

AOR 2012-27



July 10, 2012

VIA COURIER and EMAIL

Anthony Herman
General Counsel
Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

Dear Mr. Herman:

Pursuant to 2 U.S.C. § 437f (2012), we seek an advisory opinion on behalf of the National Defense Committee ("National Defense"), a tax-exempt organization operating under Section 501(c)(4) of the Internal Revenue Code. National Defense is comprised of patriotic Americans and veterans who support limited government, constitutional accountability, strong military protection of the United States, and our historic commitment to service-members and veterans. In keeping with its mission, National Defense wishes to speak out concerning political issues, candidates, and the 2012 elections. After reviewing the Federal Election Commission's many regulations, it cannot determine whether its planned activities would require it to register and report as a "political committee" and whether its speech might be deemed "express advocacy." Because it would like to speak very soon, it requests expedited consideration within thirty days pursuant to Section 437f(a)(2) and 74 Fed. Reg. 32,160 (July 7, 2009).

National Defense Committee

National Defense is incorporated as a non-profit organization in the Commonwealth of Virginia, exempt from taxation under Section 501(c)(4) of the Internal Revenue Code. It is not under the control of any candidate, nor does it have as its major purpose the election or defeat of clearly identified candidates. It will not make any in-kind or direct contributions to federal candidates, party committees, or political committees that make contributions to federal candidates or political party committees. National Defense will not make coordinated expenditures within the meaning of the Federal Election Campaign Act ("FECA"), nor is it affiliated with any group or committee that makes contributions within the meaning of the FECA. Lastly, National Defense will not accept any contributions from foreign nationals or federal contractors within the meaning of the FECA. It has included a copy of its bylaws as EXHIBIT 1 to this Advisory Opinion Request ("AOR").

National Defense wishes to avoid the public stigma and regulatory burdens of being labeled a political action committee. It simply wishes to speak.



FACTUAL BACKGROUND

National Defense is an all-volunteer organization which focuses on matters that impact war veterans, veterans' affairs, veterans' issues and programs, national defense, homeland security, and national security. National Defense engages in a number of educational and issue messaging activities, including surveying and analyzing the sense of Congress on a variety of issues, supporting limited government, and engaging in grassroots and volunteer advocacy for improvements to the military absentee voting system, military and veteran re-employment programs, and educational programs for military and veterans. National Defense also advocates for improved and upgraded military capabilities, particularly with regard to naval vessels and wounded warrior care.

National Defense currently has a small budget and can spend just over \$3,000 to fund communications discussing policy issues pertinent to its mission. It plans to place these video advertisements on a variety of nationally distributed online and social media platforms, including, but not limited to, paid video placements via a commercial vendor. *See* EXHIBIT 2. National Defense would like to ask for more than \$1,000 from other individuals to help support its speech and would also like to draw upon donations from supporters to pay for additional, future advertisements. Such advertisements would discuss public issues relevant to upcoming federal elections, military voting, and policy positions of candidates for federal office that relate to National Defense's core mission. They would be similar to the ones listed in this AOR.

National Defense is unable to afford ongoing counsel to defend against complaints that might allege it has violated one or more of the Commission's numerous and complex regulations.¹ Moreover, it cannot afford additional legal fees nor can it timely communicate with the public if it is forced to request advisory opinions each time it would like to speak or if it is required to register as a "political committee" in the midst of its public communications. Consequently, it brings this AOR to advise the Commission of its current and future plans, and seeks bright-line guidance so it will know – in advance – where the legal boundaries lie between banned, regulated, and non-regulated speech and association. *See Citizens United v. FEC*, 130 S.Ct. 876, 895 (2010).

National Defense plans to save its funds to budget for additional advertisements beyond those described herein. These would be similar to the ones listed in this advisory opinion request ("AOR"). However, it cannot afford additional legal fees nor can it timely communicate with the public if it is forced to request advisory opinions each time it would like to speak or if it is required to register as a "political committee" in the midst of its public communications. Because of this, National Defense seeks clear instruction from the Commission so that it may properly act to avoid any violation of the FECA.

