

BEFORE THE FEDERAL ELECTION COMMISSION

2004 DEC 10 P 1:19

National Republican Congressional Committee,
and Christopher J. Ward, as treasurer

MUR 5380

2004 DEC 10 P 2:13

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**NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE'S
MOTION TO RECONSIDER FINDING OF REASON TO BELIEVE
AND TO DISMISS MATTER UNDER REVIEW 5380**

By and through the undersigned counsel, the National Republican Congressional Committee ("NRCC"), and Christopher J. Ward as treasurer, submit this initial response to MUR 5380. MUR 5380 is a Commission-generated matter. The Commission has already found that there is reason to believe that the NRCC violated 2 U.S.C. § 441d(a), and this is the first opportunity the NRCC has had to respond.

The central allegation set forth in the Factual and Legal Analysis ("F&LA") is that the NRCC may not have had disclaimers on certain telephone calls. We ask that the Commission reconsider its finding of reason to believe, and dismiss the complaint for the following reasons:

- The NRCC's policy is to be over-inclusive with respect to disclaimers, and consistent with that policy, the NRCC does in fact use disclaimers on phone calls of the sort at issue. *See* Exhibit 1 (Affidavit of Maura Kunz). Even the F&LA provides examples of calls that identified the NRCC as the source of the call.
- Commission regulations do not require disclaimers on phone calls of the sort at issue, specifically live phone calls placed to individuals targeted by the NRCC for increased involvement in its various Republican Party grassroots programs. Instead, the disclaimer requirement only applies to "telephone banks" to the "general public." *See* 11 CFR 100.26. The calls at issue were not to the general public.

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- Several Commission advisory opinions (“AOs”) have already ruled that targeted communications not made to the general public do not require disclaimers. These AOs are indistinguishable in all their material respects to the present matter.
- The F&LA is based upon little more than a handful of one-sided negative news articles critical of the NRCC’s fundraising methods, virtually all of which were written before the effective date of BCRA. Some date back as far as 1998. If such allegations were submitted to the Commission in the form of a complaint, such evidence would not support a finding of reason to believe. *See* Statement of Reasons, MUR 4960.
- The subject matter of this MUR goes to heart of the constitutionally guaranteed association rights of the NRCC, and questions how the NRCC communicates with its supporters and other targeted individuals. *See California Democratic Party v. Jones*, 530 U.S. 567 (2000). The Commission is not permitted to simply cobble together a few stale news articles, and then launch an extremely burdensome and intrusive inquiry. *See FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 386-88 (D.C. Cir.), *cert. denied*, 454 U.S. 897 (1981).
- The section relied upon in the F&LA, 441d(a), does not even mention telephones, phone banks or the like. During its rapid-fire BCRA rulemakings, the Commission essentially rewrote section 441d(a), grafting section 431(22)’s definition of “public communication” onto section 441d(a). This was done despite unanimous comments advocating against this, and without any sort of evidence of supportive legislative intent. The District of Columbia District Court has already found several of the BCRA regulations to be improper (some of this the Commission is not even appealing), and the Commission’s arbitrary rewrite of section 441d(a) will fare no better.

A. Background

This matter centers around the practices of two of the NRCC’s party programs, its Business Advisory Council and its Physicians’ Advisory Board. Neither are open to the general public. Both are grassroots-based programs designed to energize and increase the support of targeted constituencies.

Long before the actual passage of BCRA, the NRCC anticipated that campaign finance reform’s inevitable passage would force the national party to modify and in some cases abandon fundraising and other party programs that proved successful under FECA. With the writing on the proverbial wall regarding campaign finance reform, the NRCC

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began to shift its activities away from a Washington, D.C.-focused view of the world and toward a more grassroots driven approach. The Business Advisory Council and the Physicians' Advisory Board are the natural outgrowth of this changing approach.

Other party committees have been slow to adapt to the post-BCRA world. So too has the media failed to grasp the changing landscape – they continue to write essentially the same basic article about once a year regarding NRCC fundraising, completely missing the point that we have shifted to a grassroots approach – an approach where fundraising is but one component. The fact is that, despite political and media criticisms, programs such as the Business Advisory Council and the Physicians' Advisory Board have been successful in energizing people who may not have otherwise become active in politics.

1. The Business Advisory Council.

The Business Advisory Council consists primarily of small business owners who have been politically involved, and particularly supportive of the NRCC.¹ In addition to financial support, many of those involved with the Council are grassroots activists across the country who care passionately about the future of our country. Generally speaking, it is a group of conservative businessmen and women who advocate a progressive, conservative, pro-business agenda. For those who choose to support the NRCC financially, contributions average between \$300 and \$500. There are periodic meetings and events, designed to keep the grassroots activists informed. Membership in the Council is based upon several criteria, including a commitment to a progressive,

¹ Prior to the enactment of BCRA, the Business Advisory Council had a non-federal fundraising component for small businesses that wished to support the NRCC financially with corporate funds

conservative, pro-business agenda. The Business Advisory Council is not open to the general public.

2. The Physicians' Advisory Board.

The Physicians' Advisory Board was developed as a means to mobilize actual physicians, and seek their support and counsel on positions the Republican Party takes with respect to health care reform. In turn, this would help mobilize grassroots support, and foster increased involvement in activities of the Republican Party. Selection for membership to the board is based upon several criteria, including an ability to display leadership skills in spreading the message of the needs for serious health care reform, and pro-active communication skills to communicate ideas to party leaders. As is the case with the Business Advisory Council, there are periodic meetings and events, designed to keep the grassroots activists informed. The Physicians' Advisory Board is not open to the general public.

3. The telephone calls at issue are fluid.

What is at issue here are live phone calls, which are by definition ever-changing, unpredictable and fluid. Calls of the sort at issue are different from television or radio ads, printed materials or even garden-variety phone banks where a voter is urged to go vote or the like. Such fixed, predictable communications lend themselves more easily to the inclusion of disclaimers. But the phone calls of the sort at issue are not fixed – they are by definition interactive with the recipient of the call. Much depends on how receptive the recipient is to the call, and contingent on what a recipient may say in response to a call. Rarely are calls identical, let alone substantially similar – variation is not limited to a person's name or geographic region, but includes the content of the call

as well. Time and time again, recipients terminate the call prematurely, long before the caller is afforded any sort of opportunity to convey a disclaimer.

