEST TO RESCIND REASON TO BELIEVE FINDING

The Commission found reason to believe that GGC violated 2 U.S.C. §§ 433 and 434, but took no further action in light of the small amount of the NRSC's payment to GGC and/or GGC's January 1994 termination as an Alabama state political committee. In a November 7, 1995, letter GGC objected to the Commission's finding, saying that the Factual and Legal Analysis was "replete with conjecture, speculation and unsupported innuendoes." Attachment 16. GGC asks that the finding of the Commission be deleted or changed "to find that no violation occurred." *Id.* at 2.

⁶⁰ Commission regulations codifying the requirements set forth in the MCFL decision for a non-profit corporation to claim an exemption from the Section 441b(a) prohibition on corporate independent expenditures are currently set forth at 11 C.F.R. § 114.10(c) and became effective after the events at issue in this matter took place. These new regulations were recently challenged by MCCL in its lawsuit and held to be unconstitutional by the U.S. District Court of Minnesota. See MCCL v. FEC, Civ. No. 3-95-1147 (D. Minn April 22, 1996). An appeal filed by the Commission on June 17, 1996, is pending.

A reason to believe finding is merely a threshold determination which permits the Commission to undertake an investigation into whether a violation has occurred. Sufficient information existed at the time of the Commission's reason to believe finding against GGC to warrant a threshold determination. A reason to believe finding is not rescinded absent evidence of a substantive or procedural error. No such evidence has been presented here. Accordingly, this Office recommends that the Commission decline to rescind its reason to believe finding against GGC.⁶¹

IV. INVESTIGATIVE PLAN

This Office requests that the Commission approve the attached 15 Subpoenas to Produce Documents/Orders to Submit Written Answers. These Subpoenas/Orders are intended to seek additional information relating to the GOTV activities conducted or financed by the recipients as well as information relevant to finding coordination, such as the identities of vendors and consultants used, the identity of those at the NRSC with whom the recipients communicated, the

⁶¹ Since the Commission's reason to believe finding, more information has been obtained raising further questions about GGC. The NRSC says GGC's request for a donation was made by Emory Folmar, the mayor of Montgomery Alabama and a former chairman of the Alabama State Republican Executive Committee. GGC's documents reveal that on November 20, 1992, two days after it received the NRSC's \$7,000 donation, GGC made an \$8,000 contribution to Folmar's campaign fund. Folmar had won re-election as mayor in October 1991 so he apparently had no immediate need for those funds for his own campaign. Folmar's campaign reported the receipt of GGC's \$8,000 contribution in an annual report filed with the Alabama Secretary of State's office in January 1993. That report, signed by treasurer Anita Folmar, Folmar's wife, also shows expenditures totaling \$15,000 for 1992; however, only \$3,950 of those expenditures are itemized. On the same day Folmar received GGC's \$8,000 contribution, a group with the same name as one connected to Folmar's wife Anita, "Victory '92," made a \$5,000 contribution to the Coverdell Senate Committee. A month and a half later, on December 30, 1992, GGC received a \$1,554 contribution from "Anita Folmar d/b/a Victory '92".

identity of anyone at the relevant campaigns with whom the recipients communicated and any documents regarding such communications. See Attachment 17.

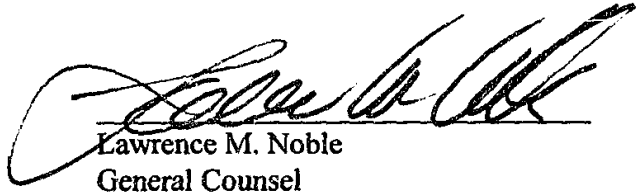
We also recommend that the Commission approve 23 subpoenas for deposition to the key individuals identified in the initial discovery as having information concerning the NRSC's payments to the recipients and the GOTV activities conducted or financed by the recipients. We are recommending that the Commission approve such a large number of subpoenas at this time so that we can expedite this case in light of the District Court's order in the pending Section 437g(a)(8) suit in this matter, DSCC v. FEC, Case No.96-2184, U.S. District Court for the District of Columbia (November 25, 1996). In some cases, such as former employees of ADF, we intend to first conduct informal interviews. Moreover, depending on the information obtained in the additional written discovery, in informal interviews and in any initial depositions taken, some depositions may be ultimately unnecessary.

V. RECOMMENDATIONS

1. Decline to vacate the reason to believe finding against the Good Government Committee and approve the appropriate letter.
2. Approve the appropriate subpoenas for depositions to: Curt Anderson, Paul Curcio, Enoch Ebong, Liz Owen, Jeb Hensarling, William Harris, David Carney, Phil Gramm, James Hagen, David O'Steen, Darla St. Martin, Jacki Ragan, Carol Long, Heather Clapsaddle, Marice Rosenberg, Mike McDaniel, Red McDaniel, John Isaf, John Grotta, Wes Anderson, Eric Licht, Jackie Schwietz and Rosemary Swanson.
3. Approve the attached Subpoenas to Produce Documents and Orders to Submit Written Answers to: Southern Education Council, Minnesota Citizens Concerned for Life, Inc., Minnesota Citizens Concerned for Life Committee for a Pro-Life Congress, American

Defense Foundation/American Defense Institute, League of Catholic Voters, National Right to Life Committee, National Republican Senatorial Committee and Stan Huckaby, as treasurer, Coalitions for America, Inc., National Right to Life Political Action Committee and Amarie Natividad, as treasurer, National Right to Work Committee Paul Curcio, David Carney, Curt Anderson, William Harris, and Jeb Hensarling.

1/8/97
Date


Lawrence M. Noble
General Counsel

Attachments (All attachments except for numbers 17 and 18 are available in the Commission Secretary's Office)

1. NRSC's Responses to Subpoena, Follow-up Inquiries and Reason-to-Believe Findings
2. ADF's Responses to Subpoena, Follow-up Inquiries and Reason-to-Believe Findings
3. NRLC's Responses to Subpoena and Follow-up Inquiries
4. CFA's Responses to Subpoena and Follow-up Inquiries
5. Documents Obtained from Department of Defense re: ADF Contacts
6. Excerpt from Documents Produced by Georgia CC in MUR 3669
7. Excerpt from Ralph Reed Deposition Transcript in MUR 3669
8. Excerpt from NRLC Voter Identification Program Handbook in MUR 959
9. Excerpt from MCCL's Reply in *MCCL Inc. v. FEC*
10. 3/93 Norquist Article in *American Spectator*
11. 1994 League of Catholic Voters/Christian Coalition Voter Guide
12. 11/24/94 Nassetta letter to *Washington Times*
13. 4/7/94 Nassetta commentary in the *Arlington Catholic Herald*
14. Excerpt from Documents Produced by CC in MUR 3669 re: Conference Attendees
15. Excerpt from *Dirty Little Secrets* re: GOTV Phone Calls in MN and PA Senate Races
16. 11/7/95 Letter from Good Government Committee re: rescinding rtb finding
17. Subpoenas to Produce Documents and Orders to Submit Written Answers
Bates-Stamped Documents (These documents are available in the Commission Secretary's Office)

Series 000 -- Documents Produced by NRSC
Series 200 -- Documents Produced by NRLC
Series 400 -- Documents Produced by CFA
Series 500 -- Documents Produced by ADF

Staff Assigned: Dawn Odrowski