¹ *See, e.g.*, Robert Bauer's complaint filed on behalf of Obama for America and the Democratic National Committee against Crossroads GPS predicated upon this very legal theory. <http://www.documentcloud.org/documents/370370-obama-lawyers-letter-to-crossroads.html>



PROPOSED SPEECH

As soon as possible, National Defense will begin paying for issue advertisements that discuss limited government, constitutional accountability, and strong military protection of the United States. National Defense will be using inexpensive means to convey its viewpoint on these topics to the broadest possible audience. This will allow National Defense to both speak to and be heard by like-minded parties with which it wishes to associate. The full text of proposed scripts is included below, while additional information concerning these scripts with visual and audio information can be found in EXHIBIT 2.

A. Let's Make History

"America needs a strong military capable of meeting the threats of tomorrow. But Nydia Velázquez repeatedly introduced and supported bills like HR 3638 that would cut off funding for frontline troops. Rather than standing up for America, Nydia Velázquez has been one of the least effective members of Congress. This fall, let's make history by changing that. Protect our freedom. Defend our nation. Learn about HR 3638."

B. Ethically Challenged

"Nydia Velázquez. Ethically challenged. A key supporter of the Troubled Asset Relief Program. Calls bailed-out Wall Street greedy one day, but takes hundreds of thousands from it the next. A leader you can believe in? Call Nydia Velázquez and let's make sure we end the bailouts that bankrupt America."

C. ObamaCare

"Nancy Pelosi and ObamaCare, what a pair! Even though most Americans opposed ObamaCare, Pelosi maintained her support of socialized medicine. But we can't let ObamaCare win. Our proud patriotic voices must stand against ObamaCare and vote socialized medicine out. Support conservative voices and public servants ready to end ObamaCare's reign."

D. Military Voting Matters

"Military voting matters. That's why Nancy Pelosi is such a disappointment for service men and women. Instead of supporting express delivery of overseas military ballots, Pelosi favored sluggish postal unions. Shouldn't military voices and votes matter? Shouldn't yours? Be heard this fall."

E. Military Voting Hindered

"Our heroes on the front lines know that Obama's assault on America's military is putting their lives, the care of wounded warriors, and the GI and Veterans' benefits they were promised at risk. Is that why Obama's Justice Department and Congressional liberals refuse to stand up for military voting rights? Shouldn't those who dodge bullets for our freedom be free to vote their conscience and vote out those who won't keep their promises? Take a stand with us and make sure military voting is taken seriously."



F. Stop the Liberal Agenda

“Harry Reid: Willing to put America’s service men and women at risk through his risky sequestration gamble. Willing to put politics above common sense and protecting the men and women who defend our nation. Stop the insanity, stop sequestrations, stop Reid’s twisted liberal agenda. This fall, get educated about Harry Reid, get engaged, and get active.”

G. Don’t Trust Harry Reid

“What kind of leader is Harry Reid? Ineffective. Ultra-liberal. Unrepresentative of Nevada values. Harry Reid voted for increasing Tricare premiums to nickel and dime America’s heroes. Veterans and service men and women know better than to trust Harry Reid. This November: support new voices, support your military, support Nevada values.”

PROPOSED DONATION REQUESTS

A. Military Voices and Votes Must be Heard

“Our heroes on the front lines know that Obama’s assault on America’s military is putting their lives, the care of wounded warriors, and the GI and Veterans benefits they were promised at risk. Is that why Obama’s Justice Department & Congressional liberals refuse to stand up for military voting rights? Help those who dodge bullets for our freedom vote their conscience. Support their right to vote out Obama – donate to National Defense so we can stand up for military voting rights this fall.”

B. America the Proud?

“It used to be that America was a nation we could be proud of. But today, an ultra-liberal Congress repeatedly ignores the value of our military. Military voting, ignored. Protecting military benefits, disregarded. Veterans, left out in the cold. And the Commander in Chief sits by. In building a \$1 billion war chest, the Commander in Chief makes sure liberals will win this fall, while crippling the military. Let’s put an end to this nonsense. Donate to National Defense Committee today and let’s roll back the Commander in Chief’s liberal agenda.”