Despite the fluid nature of the calls, the NRCC's policy is to identify the NRCC as the sponsor of the call at the threshold of the call. To balance the fluid nature of these calls with its desire to disclose the source of the call, the NRCC has developed the following policies:

- Due to news articles of the sort cited in the F&LA, it is now made clear at the beginning of every call that the NRCC is the sponsor of the call. Although this had been the common practice, vendors occasionally chose to deviate from this practice and not mention the NRCC at the beginning of the call. Mentioning the NRCC at the beginning of a call became an official policy of the NRCC in late 2002.² See Attachment A (Affidavit of Maura Kunz).
- Also due to news articles of the sort cited in the F&LA, the NRCC increased its quality control over its vendors, and made such quality control a material contractual term. Such quality control includes such things as insisting on having a vendor supervisor present at all times when calls are made, and monitor the calls to ensure that calls are being made properly; providing a senior-level staff member to oversee all aspects of the NRCC account on a full-time basis; and not deviating from language approved by the NRCC, and identify themselves as working for the NRCC.
- Critically, all written follow up includes all requisite disclaimers. Thus, in the event someone is involved with the Business Advisory Council or the Physicians' Advisory Board, and even if a call becomes terminated or there is confusion regarding the sponsor of the call, such confusion is eliminated by the written follow-up. See Attachment A (Affidavit of Maura Kunz). In fact, the F&LA cites the NRCC's own website as an example of a proper disclaimer! See F&LA at 11.

² The fact that the NRCC identifies itself at the beginning of a call at least since late 2002 is supported by the F&LA. See F&LA at 4 ("... the most recent message [dated February 2004] actually identified the NRCC as the source of the telephone call.").

B. Analysis

1. **The NRCC has an over-inclusive policy with respect to disclaimers, and the NRCC does in fact include disclaimers on phone calls of the sort at issue.**

The simple response to the F&LA's assertion regarding disclaimers is that the NRCC does include disclaimers in its phone calls. Attached is an affidavit from the NRCC's Director of Telemarketing Programs confirming this. Specifically:

- NRCC phone calls of the sort at issue are reviewed by several NRCC professional political staff, and reviewed personally by the undersigned.
- In addition to identifying the NRCC as the sponsor of the call, NRCC phone calls of the sort at issue include several other disclaimers, including best efforts language, requisite Internal Revenue Service language regarding the non-deductibility of contributions, and that contributions from corporations and foreign nationals are prohibited. Either the address or the website of the NRCC is provided as well, and the listener is informed that the call is not authorized by a candidate or candidate's committee, but instead is being made on behalf of the NRCC. All this is considered boilerplate that is included on every call at the appropriate time.
- All written follow-up materials also contain disclaimers. Specifically, all written material states that it is "paid for by the National Republican Congressional Committee," that it is "not authorized by any candidate or candidate's committee," and includes the NRCC's website. All this is clearly set forth in a box.

Despite its policies and its intent to include disclaimers, what is at issue here are live phone calls, which are by definition ever-changing, unpredictable and fluid. Calls of the sort at issue are different from television or radio ads, printed materials or even garden-variety phone banks where a voter is urged to go vote or the like. Phone calls of the sort at issue are not fixed – they are by definition interactive with the recipient of the call. Much depends on how receptive the recipient is to the call. Rarely are calls identical, let alone substantially similar – variation is not limited to a person's name or

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geographic region, but includes the content of the call as well. Time and time again, recipients terminate the call, thus eliminating any chance of saying anything other than "Hello, I'm calling from the National Republican Congressional Committee," or the like. Such fluidity makes the inclusion of disclaimers on all calls impossible.

Moreover, the present matter is analogous to several recent AOs regarding disclaimers. These AO's show that the Commission has repeatedly allowed for flexibility in analogous factual situations:

- AO 2004-10: The Commission fashioned an exception to the so-called "stand by your ad" requirement for "live read" radio communications paid for by Federal candidate committees. Live phone calls face the same challenges as a "live read" radio communication.
- AO 2004-09: The Commission exempted wireless PCS digital telephones from disclaimer requirements. In addition to the obvious similarity as both AO 2004-09 and the present situation concern telephones communications, the limitations on the length of message at issue in AO 2004-09 are present here. As a practical matter, a phone call will only go on so long before the recipient terminates the call. AO 2004-09 is particularly applicable to the voice mails emphasized in the F&LA – voice mails are of limited duration.
- AO 2004-01: The Commission fashioned an exception to the "stand by your ad" requirement. In an ad authorized by two Federal candidates, the Commission permitted one candidate to speak for both.

Ultimately, what all these AOs demonstrate is that disclaimer rules, even post-BCRA, are not nearly as rigid and absolute as the F&LA presumes.

No law requires the NRCC to read a disclaimer by rote at the beginning of a call, and to do so would be silly. Virtually no one would stay on the phone long enough to wade through such verbiage. And it makes absolutely no sense, and would only cause confusion, to begin a call by saying "I'm calling for the NRCC on behalf of Congressman so and so, and this hasn't been authorized by any candidate or candidate's committee."

To an ordinary person not versed in campaign law terms of art, a call from a Congressman (who is presumably a candidate somewhere) would appear to be “authorized” by that Congressman. Thus, the NRCC is doing all that it can.³

2. Commission regulations require disclaimers only on “telephone banks” to the “general public,” and not on targeted telephone calls of the sort at issue.

Although it is NRCC policy to include disclaimers (as demonstrated by the attached affidavit), phone calls of the sort at issue do not as a matter of law require disclaimers. The F&LA completely ignores this. Under the Commission’s regulations (specifically section 110.11(a)), disclaimers are only required on public communications, not all communications as presumed by the F&LA. Although some telephone banks (as defined by section 100.28) would require disclaimers, section 100.26 makes clear that only telephone banks “to the general public” require disclaimers.

Section 110.11(a) makes clear that only “public communications” require disclaimers:

This section applies only to **public communications**, defined for this section to include the communications at 11 CFR 100.26 plus unsolicited electronic mail of more than 500 substantially similar communications and Internet websites of political committees available to the general public, and electioneering communications as defined in 11 CFR 100.29. The following types of such communications must include

11 CFR 110.11(a) (emphasis added).⁴

“Public communication” is defined in section 100.26:

³ In fact, the NRCC’s policy with respect to disclaimers is over-inclusive, and no effort is made to skirt or avoid disclosure. For example, all of the NRCC’s preprinted letterhead includes a “paid for by . . . ,” “not authorized by . . . ,” and web address. This is true regardless of content, or whether or not a disclaimer is mandated, thus demonstrating an effort to be over-inclusive.

⁴ This is true even in the case of solicitations. Commission regulations do not require disclaimers on all solicitations. The disclaimer requirements of section 110.11 only apply to “public communications by any person that solicit any contribution.” 11 CFR 110.11(a)(3).

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Public communication means a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank **to the general public**, or any other form of general public political advertising. The term public communication shall not include communications over the internet.

11 CFR 100.26 (emphasis added).

“Telephone bank” is defined in section 100.28:

Telephone bank means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period. A telephone bank does not include electronic mail or Internet communications transmitted over telephone lines. For purposes of this section, substantially similar includes communications that include substantially the same template or language, but vary in non-material respects such as communications customized by the recipient’s name, occupation, or geographic location.

