



MEMORANDUM

TO :

Commissioner of Public Health
Department of Health

FROM :

Mr. H. Donaldson C. Smith
County Commissioner, Berkeley

SUBJECT :

October 21, 1938

REFERENCE :

Statement of Expenses for 1938-1939

Enclosed is a copy of the Statement of Expenses for 1938-1939

submitted to the Chairman, Board of Health and Commissioners for the

County of Alameda, California. The same was received by the Commissioner

of Public Health on October 21, 1938 at Berkeley.

cc: Commissioner

Staff Director

Public Officer

Public Records

Attachment



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 4378
National Republican Senatorial Committee)
Stan Huckaby, as treasurer)

STATEMENT OF REASONS OF
VICE CHAIRMAN DARRYL R. WOLD and
COMMISSIONERS LEE ANN ELLIOTT and DAVID M. MASON

We write to state our reasons for rejecting the General Counsel's recommendation that the Commission find probable cause to believe that the National Republican Senatorial Committee ("the NRSC") violated 2 U.S.C. §§ 441a(f), 441b and 434(b) and 11 C.F.R. §102.5(a) as a result of having made expenditures in excess of the limitations on party expenditures at 2 U.S.C. § 441a(d), in 1996, for media advertisements critical of Senator Baucus, of having reported these disbursements as "administrative/voter drive" expenditures and thus as allocable pursuant to 11 C.F.R. § 106.5 and § 104.10(b)(1), rather than as in-kind contributions, and of having made thirty-five percent of the expenditures from non-federal accounts.

At issue is the question whether there is sufficient evidence of coordination between the NRSC and Montanans for Rehberg, the campaign committee of Dennis Rehberg. The undersigned find the evidence here to be insufficient to establish probable cause to believe that there was coordination.

I

In June, 1996, the Supreme Court in *Colorado Republican Federal Campaign Committee v. FEC*, 116 S.Ct. 2309, 2315-2316 (1996), rejected the Commission's long-standing position that party committees, by virtue of their close relationship to candidates, were incapable of making independent expenditures; rather, the Court held that political parties can make expenditures independent of candidates and, therefore, are not subject to the limitations of 2 U.S.C. § 441a(d). The question as to whether or not an expenditure is independent is a factual one which turns on the evidence of coordination in the record. See *Colorado Republican*, 518 U.S. at 617 (plurality) ("the constitutionally significant fact . . . is the lack of coordination between the candidate and the source of the expenditure.").

In 1996, the NRSC undertook a "legislative advocacy" program which included, inter alia, the placement of "issue ads" in Montana. Jo Anne Barnhart, then political director of the NRSC and primarily responsible for the program, testified:

The purpose of the program was to promote the Republican agenda.... The agenda of the leadership in the Congress. We would receive internal calendars from the Leader's office showing us the votes, the planned votes, or the tentative schedule that they wanted to follow in terms of bringing issues before the Senate for a vote. And so we would look at that and decide which issues we wanted to advocate, to help pass the agenda in the Congress.

Barnhart dep. at 37-38.

This program was announced by the NRSC in a press release on October 19, 1995. It was to be nationwide in scope, and not limited to Montana. The initial announcement indicated that the planned ads would focus on tax issues, and identified Montana Senator Max Baucus as one of several likely subjects of the nationwide campaign. This announcement was made *before* any meetings between the Rehberg campaign and the NRSC at which any media ads were even mentioned. General Counsel's Probable Cause (PC) Brief at 14, 31-39.

As detailed in the Probable Cause Brief, the ads run in Montana identified and criticized Senator Baucus and urged listeners or viewers to contact Baucus regarding pending legislative proposals. The ads did not include express advocacy of Baucus's election or defeat, nor did they mention the upcoming election or his candidacy.