C. Strategic Stupidity

“Crippling America’s military through sequestration is a strategic failure – and Senate Democrats have supported this insanity! With your donation, we can speak out against the liberal dream of ending American Exceptionalism and decimating America’s military. We can stop the Democrats’ madness. Help send a message to misguided Senators like Jon Tester. Support National Defense, and let’s retire these failed policies.”

D. Fighting Back

“Supporters of traditional constitutional values have celebrated our courts’ defense of freedom, and planned how to make the most effective use of your support this fall. Your donation to National Defense will beat back the liberal Obama agenda and bring about real change in



Washington. Help America fight back in print, on the air, and against liberal deep pockets. Stand together. Get organized. Start now.”

QUESTIONS PRESENTED

1. Will any of National Defense’s proposed speech constitute “express advocacy” and be subject to regulation?

National Defense would like to speak out about the issues detailed above without having to register and report as a “political committee” with this Commission. National Defense is a grassroots organization with a small budget. Every dollar spent on compliance with FEC reporting is a dollar taken away from its speech. It does not understand the vague rules regarding “political committee status,” related definitions, or the vague rules governing the “express advocacy” standard. This vagueness effectively mutes National Defense. It cannot speak out and be heard on important matters such as military voting, limited government, and veterans’ issues unless clear guidance and boundaries are provided regarding its proposed speech.

National Defense seeks instruction from the Commission concerning whether, and why, any of the above listed scripts, and those found in EXHIBIT 1, would constitute “express advocacy” under 11 C.F.R. § 100.22(a) or (b).

National Defense also seeks guidance from the Commission for the benefit of its future exercise of free speech. Specifically, in order to plan its activities, National Defense must know where the boundary line is found between unregulated issue advocacy and regulated express advocacy or regulated communications. It must have sufficient information to determine whether or not any future ad is subject to FEC regulation and reporting. After review of 11 C.F.R. § 100.22(b), enforcement matters, advisory opinions, and Explanation and Justification (“E&J”) statements, no consistent guidance can be found. The Express Advocacy E&J explains that “communications discussing or commenting on a candidate's character, qualifications or accomplishments are considered express advocacy under new section 100.22(b) if, in context, they have no reasonable meaning other than to encourage actions to elect or defeat the candidate in question.” 60 Fed. Reg. 35,292, 35,295 (Jul. 6, 1995). However, no clear line of demarcation illustrates just how much discussion or commentary about a candidate’s character, qualifications, or accomplishments transforms issue advocacy into express advocacy. Similarly, the Commission’s interpretation of express advocacy and political committee status has been less than consistent. *See, e.g.*, MUR 5634 (Sierra Club), First General Counsel’s Report (F.E.C. 2005) (a “close call” transforms speech into express advocacy); MUR 5842 (Economic Freedom Fund), Statement of Reasons of Commissioners Cynthia L. Bauerly and Ellen L. Weintraub (F.E.C. 2009) (describing a two-Commissioner “electoral nexus” approach to speech regulation); MUR 5831 (Softer Voices) (F.E.C. 2008), First General Counsel’s Report (describing a “positive light” approach to express advocacy determinations); AO 2012-11 (Free Speech) (illustrating the lack of uniform interpretation of the standards defining express advocacy, even among members of the Commission itself).

National Defense intends to speak out in ways similar to those described herein, and do so over time in furtherance of its exempt purpose. In order to do so, and to ensure the rapid and easy



distribution of its prospective speech, it requires this Commission's guidance concerning the boundary lines between regulated and non-regulated activity.

2. Will the Commission continue to apply and enforce 11 C.F.R. § 100.22(b)?

National Defense seeks guidance as to whether the Commission will apply and enforce 11 C.F.R. § 100.22(b) against any speech by National Defense. Prior to *Citizens United*, several federal courts invalidated 11 C.F.R. § 100.22(b) due to its constitutional infirmities. See *Right to Life of Duchess Co., Inc. v. FEC*, 6 F.Supp. 2d 248 (S.D.N.Y. 1998); *Maine Right to Life Committee v. FEC*, 914 F. Supp. 8 (D. Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996); *FEC v. Christian Action Network*, 110 F.3d 1049 (4th Cir. 1997); *Virginia Soc'y for Human Life v. FEC*, 263 F.3d 379 (4th Cir. 2001). Recently, the Fourth Circuit issued an outlying opinion upholding 11 C.F.R. § 100.22(b) in *The Real Truth About Obama, Inc. v. FEC*, 3:08-cv-00483-JRS, leaving the validity of 11 C.F.R. § 100.22(b) in doubt given the inter-circuit contradiction over this issue.