11 CFR 100.28.

Thus, even if telephone calls constitute a “telephone bank” as defined by section 100.28,⁵ the disclaimer requirement would only apply if that telephone bank qualified as a “public communication” under section 100.26. In order for a telephone bank to qualify as a public communication (and thus be subject to disclaimer requirements), section 100.26 states that the telephone bank must be “to the general public.” Telephone banks not “to the general public” would not constitute a “public communication,” and thus would not be subject to the disclaimer requirement of section 110.11.⁶

⁵ The Commission cannot assume that telephone calls of the sort at issue constitute a “telephone bank.” To qualify as a telephone bank, there must be a sufficient number of identical or substantially similar calls. But what is at issue are fluid, live calls. These are not repetitive, garden-variety advocacy calls, but instead are calls that differ in material ways other than altering the name of the recipient or geographic location.

⁶ This reading is consistent with other language found in both BCRA and Commission regulations, all of which emphasizes the need for some sort of interaction with the general public. For example, even as amended by BCRA, section 441d still explicitly limits its reach to “general public political advertising.” Similarly, 11 CFR 110.11 limits its reach to “unsolicited electronic mail” and websites “available to the general public” – thus emphasizing the point that intra-party or non-general public communications do not require disclaimers.

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The Business Advisory Council and the Physicians' Advisory Board are party programs targeted to specific and limited constituencies. They are not programs open to the general public, and telephone calls related to these programs are not made to the general public. Exhibit A (Affidavit of Maura Kunz). Remarkably, the F&LA never asserts that the calls at issue were made to the general public. In fact, the F&LA repeatedly states that the calls at issue were made to targeted people regarding Republican Party activities:

- “Information gathered by the Commission indicates that the NRCC made telephone calls to various individuals concerning an award for business professionals and physicians and about an invitation to sit on a Congressional advisory committee.” F&LA at 1-2 (emphasis added).
- “News articles indicate the NRCC called doctors” *Id.* at 2.
- “Since 1998, the NRCC has been calling business owners regarding the Business Advisory Council.” *Id.* at 3.
- “One business owner posted on his website audio files” *Id.*

Thus, not only does the F&LA fail to allege that the calls at issue were made to the general public, the F&LA itself establishes that the calls at issue were not made to the general public. Under Commission regulations, such calls do not require disclaimers.

2. Several Commission AOs, indistinguishable in all material respects from the present case, have ruled that disclaimers are not required.

The Commission has already ruled in at least two instances that communications that do not involve general public advertising do not require disclaimers. Critically, these AOs interpreted language in section 441d(a) that has not been altered by either BCRA or subsequent Commission rulemaking.⁷ Even if it were not NRCC policy to include

⁷ Even though the Commission grafted the definition of “public communication” into section 441d(a), and thus attempted to expand section 441d(a)’s reach to include phone banks, that is of no consequence here. As the discussion of AOs 1988-40 and 1988-1 shows, even communications that are clearly within the

disclaimers on calls of the sort at issue, the NRCC would still be entitled to rely on such AOs. *See* 2 U.S.C. § 437f(c).

In AO 1988-40, a political committee asked, *inter alia*, whether or not certain post cards required disclaimers. Specifically, the committee wished to send campaign-related post cards to select persons pulled from a list of eligible voters provided by a local county. The political committee claimed it would rely on several factors in selecting possible recipients from the list. The factors were broad and rather vague, including electoral behavior; party affiliation; and “political judgments . . . as to which individuals or groups of individuals would be most desirable from the Committee’s standpoint to receive the post cards.” Based upon these facts, the Commission stated:

In addition, because the described post cards are not distributed “through any broadcast station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing, or other form of general public political advertising,” the post cards will not require a disclaimer under 2 U.S.C. § 441a and 11 CFR 110.11.

AO 1988-40 is indistinguishable from the present case. The critical issue in the AO concerning disclaimers turned on the question of whether or not post cards were a “form of general public advertising.” They were not in that case, because they were sent to a targeted list, created based upon what are essentially political considerations. This is exactly the case here: phone calls placed to a targeted group that was selected based upon certain criteria and governed by political considerations. In fact, the targeting in AO 1988-40 is more broad than the more focused targeting conducted for the Business Advisory Council or the Physicians’ Advisory Board.

reach of section 441d(a)’s disclaimer requirements (post cards delivered through the mail, palm cards, etc) do not require disclaimers when delivered to something less than the “general public ”

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In AO 1988-1, an individual who planned on seeking selection as a presidential delegate asked, *inter alia*, whether or not certain phone banks and palm cards would require disclaimers. Specifically, the phone calls were to identify likely caucus attendees, who would then receive follow-up letters. After noting that communications that constituted general public political advertising required disclaimers, the Commission ruled that the phone did not require disclaimers. The calls were made to a select list, and not to the general public; thus disclaimers were not required.

Like AO 1988-40, the material facts of AO 1988-1 are indistinguishable from the present case. The critical issue turned on whether or not phone banks made to a select list required disclaimers when the calls were placed to a select list. In fact, like the present case, the calls in AO 1988-1 were intra-party calls, designed to attract and energize supporters. This purpose mirrors one of the purposes of both the Business Advisory Council and Physicians' Advisory Board: to invite selected individuals to serve as honorary chairman, honorary delegates and the like (in addition to recruiting support within the party ranks, and invite individuals to attend various party meetings, events, and party strategy sessions).

4. MUR 5380 is a self-generated matter based upon erroneous facts in search of a legal violation.

MUR 5380 is a matter self-generated by the Commission.⁸ It is not based upon a complaint, nor did the NRCC have an opportunity to be heard prior to the Commission's

⁸ In its footnote 1, the F&LA references a number of complaint-generated MURs that were dismissed. These complaints were filed by the perennial frivolous complaint filer Larry Klayman of Judicial Watch. Given that those complaints were dismissed, it is baffling why the Commission wishes to self-generate Klayman-esque accusations – the F&L regurgitates several of Klayman's long since dismissed and discredited accusations, and one would think there is plenty to do already, given the need to promulgate new regulations in the wake the D.C. District Court's ruling in Shays v. FEC. For a summary of the original accusations, see the National Republican Congressional Committee's Initial Response to the Complaint In MUR 5194.

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finding of reason to believe that occurred in August of this year.⁹ The F&LA is replete with errors of both law and fact, based on little more than a handful of news articles that were critical of the NRCC's fundraising methods, in particular over the telephone, virtually all of which were written before the effective date of the Bipartisan Campaign Reform Act of 2002.

The Commission has already ruled that such information is insufficient to support a finding of reason to believe. In its Statement of Reasons in MUR 4960, the Commission stated that it "may find 'reason to believe' only if a complaint sets forth sufficient specific facts, which if proven true, would constitute a violation of" the Act. The Commission added that "[u]nwarranted legal conclusions from asserted facts, or mere speculation, will not be accepted as true." Moreover, there is no presumption in favor of allegations: "... credibility will not be weighed in favor of the complainant or the respondent"

MUR 5380 is nothing more than a one-sided, biased fact pattern in search of a legal violation.¹⁰ It includes all sorts of irrelevant barbs – numerous old news articles (some of which are over four years old), stale information, ridiculous statements about the NRCC not "explaining on the public record" how its fundraising works, etc. When stripped of such irrelevancies, the F&LA is left with very little, save for some conclusory

⁹ In fact, the NRCC was not served with a copy of the supporting F&LA – only recently did we receive a faxed copy of the F&LA, and an original has still not arrived in the mail.

