

Republican
National
Committee

David A. Norcross
General Counsel

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

AUG 11 3 31 PM '95

August 9, 1995

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

Supplement To
AOR 1995-25

AOR 1995-25

Dear Mr. Litchfield:

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

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

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



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

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

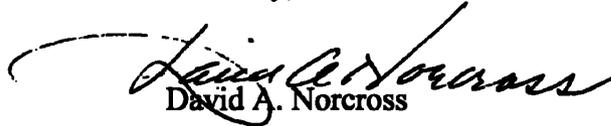
Even assuming that prior approval would pass Constitutional muster the Commission should be aware that the decision to use a specific script is usually a last minute decision with the final copy being approved very close to air time. As a practical matter the FEC could never address specific communications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

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

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

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

Sincerely,



David A. Norcross



**Republican
National
Committee**

**TITLE: "THE PROMISE"
:30**

VIDEO

**American flag backdrop
Slow motion dissolves of
the Capitol exterior and interior,
gavel, etc.**

**CHYRON: Republicans:
Cutting staff and committees
Making Congress live by its own laws.**

**CHYRON: Join the fight.
Call 202-224-3121 to pass the Balanced
Budget Amendment.**

**Congress votes on January 19th.
Paid for by The Republican National
Committee.**

AUDIO

(Announcer):

**"On election day, America sent
a clear message.**

**You chose Republicans who
voted to change the way
Congress does business.**

**And on their first day in
Washington, the new
Republican majorities kept that
promise.**

**It's the first step toward smaller
government, lower taxes, and
more freedom.**

**Join the fight. Help us win the
next battle – and pass the
Balanced Budget Amendment.**

**Because we're doing what we
promised."**

TOO YOUNG TO DIE

MEDICARE
1965-2002

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

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

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

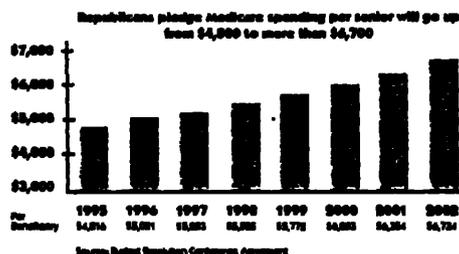
The trustees in charge of Medicare—including three Clinton Cabinet members—have warned the president and Congress that Medicare is going bankrupt in 2002. No Democrat or Republican disputes this fact.

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

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

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

Republicans pledge to increase total Medicare spending by 54%—a faster rate of



growth than for any other major government program.

Republicans pledge that you can keep your existing coverage.

Republicans pledge that you can keep your own doctor.

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

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

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

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

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

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

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

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

Name _____

Address _____

City _____

State _____ Zip _____

Phone _____

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

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

Commercial

Wife reading book entitled Medicare Trustees Report

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

Husband: mumbles “well...”

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

Husband: mumbles “ protect us...”

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

Voice Over: There is a better way.

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

Paid for by the Republican National Committee