EVIDENCE OF COORDINATION

When asked whether the NRSC had consulted with any Republican candidates or their consultants about the content and placement of such advertising prior to the 1996 primary elections, Ms. Barnhart replied, "no." She also testified that the NRSC did not inform such candidates in advance that these advertisements were going to be run. In response to a question as to whether the candidates were provided with scripts or videos of the advertisements prior to their airing, Ms. Barnhart stated:

Our policy, pretty much, was that after they went up, the ads went up, and they were actually on the air and running, we called the campaign, whatever campaign, and let them know. And we did that, like I say, the day - usually the day they went up, and we probably did provide a copy of the script, although I don't remember doing it specifically.

Barnhart dep. at 45.

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All three deponents (JoAnn Barnhart, Ladonna Lee and Dennis Rehberg) were questioned about meetings which Mr. Rehberg had with NRSC representatives in July and October, 1995, and in March and May, 1996, at NRSC headquarters. The deponents aver, and General Counsel does not argue to the contrary, that Mr. Rehberg *did not* discuss the NRSC ad program at any of these meetings. Deponents' denials of any specific discussion of the ads were repeated and specific. (See Rehberg dep. at 43, 81, 92, 106, 124-126, Barnhart deposition at 83-84, 89, 96, 109, 111.)

The deponents agreed that the Rehberg campaign received copies of the ad scripts via press release at the time or shortly after ads went on the air. The Rehberg campaign did not request such notification, and the NRSC did not provide any additional information about the frequency, duration or outlets on which the ads were run. See Rehberg dep. at 127-129, Lee dep. at 60.

The General Counsel concludes that "there was no prior coordination with regard to specific content, timing and placement of the individual NRSC advertisements" (PC br. at 30) and that the ads "were apparently produced without the [Rehberg campaign's] prior knowledge or approval as to content, timing and target audiences." PC br. at 53.

The Rehberg campaign, through Ladonna Lee, a consultant, did have discussions following the running of one ad, but it appears that no action was taken as a result of the discussion. The campaign was concerned about the content of the NRSC advertisement because they viewed it as "erroneous." The ad, first broadcast on April 25, 1996, asserted that Senator Baucus had voted to fund "an alpine slide and casino in Connecticut." According to Ms. Lee, the Rehberg campaign contacted the NRSC in an attempt to have the mistake rectified. Ms. Lee's testimony was:

My reaction, when we were made aware that -- I don't recall whether it was Senator Baucus' campaign or others in Montana -- the press, or whoever it was, drew attention to that fact was that this was erroneous. We were very concerned because putting out false advertising is very, very damaging. Mr. Baucus, when he did it, he did with all of the senatorial ads, he attacked Denny Rehberg for the ads, not the Senatorial Campaign Committee.

...

Q. What was erroneous about this ad?

A. It was drawn to our attention that the content of this ad, specifically the alpine slide in Puerto Rico and the casino in Connecticut, were things that Mr. Baucus had not voted for.

Q. Did you contact the NRSC about this ad after it came out?

A. Yes, we did.

Q. What was the conversation that you had?

A. We basically asked them what they were going to do to fix it because we were being killed by it. Mr. Baucus had attacked Denny for telling lies and for placing the responsibility of the ad on him which was not true. It was, it gave Baucus an opportunity to question Denny's integrity.

Q. What was the NRSC's response?

A. Shrugged their shoulders, so what.

Q. Who did you talk to at the NRSC?

A. Phil Griffith....

Q. Was there ever any correction done.

A. Not to my knowledge.

Lee dep. at 62-63.

Lacking evidence of actual coordination between NRSC and the Rehberg campaign about the ad campaign, the General Counsel bases his recommendations on "opportunities for the NRSC to learn about the Rehberg committee's plans," imparting of knowledge "in general terms" and "indirect efforts" through Rehberg's "clean campaign pledge." PC br. at 52 and 53. We do not find sufficient evidence of coordination in these general, unfocused contacts.

Following the NRSC's October 1995 announcement, Ms. Lee testified that Ms. Barnhart provided her with general information about the NRSC's plans as to budget, planned focus, and involvement of the Montana state Republican Party. Lee, however, testified that the conversation did not include any request, suggestion or input from the Rehberg campaign to the NRSC. See Lee dep. at 26-32.