¹⁰ This matter is all the more shocking given the newness of BCRA, and the Commission's own missteps and mistakes in informing the regulated community of the impact of the new law. For example, the Commission's first brochure on disclaimers was wrong – specifically, it failed to mention that the best efforts language had changed for campaign committees. Similarly, the information line has been less than consistent. For example, despite public statements by Commissioners in public settings, including Commission-sponsored seminars, that the ability of a federal campaign to contribute funds to a state candidate was a question of state law, the information line continued to claim that such contributions were limited to \$1,000. The intent of these examples is not to lay blame to the feet of the Commission or its professional staff, but instead merely to illustrate the daunting task that was presented by the enactment of BCRA, particularly the statutorily imposed regulatory schedule, and a lack of any sort of meaningful transition period.

accusations regarding NRCC fundraising. This does not satisfy the standard set forth in MUR 4960.

Left with very little in the way of supportable legal theory, the F&LA sets forth a convoluted and incorrect analysis of the law on disclaimers. But even then, the best it can offer is a statement buried on page 11 of the F&LA that “the telephone calls at issue here may have required disclaimers.” Is that a factual statement or legal statement? If factual, the F&LA itself concedes that calls did have disclaimers. If so, how can the F&LA support a finding of reason to believe? Or perhaps it is conceding legal infirmity – maybe such calls require disclaimers, maybe they do not, so says the F&LA. If that is the case, the Commission ought not revert back to what some had characterized as rulemaking by way of MUR.¹¹ Either way, the Commission’s reason to believe finding lacks sufficient support.¹²

5. The subject matter of this MUR goes to the heart of the NRCC’s constitutionally guaranteed associational rights.

Contrary to the F&LA’s nonsense about the NRCC’s failure to state “on the public record” details of its inner workings, the NRCC is under no obligation to disclose the details as to who is invited to join a certain party group, or why they are asked to join. As the U.S. Supreme Court has repeatedly ruled, such internal processes are protected by the right of association contained in the First Amendment. The Court has said:

Consistent with this tradition, the Court has recognized that the First Amendment protects “the freedom to join together in furtherance of common political beliefs,” which “necessarily presupposes the freedom to

¹¹ Perhaps the Commission wishes to use this matter to help further define the law in this area. Given the murkiness of the F&L, the NRCC respectfully requests pre-probable cause conciliation.

¹² Moreover, the subject matter of the MUR – disclaimers – has not been a high-priority item on the Commission’s own internal prioritization system, and the Commission routinely fails to take action on matters concerning disclaimers.

identify the people who constitute the association, and to limit the association to those people only.”

California Democratic Party v. Jones, 530 U.S. 567, 574 (2000)(*quoting Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214-15 (1986) and Democratic Party of United States v. Wisconsin ex rel. LaFollette, 450 U.S. 107, 122 (1981)).

Thus, the subject matter of this MUR goes to the heart of the NRCC’s constitutionally protected right of association. How the NRCC chooses to communicate with its members, supporters and recruits is not the sort of thing under the purview of the Commission. Ultimately, the Commission is not permitted to simply cobble together a few stale news articles and launch an extremely burdensome and intrusive inquiry. *See FEC v. Machinists Non-Partisan Political League*, 655 F.2d 380, 386-88 (D.C. Cir.), *cert. denied*, 454 U.S. 897 (1981)(especially careful judicial scrutiny of agency’s authority to investigate is appropriate where subpoena demands “delicate” materials concerning a political group’s internal communications, may infringe on first amendment associational rights, and is issued by an agency which cannot investigate based upon “official curiosity”); FEC v. Florida for Kennedy Committee, 681 F.2d 1281, 1284-85 (11th Cir. 1982)(court must closely scrutinize agency’s authority to investigate where subpoena may infringe upon first amendment associational rights).

6. Relevant Commission regulations are arbitrary and capricious.

The F&LA asserts that there is reason to believe that certain NRCC telephone calls violated 2 U.S.C. § 441d(a). But the text of section 441d(a) makes no mention of telephone calls, phone banks or the like. On the contrary, section 441d(a) specifies that to which it applies: “communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing, or any other type of general public

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political advertising.” Nowhere does section 441d(a) purport to cover the activity that is at issue; the Commission has noted this fact previously. *See* 67 Fed. Reg. 76,963 (“ . . . telephone banks are not specifically mentioned in section 441d(a).”).

The law before BCRA required “general public political advertising” to carry a statement of who paid for a communication and whether a candidate authorized it. 2 U.S.C. § 441d. As the Commission well knows, telephone calls or phone banks were not considered “general public political advertising” under pre-BCRA law. BCRA amended section 441d, broadening it to include, *inter alia*, electioneering communications, but the BCRA amendments to section 441d did not include any reference to telephone calls, phone banks or the like.

Instead of simply reading the plain language of the statute – and realizing that if Congress wished to include telephone calls or phone banks in section 441d, it could have done so -- the Commission elected to impermissibly rewrite the statute *via* its rulemaking. In the post-BCRA wave of rapid-fire rulemaking, the Commission proposed reading the definition of “public communication” found in section 431(22) into section 441d(a). Specifically, the Commission proposed including each listed term in the definition of “public communication” found in section 431(22) as a specific example of “general public political advertising.” In other words, despite that fact that Congress did not do so, the Commission proposed equating the description of “communication” in section 441d(a) with the term “public communication” as defined in section 431(22).

The Commission received two comments on the matter (one of which was from the NRCC, the other from the Democratic Party), both urging against this rewriting of the statute. Despite the unanimity of the comments, and a lack of any legislative intent or

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favorable comment sanctioning its conduct, the Commission nonetheless rewrote the statute. In so doing, the Commission confused two separate concepts established by Congress to address two separate purposes, and has made a mess of what could have been a rather clear standard.

Such action is contrary to law and arbitrary and capricious. The District of Columbia District Court has already found several of the regulations promulgated pursuant to BCRA to be improper, and if challenged, its regulations interpreting 441d will fare no better.

C. Conclusion

For the foregoing reasons, the National Republican Congressional Committee respectfully requests that the Commission reconsider its finding of reason to believe and dismiss Matter Under Review 5380.

Respectfully submitted,



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EXHIBIT A

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BEFORE THE FEDERAL ELECTION COMMISSION

National Republican Congressional Committee,
and Christopher J. Ward, as treasurer

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MUR 5380

AFFIDAVIT OF MAURA KUNZ

I, Maura Kunz, do depose and state as follows:

1. My name is Maura Kunz. I am currently the Director of Telemarketing Programs for the National Republican Congressional Committee ("NRCC"). I have served in this capacity for about the past two years. Through this position, I am familiar with the day-to-day operations of the NRCC with respect to its Business Advisory Council and Physicians' Advisory Board.