In a memorandum to the Rehberg campaign Ms. Lee summarized part of this conversation under the heading "State Party":

The party is going to undertake a message program showing MB out of touch w/Montana. Our recommendation is a series of radio ads starting ASAP telling MT that Max has already voted against their cut in taxes, reducing government, etc. The messages will then be adapted depending upon the news cycle. Jo Anne said they have \$35,000 to begin the program with and could spend over \$100,000 between now and the beginning of the year.

When asked during his deposition about this memorandum, Mr. Rehberg testified that this "was Ladonna's recommendation to me that if the state party did do this, this is what she would like to see done. The state party did not do this." Rehberg dep. at 62.

The only subsequent contacts about the ads were questions concerning whether the NRSC was ever going to carry out such an advertising program. Apparently the campaign received no information on this point, as Lee stated she was "surprised" when the ads actually ran. Lee dep. at 83.

Whether or however Lee's "recommendation" was communicated, the Rehberg campaign insists it had no influence over the NRSC ad campaign. Rehberg stated:

[S]omewhere along in here, it became obvious to us that what Max said as true, that they were cookie cutter ads, because I was told by someone, perhaps consultants, that ads like this were being run in Nebraska or Kansas with Baucus's name crossed out and incumbent whoever in that state, put in. So these were not specific to Montana, from what I was told. These were cookie cutter ads produced by the Senatorial Committee at their request without consultation.

Rehberg dep. at 134-135.

With regard to the issues raised in the NRSC advertisements, Mr. Rehberg stated:

I don't want to leave you with the impression that they are specific to Montana. It's just that I know that if you vote to raise taxes, a certain percentage of people in Montana are going to be very unhappy about that. And, so, that is an issue in Montana, but it is probably an issue in New Jersey. It may not be, but. --

Q. But there were others that Montanans were not that interested in, that [the NRSC] insisted upon raising; is that correct?

A. Well, the alpine slide. That's a good example of a stupid ad. Where they came up with that stuff, I don't know.

Term limits, I don't know that our polling data would have shown that term limits was more important than spending. But the Senatorial Committee came to that conclusion, independent of us, that term limits was an important issue, so they ran an issue ad. It must have had something to do with what was going on in Congress. I don't know, because they didn't ask our opinion.

Rehberg dep. at 130-131.

Ms. Lee testified similarly that the campaign opposed the content of an advertisement announced in a June 21, 1996 NRSC release:

A. This ad reflected a theme that the Senatorial Committee used a cookie cutter approach in several campaigns. It focused on the word *liberal* and tagged Max Baucus, as well as other states wherever they ran it, as liberals.

...

We within the campaign did not feel it was anything that was helpful because Max Baucus wasn't seen as a liberal in Montana.

Q. So you did not view this as a positive element of the campaign?

A. Again, in terms of, you know, what the Senatorial Committee was doing, we didn't think that it was anything that was believable to the voters of Montana.

Lee dep. at 78-79.

In fact, Rehberg argues that the NRSC ads were directly contrary to his preferred campaign strategy:

[A]t my first debate with Senator Baucus, [after the primary] I presented a clean campaign pledge saying that any charges would be done in my voice. And I guess it was, in a way, of telling the Montana public I wanted to run a positive campaign, but in a way hoping that in memo form that everybody else would understand it. Whether it was going to be a political action committee, who was thinking about being involved but we didn't know that they were going to be, that they would abide by how we wanted to run the campaign, and the Senatorial Committee, hoping that they would see this campaign pledge that I had signed and go, oh, now we get it.

...

And that made him mad, D'Amato. I heard through the grapevine that he was outraged that I would sign a clean campaign pledge, that I had, in effect, tied their hands good.

Rehberg dep. at 56-57.

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In discussing the interaction between his campaign and the NRSC, Mr. Rehberg addressed both his own relationship with Senator D'Amato and the relationships between his consultants and NRSC staff. Relatively early in the deposition he stated:

There were conversations that occurred between my consultants and the Senatorial Committee about our race. All I'm aware of is that there was not a good working relationship between my consultants and the Senatorial Committee. It was a constant frustration to me.

Rehberg dep. at 51.

Ladonna Lee characterized the campaign's communications with the NRSC as continuing despite the campaign's objections to the ads due to its need for other forms of NRSC assistance.

Q. So as far as you can remember, in terms of [a] direct relationship with the NRSC, there was no communication beyond your talk with Mr. Griffin about the earlier -

A. No. I wouldn't say there was no communication with the campaign. The Senatorial Committee is responsible to elect Republicans to the US Senate. They have resources. They control, by virtue of their promotion or detraction from your campaign, the out of state money that comes to a campaign. Control is too strong a word. They have a great impact as to whether or not people perceive your race as a winning race.

So we obviously were not going to cut off our noses to spite our face. So we had ongoing communication with them in terms of the media campaign. It had not been a fruitful relationship.

Q. Your ongoing communications were about what subjects?

A. Whatever was happening in the campaign. I mean, they do briefings, on an ongoing basis to the PAC community, to donors. We were still, at this point, trying to get the research package that was promised for almost a year at this point.

If we were doing a PAC fund-raiser or something like that, we would make them aware of it so they would support and make people aware of it.

You have an ongoing relationship because they still had not spent the coordinated expenditure on our behalf. They had the capacity to make a big impact, as they did, unfortunately, in September, when they made statements that, again, were not factual and hurt our fundraising greatly to losing the campaign.

Lee dep. at 73-76.

II

That there were contacts between the Rehberg campaign and the NRSC is clear. The question before us, however, is whether they amount to coordination with respect to the advertising campaign at issue. We find that they do not. As noted by the General Counsel in his November 16 brief, at page 30: "The deponents all testified that there was no prior coordination with regard to specific content, timing and placement of the individual NRSC advertisements." Respondent's counsel credibly argues that "This concession alone precludes any finding of coordination." Reply br. at 4.

In our view, the fact that there was "no prior coordination" is a key factual determination. Absent such evidence, what remains is the "uncontroverted direct evidence" (presented in the deposition of Ms. Barnhart at 37-38, 89, 96, 109, 111) that this advertising campaign was developed by the NRSC "independently and not pursuant to any general or particular understanding with a candidate." *Colorado Republican*, at 116 S.Ct. 2315.¹

Like the Court in *Colorado Republican*, we also reach the conclusion that the more general pattern of contacts between the campaign and the party committee do not constitute coordination sufficient to transform the NRSC's ad disbursements into in-kind contributions to the Rehberg campaign.

At the outset, we do not read the "pursuant to any general or particular understanding with a candidate" phrase from the *Colorado Republican* plurality (518 US 604, 618) as enunciating a judicially-approved test for coordination. In fact, the very next sentence ("We can find no 'genuine' issue of fact in this respect." (emphasis added))

¹ The facts before the *Colorado* Court, are analogous to the facts here. At issue were advertisements which had been placed by the Colorado Republican Federal Campaign Committee before the 1988 primary election for the U.S. Senate in that state. These advertisements were critical of the legislative record of then-U.S. Senator Timothy Wirth, who was running unopposed for renomination by the Democratic Party.

The "uncontroverted direct evidence" referred to by the *Colorado* Court was the deposition testimony of the Colorado Party's Chairman that he arranged for the development of the script at his own initiative, and that he alone approved it. The only other politically relevant individuals who might have read it were the party's executive director and political director, and all relevant discussions took place at meetings attended by party staff. Nevertheless, the General Counsel's office argued in District Court that the Colorado Republican Party had coordinated the advertisement with its candidates because the Chairman also stated it was his practice to coordinate campaign strategy with candidates and to be as involved as he could be with individuals seeking the Republican nomination by making available to them party assets. The Court found these latter statements by the Colorado Party Chairman to be general descriptions of party practice, which neither referred to the advertising campaign at issue nor to its preparation and which did not conflict with or cast significant doubt on the direct evidence that the party's advertising campaign was developed independently of any candidate. *Colorado Republican*, 116 S.Ct. 2314-2315.