2. The Business Advisory Council is a project of the National Republican Congressional Committee, and consists primarily of small business owners who have been politically involved, and particularly supportive of the NRCC. In addition to financial support, many of those involved with the Council are grassroots activists across the country who care passionately about the future of our country. Generally speaking, it is a group of conservative businessmen and women who advocate a progressive, conservative, pro-business agenda. For those who choose to support the NRCC financially, contributions average between \$300 and \$500. There are periodic meetings and events, designed to keep the grassroots activists informed. Membership in the Council is based upon several criteria, including a commitment to a progressive, conservative, pro-business agenda. The Business Advisory Council is not open to the general public.

3. The Physicians' Advisory Board is a project of the National Republican Congressional Committee, and was developed as a means to mobilize actual physicians, and seek their support and counsel on positions the Republican Party takes with respect to health care

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reform. In turn, this would help mobilize grassroots support, and foster increased involvement in activities of the Republican Party. Selection for membership to the board is based upon several criteria, including an ability to display leadership skills in spreading the message of the needs for serious health care reform, and pro-active communication skills to communicate ideas to party leaders. As is the case with the Business Advisory Council, there are periodic meetings and events, designed to keep the grassroots activists informed. The Physicians' Advisory Board is not open to the general public.

4. The National Republican Congressional Committee's Business Advisory Council and Physicians' Advisory Board communicate with its members and other targeted individuals through a variety of methods, including telephone calls. Such calls are made to members of the Business Advisory Council and the Physicians' Advisory Board, supporters of the National Republican Congressional Committee (both financial and otherwise), and targeted individuals, whose selection is based upon political criteria. Such calls are not made to the general public.

5. Business Advisory Council and Physicians' Advisory Board phone calls are to contain the same standardized disclaimers, as reflected in Attachments 1 & 2. Specifically, such calls are to include:

- a. An identification of the NRCC as the sponsor of the call. This is conveyed at the beginning of each call.
- b. In the event a solicitation occurs, so-called "best efforts" language – in other words, a request for the address, occupation and employer of the contributor.
- c. Also in the event a solicitation occurs, a statement that contributions to the National Republican Congressional Committee and not tax deductible for federal income tax purposes.

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d. Also in the event a solicitation occurs, a statement that contributions from corporations and foreign nationals are prohibited.

e. Depending on the call, either an address or website address is provided. For example, in the event a recipient of a telephone call has question or asks for additional information, he or she is directed to the NRCC's website.

f. A statement that the call has been paid for by the National Republican Congressional Committee, and that it has not been authorized by any candidate or candidate's committee.

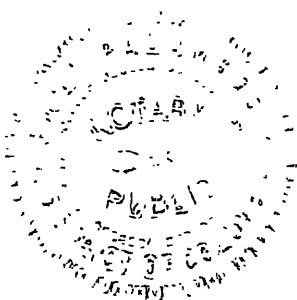
6. All follow up written materials also include such disclaimers. All written materials contain standard boilerplate: "Paid for by the National Republican Congressional Committee and not authorized by any candidate or candidate's committee," and either the Committee's web address, telephone number or address, contained in a box. Below the box is the statement "Not printed at government expense." The address of the NRCC is also provided in the body of the written materials.

7. All solicitations also contain additional disclaimers, including a request for the contributor's name, address, occupation and employer, and a statement that contributions are not tax deductible for federal income tax purposes.

FURTHER AFFIANT SAYETH NOT.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 9, 2004.

Maura E. Lung



EMILY PALUMBOS
Notary Public, District of Columbia
My Commission Expires 01/09

Emily Palumbos

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1

BUSINESS HOUSEFILE

CARD 4: CREDIT CARD/PHONE CHECK REQUEST

Only Credit Card or Phone Check Gifts Count!
DON'T LOSE THE GIFT NOW!

CARD NUMBER ON FILE: That's Great Mr(s) _____! And I'll just put that on the same credit card you used before, okay?

NO CREDIT CARD ON FILE: That's great Mr(s) _____! Will that be on a Visa or MasterCard? (if asked: We also take American Express or Discover)

CARD NOT AVAILABLE: Go to Phone Check Request

NO/HESITANT:

- Actually, because we're putting the Wall Street Journal ad together now, we almost have to do this with a credit card. Do you have your card handy? (or Do you have another card you could use?)
- I can assure you we have excellent security and we will also send you a written acknowledgement immediately.
- I can also give you a personal confirmation number and you can call us directly if you have any questions. (NOTE TO COMMUNICATOR: confirmation number is the same as the unique number and the number to call with questions is 1-877-565-1309)

IF YES: Go to Credit Card Close

IF STILL WANTS TO SEND CHECK: Continue with Phone Check

PHONE CHECK REQUEST

(use with everyone who doesn't give you a credit card)

Would you prefer to pay by check?

IF YES: That's great! I can take that over the phone too...all I need is the information on your check. It's just quicker and easier than doing it by mail (and I'll be glad to hold while you get your checkbook.)

IF YES: Card 5 - Close for Phone Check

IF NO: Card 6 - Lost Gift Close

HOW DOES CHECK BY PHONE WORK?: When you provide us with your checking account information (ABA and account number), you are authorizing the NRCC to directly debit your checking account in the amount of \$_____. The funds will be withdrawn within 2 business days, and we'll send you a written confirmation. Your bank statement will read "NRCC Contribution". (If asked: You do not need to void a check.)

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CARD 5: CLOSE FOR CREDIT CARD/PHONE CHECK

CREDIT CARD ON FILE:

- o Great! And I have the last 4 numbers on your card as _____. Can I get your expiration date?
- o And I just want to confirm: *we're processing a ____ dollar gift in (a single payment/2 equal payments)* on your credit card - okay?
 - o *If 2 equal installments:*
 - *IF CREDIT - CONTINUE*
 - *IF DEBIT - Unfortunately we are unable to accept debit cards for installments transactions. Do you have a credit card available or would you like us to process you ____ dollar gift in a single payment on your debit card?*
 - o *If has credit card: Go to credit card close*
 - o *If using debit card: Confirm amount and continue*
- o And let me confirm your name - I have...(CONFIRM NAME AND SPELLING IF NECESSARY)
- o Federal law requires us to report your BUSINESS TITLE, COMPANY NAME, AND COMPLETE ADDRESS (confirm business title, company name (verify spelling of company name) and business address)
- o Do you have a fax number? /I have your fax number as
- o Do you have an email address? /I have your email as
- o Great! We'll process your \$____ gift immediately and get you out a written acknowledgement. The charge will read "Business Advisory Council" and needs to be a paid out of personal funds. According to the "Bipartisan Campaign Finance Reform Act", it is now illegal for you to make or us to accept corporate contributions. Your gift isn't tax deductible, but I do thank you for your support! I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org. (And we'll contact you in a few weeks if you're selected as a Businessman/Businesswoman of the Year winner).