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makes clear that the court was making a factual determination. An "understanding" of some sort is essential to a finding of coordination; a mere exchange of information is not sufficient. The General Counsel states that the Rehberg campaign had an "understanding that an NRSC media program was going to be undertaken," but alleges "general and theoretical" knowledge about the planned program as the basis for this conclusion. (PC brief at 54.) We do not interpret such general knowledge *about* a potential ad campaign to amount to an understanding *with* the NRSC. In fact, the campaign was uncertain about whether the ad program was actually going to run and was surprised when it did. Lee dep. at 26-32, 83.

Though the Commission's votes in this matter came prior to its issuance, our determination is supported by the recent decision in *FEC v. Christian Coalition*, 52 F. Supp. 2d 45 (D. D.C. 1999). In developing a definition of coordination, the Judge noted:

I take from Buckley and its progeny the directive to tread carefully, acknowledging that considerable coordination will convert an expressive expenditure into a contribution but that the spender should not be deemed to forfeit First Amendment protections for her speech merely by having engaged in some consultations or coordination with a federal candidate. [*Id.* at 91.]

The actual definition developed by the *Christian Coalition* Court is as follows:

In the absence of a request or suggestion from the campaign, an expressive expenditure becomes 'coordinated,' where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over, a communication's: (1) contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) "volume" (e.g., number of copies of printed materials or frequency of media spots). [*Id.* at 92.]

We find the facts presented by the General Counsel insufficient to show that there was anything approaching this degree of coordination between the Rehberg campaign and the NRSC. It is indisputable that the initiative for the advertising program was the NRSC's alone, and that the selection of themes, and the decision to target Montana was made and announced by the NRSC prior to any discussions or communications with the Rehberg campaign. In fact, the evidence is overwhelming as to the continuing disputes and friction between the campaign and the NRSC. We cannot agree with the General Counsel's contentions that the Rehberg campaign's "general knowledge" (PC br. at 52) gleaned from a press release, or continuing contacts with NRSC on issues unrelated to the subject ad campaign (*id.* at 53-54) constitute coordination as to the subject ads. Nor can we agree that the campaign's attempts to address clear factual inaccuracy constitute coordination. The effect of such a test would be to gag any candidate whose record or position is inaccurately described. We cannot see any reasonable principle under which a candidate's complaints

of factual inaccuracy would make the candidate somehow liable for the very same inaccurate statements of which he complains.

Finally, we cannot agree that public statements about the tenor of the campaign (such as Rehberg's "clean campaign pledge" (PC br. at 53)) constitute a candidate's acceptance of and responsibility for the conduct he criticizes. Despite Rehberg's excess of caution in this regard (PC brief at 54; Rehberg dep. at 54-55), we cannot agree that a blanket request to stop an ad or to stop negative campaigning constitutes coordination regarding the ads to which the candidate objects. If the NRSC had pulled, altered, and re-issued an ad in response to Rehberg's complaints, a more complicated situation would be presented. The evidence is clear in this matter that the NRSC took no action whatsoever in response to Rehberg's comments.

Our colleagues who supported the General Counsel's recommendation put heavy emphasis on the single word "recommendation" in a memorandum following the announcement of the planned campaign from the consultant Lee to the Rehberg campaign (See Thomas/McDonald Statement at 13), arguing that such a recommendation implies that the ads were at the request or suggestion of the campaign (citing 2 USC 441a(a)(7)(B)(i)). First, this "recommendation" from a consultant to the client campaign was made *after* the NRSC had announced plans for a national ad campaign, focused on fiscal issues, and including Baucus as one subject. Additionally, our colleagues admit (their footnote 4) that to whom and about what a recommendation may have been made is ambiguous, and that it may have been in regard to state party 441a(d) expenditures. In any event, it is clear that the "recommendation," if it was actually made to anyone outside of the campaign, was not followed, as it called for "ads starting ASAP." This only makes obvious the fact that the NRSC exercised complete and independent control over the timing (and other aspects) of the advertising campaign, as the ads commenced roughly five months following this memorandum, as part of a national campaign just as the NRSC had announced in October of 1995, and not in response to any request or suggestion of the Rehberg campaign.

The General Counsel and our colleagues place great emphasis on the content of the NRSC ads, declaring them to be "in connection with" the Montana Senate campaign. Unfortunately, the General Counsel's brief relies extensively on the "electioneering message" test which has now been definitively rejected by the Commission. (Statement at 1-7; PC br. at 15-20, 50-51.) For the reasons enunciated in our Statement of Reasons in the Clinton and Dole audits (joined in that instance by Commissioner Sandstrom) we reject "electioneering message" as a content test for coordinated communications. While avoiding the term electioneering message, our colleagues rely on the same rejected analysis, arguing that the NRSC ads were "meant to diminish support for the Baucus campaign" (Statement at 8 and 10), repeating a key phrase of the electioneering message test.²

² We note the similarity of the ads in this matter and the ads run by the DNC and RNC examined in the Clinton and Dole audits. While raising a question of partisan bias here (Statement at 16), our

Curiously, our colleagues cite Advisory Opinion 1985-14 (source of the now-rejected "electioneering message" analysis) for the proposition that coordinated party expenditures would be analyzed under the "in connection with" test of § 441a(d), presumably in contrast with § 431's "purpose of influencing" language. We are unclear as to the significance of this distinction, and would argue that "*expenditures* in connection with" in § 441a(d) are limited pursuant to the definition of "expenditure" in § 431. But more particularly, AO 1985-14 states that "payments for these communications are reportable expenditures *for the purpose of influencing Federal elections.*" The Opinion also notes

the Commission assumes that DCCC's expenditures for these communications will not be made in cooperation or consultation with any candidate. Instead, the Commission views your request as limited to the situation where expenditures for these communications are made without any consultation or cooperation, or any request or suggestion of, candidates seeking election to the House of Representatives in the selected districts. In this context, the Act's limitations at 2 U.S.C. § 441a(d) become relevant....

Because Advisory Opinion 1985-14 was explicitly limited to instances in which there was no coordination between a party committee and a campaign, we do not see how it could be applied in determining whether particular communications were coordinated or not.

III

We do not read the General Counsel's recommendations as urging us to treat the NRSC ads as § 441a(d) expenditures on any basis other than the alleged coordination with the Rehberg campaign. It is not clear whether our colleagues are arguing that the NRSC advertisements are not allocable under our regulations (§ 106.5)³ regardless of coordination. However, we find the NRSC advertisements to be precisely the type addressed by the Commission in Advisory Opinion ("AO") 1995-25. AO 1995-25 concluded that, "legislative advocacy media advertisements that focus on national legislative activity and promote the [] Party should be considered as made in connection with both Federal and non-federal elections, unless the ads would qualify as coordinated expenditures on behalf of any general election candidates of the Party under 2 U.S.C. § 441a(d)." Therefore, absent coordination, party committees like the NRSC, are entitled to rely on that opinion in

colleagues did not protest so vigorously when the Commission unanimously rejected staff recommendations regarding the similar ads in the presidential audits.

³ We find unconvincing our colleagues' argument that the exceptions at § 106.1(c) to our rule on "Allocation of expenses between candidates" implies that the NRSC ads are allocable. The general rule at § 106.1(a)(1) includes in-kind contributions, independent expenditures and coordinated expenditures. Thus, their argument is either circular (assuming the "on behalf of" language of the exception is used to prove coordination under the general rule) or inapplicable (assuming there is other proof of coordination, in which case the general rule would expressly apply).

allocating costs for legislative media advertisements, like those here, between federal and non-federal accounts.