NO CREDIT CARD ON FILE:

- o Great! And what is the card number?... and the expiration date...
- o And I just want to confirm: *we're processing a ____ dollar gift in (a single payment/2 equal payments)* on your credit card - okay?
 - o *If 2 equal installments:*
 - *IF CREDIT - CONTINUE*
 - *IF DEBIT - Unfortunately we are unable to accept debit cards for installments transactions. Do you have a credit card available or would you like us to process you ____ dollar gift in a single payment on your debit card?*
 - o *If has credit card: Go to credit card close*
 - o *If using debit card: Confirm amount and continue*
- o And let me confirm your name - I have...(CONFIRM NAME AND SPELLING)

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- o Federal law requires us to report your BUSINESS TITLE, COMPANY NAME, AND COMPLETE ADDRESS (confirm business title; company name (verify spelling of company name) and business address)
- o Do you have a fax number? /I have your fax number as
- o Do you have an email address? /I have your email as
- o Great! We'll process your \$____ gift immediately and get you out a written acknowledgement. The charge will read "Business Advisory Council" and needs to be a paid out of personal funds. According to the "Bipartisan Campaign Finance Reform Act", it is now illegal for you to make or us to accept corporate contributions. Your gift isn't tax deductible, but I do want to thank you for your support! I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org. (And we'll contact you in a few weeks if you're selected as a Businessman/Businesswoman of the Year winner).

PHONE CHECK:

- o And is this a personal check, right?
- o IF NO: According to the "Bipartisan Campaign Finance Reform Act" it is now illegal for you to make or for us to accept corporate contributions. By law we can no longer accept a business check so it needs to be a personal one - or a debit card. Do you have one there?
 - IF NO: Go to Card 6 - Lost Gift Close
 - IF YES: continue on...
- o And your "ABA" routing number (it's 9 digits)?
- o And what is your account number?
- o And let me confirm your name - I have...(CONFIRM NAME AND SPELLING)
- o Federal law requires us to report your BUSINESS TITLE, COMPANY NAME, AND COMPLETE ADDRESS (confirm business title; company name (verify spelling of company name) and business address)
- o Do you have a fax number? /I have your fax number as
- o Do you have an email address? /I have your email as
- o Now just to confirm: we're going to process your gift today, in the amount of \$_____ and your statement will read NRCC contribution - okay?
- o Great, if you have any questions, you can call 1-877-333-4201. We'll send you a written acknowledgement immediately. I need to tell you your gift isn't tax deductible, but we certainly thank you for your support! I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org. (And we'll contact you in a few weeks if you're selected as a Businessman/Businesswoman of the Year winner).

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CARD 6: CLOSE FOR NO/LOST GIFT

NO/NOT INTERESTED: Well I certainly understand Mr(s) _____, and I thank you for everything you've done in the past. (You've been very generous!) I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. (if no fax #: Before you go, could I get your fax number?)

LOST GIFT: That's fine. What I can do is send you a letter and you can just mail us your check. We'll look for your \$_____ gift in the next couple weeks. Let me just confirm some information...I have... (confirm fax number and mailing address and business title and company name.) I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org. (enter) Great, thanks again, Mr(s)_____!

CARD 7: ALREADY SENT GIFT/RECENTLY GAVE

Was that to renew your membership for 2005?

IF NO: Well we really appreciate your support. We wouldn't even be on the phones today if we weren't facing a critical financial short fall and that's why we need everyone to renew their membership. Since you just gave could you help with a much smaller gift of (Third Request Amount) ____ or ____ dollars?

IF YES: Well thank you very much for that! You've been very generous and thanks for talking to me today. I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org. Goodbye.

IF YES: CARD 4 - Credit Card/Phone Check Request

IF SEND ME SOMETHING: Actually, you can get more information from our website. It's www.businessadvisorycouncil.org

IF NO/NOT INTERESTED: CARD 6 - Close for No

CARD 8: SEND ME SOMETHING

I understand, but we're facing a critical financial shortfall. So we need everyone to renew their membership. In fact we're updating our roster now so we really need to firm up our commitments right away. Let me ask you this: could we count on a smaller gift, say just ____ dollars?

IF YES: CARD 4 - Credit Card/Phone Check Request

IF SEND ME SOMETHING: Actually, you can get more information from our website. It's www.businessadvisorycouncil.org

IF NO/NOT INTERESTED: CARD 6 - Close for No

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CARD 9: ECONOMY SLOW/STOCK MARKET DOWN/BUSINESS OFF

I know what you're saying and we wouldn't be on the phones today if we weren't in a financial crisis. Let me ask you this could we count on a *smaller gift*, say just _____ dollars - would that be better for you?

IF YES: CARD 4 - Credit Card/Phone Check Request

IF HESITANT/TOO MUCH: CARD 3 - Third Request

IF NO: CARD 6 - Close for No

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BUSINESS PROSPECTING

➤ **CARD 5: CLOSE FOR CREDIT CARD**

CREDIT CARD CLOSE:

- Great...and what is the *card number*?
- And the *expiration date*?
- And I just want to confirm: *we're processing a ____ dollar gift in (a single payment/2 equal payments) on your credit card – okay?*
- **IF 2 EQUAL INSTALLMENTS:**

Will you be using a credit card or a debit card?

IF CREDIT – CONTINUE to fax number

IF DEBIT: Unfortunately we are unable to accept debit cards for installment transactions. Do you have a credit card available or would you like us to process your ____ dollar gift in a single payment on your debit card?

IF Has a Credit Card: Go to credit card close.

IF using debit card: Confirm amount and continue...

- Do you have a *fax number*? (If asked why: To send you updates)
- Do you have an *e-mail address*?
- Great! We'll process your \$____ gift immediately and send you a written acknowledgement. The charge will read Business Advisory Council. I need to remind you that your gift isn't tax deductible and gifts from foreign nationals are prohibited. Also, according to the "Bipartisan Campaign Finance Reform Act" it is now illegal for you to make or for us to accept corporate contributions. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. Thank you for your support, and we look forward to your input on the Business Council!

IF DONOR SAYS CARD IS CORPORATE OR IS UNSURE IF CARD IS CORPORATE: Unfortunately we can only accept a gift from your personal account. Do you have a personal card handy or would you like to pay by personal check?

IF YES TO CARD: Go to Credit Card Close at top of this page

IF YES TO CHECK: Go to Card 6 – Close for Check by phone

IF NO: Go to Card 7 – Lost Gift Close

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➤ CARD 6: CLOSE FOR CHECK BY PHONE

PHONE CHECK CLOSE:

- And this is a personal check, right?

NO: According to the "Bipartisan Campaign Finance Reform Act" it is now illegal for you to make or for us to accept corporate contributions. By law we can no longer accept a business check so it needs to be a personal one – or a debit card. Do you have one there?

NO: Go to Card 7 – Lost Gift Close

YES: continue on...

- And your "**ABA**" routing number (it's 9 digits)?
- And what is your **account number**?
- Do you have a **fax number**?
- Do you have an **e-mail address**?
- Now just to confirm: *we're going to process a gift in the amount of _____ dollars from your checking account – okay?*
- Great, We'll process your \$_____ gift immediately and send you a written acknowledgement. Your statement will read "NRCC Contribution". And I need to remind you that your gift isn't tax deductible, and contributions from corporations and foreign nationals are prohibited. Thank you for your support! Let me also give you a number you can call if you have any questions. It's **1-877-333-4201**. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. We look forward to your input on the Business Council!
- **HOW DOES CHECK BY PHONE WORK?:** When you provide us with your checking account information (ABA and account number), you are authorizing the NRCC to directly debit your checking account in the amount of \$_____. The funds will be withdrawn within 2 business days, and we'll send you a written acknowledgement. Your bank statement will read "NRCC Contribution". (If asked: You do not need to void a check.)

➤ CARD 7: CLOSE FOR NO/LOST GIFTS/JOIN WON'T DONATE

NO: I certainly understand and I thank you for talking to me. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org.

JOIN BUT WON'T DONATE: That's fine. What I can do is go ahead and send you out all your materials (confirm address and fax number)...**and welcome to the Council!**

LOST GIFT CLOSE: I understand, and we normally don't do it this way, but I'll get approval from our Membership Director to fax you a payment form with our address. We will add your **@\$\$\$** immediately to our budget to help pay for the Wall Street Journal Ad. Can I get your fax number?

(Confirm fax number and address). Great! You can look for your membership package in the next few days, which will arrive Priority Mail. I'll also fax you a pledge form right away and look for your check in the next few days. Your **@\$\$\$** is crucial at this time and I thank you. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. Welcome to the council and have a great day!

IF NO FAX NUMBER: That's ok, I'll just mail you the payment form along with your membership package, which will arrive Priority Mail. (Confirm address). Great! Your **@\$\$\$** is crucial at this time and I'll look for check in the next few days. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. Welcome to the council and have a great day!

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PHYSICIANS HOUSEFILE

CARD 4: CREDIT CARD/PHONE CHECK REQUEST

*Only Credit Card or Phone Check Gifts Count!
DON'T LOSE THE GIFT NOW!*

CARD NUMBER ON FILE: *That's Great Dr _____! And I'll just put that on the same credit card you used before, okay?*

NO CREDIT CARD ON FILE: *That's great Dr _____! Will that be on a Visa or MasterCard? (if asked: We also take American Express or Discover)*

CARD NOT AVAILABLE: Go to Phone Check Request

NO/HESITANT:

- *Actually, because we're putting the Wall Street Journal ad together now, we almost have to do this with a credit card. Do you have your card handy? (or Do you have another card you could use?)*
- I can assure you we have excellent security and we will also send you a written acknowledgement immediately.
- I can also give you a personal confirmation number and you can call us directly if you have any questions. (NOTE TO COMMUNICATOR: confirmation number is the same as the unique number and the number to call with questions is 1-877-565-1309)

IF YES: Go to Credit Card Close

IF STILL WANTS TO SEND CHECK: Continue with Phone Check

PHONE CHECK REQUEST

(use with everyone who doesn't give you a credit card)

Would you prefer to pay by check?

IF YES: *That's great! I can take that over the phone too...all I need is the information on your check. It's just quicker and easier than doing it by mail (and I'll be glad to hold while you get your checkbook.)*

IF YES: Card 5 - Close for Phone Check

IF NO: Card 6 - Lost Gift Close

HOW DOES CHECK BY PHONE WORK?: When you provide us with your checking account information (ABA and account number), you are authorizing the NRCC to directly debit your checking account in the amount of \$____. The funds will be withdrawn within 2 business days, and we'll send you a written confirmation. Your bank statement will read "NRCC Contribution". (If asked: You do not need to void a check.)

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CARD 5: CLOSE FOR CREDIT CARD/PHONE CHECK

CREDIT CARD ON FILE:

- o Great! And I have the last 4 numbers on your card as _____. Can I get your expiration date?
- o And I just want to confirm: *we're processing a ____ dollar gift in (a single payment/2 equal payments)* on your credit card - okay?
 - o *If 2 equal installments:*
 - *IF CREDIT - CONTINUE*
 - *IF DEBIT - Unfortunately we are unable to accept debit cards for installments transactions. Do you have a credit card available or would you like us to process you ____ dollar gift in a single payment on your debit card?*
 - o *If has credit card: Go to credit card close*
 - o *If using debit card: Confirm amount and continue*
- o And let me confirm your name - I have...(CONFIRM NAME AND SPELLING IF NECESSARY)
- o Federal law requires us to report your BUSINESS TITLE, COMPANY NAME, AND COMPLETE ADDRESS (confirm business title, company name (verify spelling of company name) and business address)
- o Do you have a fax number? /I have your fax number as
- o Do you have an email address? /I have your email as
- o Great! We'll process your \$____ gift immediately and get you out a written acknowledgement. The charge will read "Physicians Advisory Board" and needs to be a paid out of personal funds. According to the "Bipartisan Campaign Finance Reform Act", it is now illegal for you to make or us to accept corporate contributions. Your gift isn't tax deductible, but I do thank you for your support! I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org.

NO CREDIT CARD ON FILE:

- o Great! And what is the card number?... and the expiration date...
- o And I just want to confirm: *we're processing a ____ dollar gift in (a single payment/2 equal payments)* on your credit card - okay?
 - o *If 2 equal installments:*
 - *IF CREDIT - CONTINUE*
 - *IF DEBIT - Unfortunately we are unable to accept debit cards for installments transactions. Do you have a credit card available or would you like us to process you ____ dollar gift in a single payment on your debit card?*
 - o *If has credit card: Go to credit card close*
 - o *If using debit card: Confirm amount and continue*
- o And let me confirm your name - I have...(CONFIRM NAME AND SPELLING)
- o Federal law requires us to report your BUSINESS TITLE, COMPANY NAME, AND COMPLETE ADDRESS (confirm business title, company name (verify spelling of company name) and business address)

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- o Do you have a fax number? /I have your fax number as
- o Do you have an email address? /I have your email as
- o Great! We'll process your \$_____ gift immediately and get you out a written acknowledgement. The charge will read "Physicians Advisory Board" and needs to be a paid out of personal funds. According to the "Bipartisan Campaign Finance Reform Act", it is now illegal for you to make or us to accept corporate contributions. Your gift isn't tax deductible, but I do want to thank you for your support! I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org.

PHONE CHECK:

- o And is this a personal check, right?
- o IF NO: According to the "Bipartisan Campaign Finance Reform Act" it is now illegal for you to make or for us to accept corporate contributions. By law we can no longer accept a business check so it needs to be a personal one - or a debit card. Do you have one there?
 - IF NO: Go to Card 6 - Lost Gift Close
 - IF YES: continue on...
- o And your "ABA" routing number (it's 9 digits)?
- o And what is your account number?
- o And let me confirm your name - I have...(CONFIRM NAME AND SPELLING)
- o Federal law requires us to report your BUSINESS TITLE, COMPANY NAME, AND COMPLETE ADDRESS (confirm business title, company name (verify spelling of company name) and business address)
- o Do you have a fax number? /I have your fax number as
- o Do you have an email address? /I have your email as
- o Now just to confirm: we're going to process your **gift today**, in the amount of \$_____ and your statement will read NRCC contribution - okay?
- o Great, if you have any questions, you can call 1-877-333-4201. We'll send you a written acknowledgement immediately. I need to tell you your gift isn't tax deductible, but we certainly thank you for your support! I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org.