AO 95-25 was:

predicated on the following assumptions: (1) There may or may not be a reference to a Federal officeholder who has also qualified as a candidate for Federal office. (2) If there is reference to a Federal officeholder who is also a Federal candidate, there will not be any express advocacy of that officeholder's election or defeat, nor will there be any "electioneering message" or reference to Federal elections. (3) If there is a "call to action," it will be to urge the viewer or listener to contact that Federal officeholder urging support for, or defeat of, a particular piece of legislation.

Leaving aside the "electioneering message," which the Commission now concedes it cannot apply or enforce (and which was not defined in AO 1995-25), the NRSC ads at issue here fall squarely within these conditions: they refer to a federal officeholder who is also a candidate, they eschew express advocacy, and they include a call to action to contact the officeholder regarding a particular piece of legislation. While some may now argue that AO 1995-25 was not well grounded, party committees are entitled to rely on it unless and until it is further altered, as permitted by § 437f(c)(1).

In addition to the lack of evidence of coordination with the Rehberg campaign, that fact that the NRSC ads were part of a national effort involving running essentially the same ads in many different states undermines any claim that they were specifically related to the Montana Senate race. Indeed, the national scope of the campaign adds credence to the NRSC's characterization of the ads as general party building expenditures. Our colleagues' argument that the ads were intended to influence elections rather than legislation (Statement at 10-11) suffers for ignoring the plain text of the ads which described and called for action on specific legislative proposals.⁴ It appears to us incontestable that the ads were expressly lobbying (i.e. non-federal election) expenditures. To the extent that the ads in question, like nearly all political party expenditures, arguably had some (in this case federal) electoral purpose, it strikes us that the allocation regulations are precisely the correct means for addressing them. In this case, the NRSC paid for the ads using 65% federal funds.

⁴ The argument that the ads lacked specificity due to failure to include specific bill numbers or the exact time of votes (Statement at 10, PC br. at 51) is a straw man: lobbying ads rarely include projected dates of legislative action (which often change in any case) and often include popular names rather than bill numbers. The Commission itself almost universally refers to the Federal Election Campaign Act or FECA rather than to Title 2, Chapter 14 of the United States Code, or the statute number. General Counsel's argument (PC br. at 51) that the ads should have been aimed at a broader audience is even less availing, since essentially the same ad was run in several states, and because the normal course of lobbying is to have constituents (rather than a broader "audience") contact their own representatives.

CONCLUSION

We agree with the General Counsel that there is no evidence of coordination between the Rehberg campaign and the NRSC regarding the specific content, timing, placement and other aspects of the NRSC advertisements at issue. We do not agree that the general contacts between the campaign and the NRSC constitute sufficient evidence to determine that the ads were created or placed in "cooperation, consultation or concert" with the Rehberg campaign or that the ads were run pursuant to an "understanding" with the campaign. The General Counsel's only substantial evidence, that an early discussion about the potential ad campaign coupled with subsequent inquiries as to its status amounted to a "request or suggestion" from the campaign, is controverted by the fact that the NRSC announced its intent to run a tax-focused ad campaign nationally (including Baucus as one "target") prior to any discussions with the Rehberg campaign. We see no evidence that the subsequent contacts altered the NRSC's plans or purposes. Quite the contrary, the evidence shows that the NRSC proceeded with its plans despite the needs or desires of the Rehberg campaign.

Given that political parties have a constitutional right to communicate their views on candidates or issues, and absent coordination to do so without limits, we cannot agree that a candidate's decision to comment on such communications, particularly in negative terms or as to their factual accuracy, transforms such spending into regulated and limited contributions to that candidate's campaign. Nor can we agree that candidates should be prohibited from expressing disapproval or seeking correction of factually inaccurate statements.

Darryl R. Wold 10/28/99
Darryl R. Wold Date
Vice Chairman

Lee Ann Elliott 10-28-99
Lee Ann Elliott Date
Commissioner

David M. Mason 10/28/99
David M. Mason Date
Commissioner