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CARD 6: CLOSE FOR NO/LOST GIFT

NO/NOT INTERESTED: Well I certainly understand Dr _____, and I thank you for everything you've done in the past. (You've been very generous!) I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. (if no fax #: Before you go, could I get your fax number?)

LOST GIFT: That's fine. What I can do is send you a letter and you can just mail us your check. We'll look for your \$_____ gift in the next couple weeks. Let me just confirm some information...I have... (confirm fax number and mailing address and business title and company name.) I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org. (enter) Great, thanks again, Dr _____!

CARD 7: ALREADY SENT GIFT/RECENTLY GAVE

Was that to renew your membership for 2005?

IF NO: Well we really appreciate your support. We wouldn't even be on the phones today if we weren't facing a critical financial short fall and that's why we need everyone to renew their membership. Since you just gave could you help with a much smaller gift of (Third Request Amount) ____ or ____ dollars?

IF YES: Well thank you very much for that! You've been very generous and thanks for talking to me today. I need to remind you that this call was paid for by the National Republican Congressional Committee and is not authorized by any candidate or candidate's committee. www.nrcc.org. Goodbye.

IF YES: CARD 4 - Credit Card/Phone Check Request

IF SEND ME SOMETHING: Actually, you can get more information from our website. It's www.physiciansadvisoryboard.org

IF NO/NOT INTERESTED: CARD 6 - Close for No

CARD 8: SEND ME SOMETHING

I understand, but we're facing a critical financial shortfall. So we need everyone to renew their membership. In fact we're updating our roster now so we really need to firm up our commitments right away. Let me ask you this: could we count on a smaller gift, say just ____ dollars?

IF YES: CARD 4 - Credit Card/Phone Check Request

IF SEND ME SOMETHING: Actually, you can get more information from our website. It's www.physiciansadvisoryboard.org

IF NO/NOT INTERESTED: CARD 6 - Close for No

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CARD 9: ECONOMY SLOW/STOCK MARKET DOWN/BUSINESS OFF

I know what you're saying and we wouldn't be on the phones today if we weren't in a financial crisis. Let me ask you this could we count on a **smaller gift**, say just _____ dollars - *would that be better for you?*

IF YES: CARD 4 - Credit Card/Phone Check Request

IF HESITANT/TOO MUCH: CARD 3 - Third Request

IF NO: CARD 6 - Close for No

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PHYSICIANS PROSPECTING

➤ **CARD 5: CLOSE FOR CREDIT CARD**

CREDIT CARD CLOSE:

- Great...and what is the *card number*?
- And the *expiration date*?
- And I just want to confirm: *we're processing a ____ dollar gift in (a single payment/2 equal payments) on your credit card – okay?*
- **IF 2 EQUAL INSTALLMENTS:**

Will you be using a credit card or a debit card?

IF CREDIT - CONTINUE to fax number

IF DEBIT: Unfortunately we are unable to accept debit cards for installment transactions. Do you have a credit card available or would you like us to process your ____ dollar gift in a single payment on your debit card?

IF Has a Credit Card: Go to credit card close.

IF using debit card: Confirm amount and continue...

- Do you have a *fax number*? (If asked why: To send you updates)
- Do you have an *e-mail address*?
- Great! We'll process your \$____ gift immediately and send you a written acknowledgement. The charge will read Physicians Advisory Board. I need to remind you that your gift isn't tax deductible and gifts from foreign nationals are prohibited. Also, according to the "Bipartisan Campaign Finance Reform Act" it is now illegal for you to make or for us to accept corporate contributions. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. Thank you for your support, and we look forward to your input on the Board!

IF DONOR SAYS CARD IS CORPORATE OR IS UNSURE IF CARD IS CORPORATE: Unfortunately we can only accept a gift from your personal account. Do you have a personal card handy or would you like to pay by personal check?

IF YES TO CARD: Go to Credit Card Close at top of this page

IF YES TO CHECK: Go to Card 6 – Close for Check by phone

IF NO: Go to Card 7 – Lost Gift Close

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➤ CARD 6: CLOSE FOR CHECK BY PHONE

PHONE CHECK CLOSE:

- And this is a personal check, right?

NO: According to the "Bipartisan Campaign Finance Reform Act" it is now illegal for you to make or for us to accept corporate contributions. By law we can no longer accept a business check so it needs to be a personal one – or a debit card. Do you have one there?

NO: Go to Card 7 – Lost Gift Close

YES: continue on...

- And your "**ABA**" routing number (it's 9 digits)?
- And what is your **account number**?
- Do you have a **fax number**?
- Do you have an **e-mail address**?
- Now just to confirm: *we're going to process a gift in the amount of _____ dollars from your checking account – okay?*
- Great, We'll process your \$_____ gift immediately and send you a written acknowledgement. Your statement will read "NRCC Contribution". And I need to remind you that your gift isn't tax deductible, and contributions from corporations and foreign nationals are prohibited. Thank you for your support! Let me also give you a number you can call if you have any questions. It's **1-877-333-4201**. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. We look forward to your input on the Board!
- **HOW DOES CHECK BY PHONE WORK?:** When you provide us with your checking account information (ABA and account number), you are authorizing the NRCC to directly debit your checking account in the amount of \$_____. The funds will be withdrawn within 2 business days, and we'll send you a written acknowledgement. Your bank statement will read "NRCC Contribution". (If asked: You do not need to void a check.)

➤ CARD 7: CLOSE FOR NO/LOST GIFTS/JOIN WON'T DONATE

NO: I certainly understand and I thank you for talking to me. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org.

JOIN BUT WON'T DONATE: That's fine. What I can do is go ahead and send you out all your materials (confirm address and fax number)...and welcome to the Board!

LOST GIFT CLOSE: I understand, and we normally don't do it this way, but I'll get approval from our Membership Director to fax you a payment form with our address. We will add your @\$\$\$ immediately to our budget to help pay for the Wall Street Journal Ad. Can I get your fax number?

(Confirm fax number and address). Great! You can look for your membership package in the next few days, which will arrive Priority Mail. I'll also fax you a pledge form right away and look for your check in the next few days. Your @\$\$\$ is crucial at this time and I thank you. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. Welcome to the board and have a great day!

IF NO FAX NUMBER: That's ok, I'll just mail you the payment form along with your membership package, which will arrive Priority Mail. (Confirm address). Great! Your @\$\$\$ is crucial at this time and I'll look for check in the next few days. This call is paid for by the National Republican Congressional Committee. Not authorized by any candidate or candidate's committee. www.nrcc.org. Welcome to the board and have a great day!

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