The Commission is empowered to take constitutional concerns into effect when interpreting or applying statutes. *Branch v. FCC*, 824 F.2d 37, 47 (D.C. Cir. 1987). Further, the D.C. Circuit has recognized that this Commission "must allow the maximum of first amendment freedom of expression in political campaigns commensurate with Congress' regulatory aims." *Common Cause v. FEC*, 842 F.2d 436, 448 (D.C. Cir. 1988). Given these precedents, and the constitutional uncertainty surrounding Section 100.22(b), National Defense asks whether the Commission plans to continue to apply and enforce that provision.

3. Will any of National Defense's donation communications be deemed "solicitations" and subject to regulation?

National Defense seeks guidance as to whether its proposed communications would be deemed "solicitations" under the Commission's regulations and practices and whether funds received in response to such requests would transform the group into a "political committee." As with its public outreach advertisement scripts, it requires clear guidance from the Commission as to what standards it employs to determine if funds received are transformed into "contributions," subject to regulation, and otherwise trigger political committee status.

Detailed and clear guidance is needed concerning the specific standard used by the FEC to determine whether the proposed donation requests constitute "solicitations." Otherwise, National Defense will have no prospective means of determining what speech it may engage in without running afoul of this Commission's authority. See, e.g., MURs 5753 (League of Conservation Voters) and 5754 (MoveOn.org Political Fund) (F.E.C. 2009); 2007 Political Committee Status Supplemental E&J, 72 Fed. Reg. 5595, 5603 (Feb. 7, 2007); but see *EMILY's List v. FEC*, 581 F.3d 19 (D.C. Cir. 2009).

4. Will any of the activities described trigger the requirement to register and be regulated as a "political committee"?

Will any of the proposed activities by National Defense render it a "political committee" subject to registration and regulation by the FEC?



If some of the proposed communications would be deemed express advocacy, then how much of National Defense's budget would need to be spent on such communications to transform the group into a political committee? Would it be more than 50% or does the Commission use some other percentage to determine political committee status? Would the portion used for analyzing political committee status be based on National Defense's annual calendar year 2012 revenues from donations or would the percentage be based on the amount raised during this Congress for the calendar years 2011 and 2012? How should National Defense treat administrative and non-express advocacy fundraising expenses for the purposes of the analysis of political committee status? Would the Commission count any speech that was not express advocacy in its computation of political committee status?

If some of the proposed communications would be deemed solicitations, then how much of National Defense's budget would need to be raised from such solicitations to transform the group into a political committee? Would it be more than 50% or does the Commission use some other percentage to determine political committee status? Would the portion used for analyzing political committee status be based on National Defense's annual calendar year 2012 revenues from donations or would the percentage be based on the amount raised during this Congress for the calendar years 2011 and 2012?

No candidate for public office controls National Defense and it does not hold as its major purpose – or as any part of its purpose – the election or defeat of any candidate for public office. Guidance by the FEC in how it determines the “major purpose” of an organization is requested given the lack of clarity in this area. *See, e.g., Unity '08 v. FEC*, 596 F.3d 861 (D.C. Cir. 2010); *Machinists*, 655 F.2d at 392; *and see* MUR 5854 (Lantern Project) (F.E.C. 2008); MUR 5751 (Leadership Forum) (F.E.C. 2006); MUR 6073 (Patriot Majority) (F.E.C. 2009); MUR 5842 (Economic Freedom Fund), Statements of Reasons, Commissioners Cynthia L. Bauerly and Ellen L. Weintraub.

Conclusion

Under the current regulatory regime, no clear guidelines exist to illustrate the boundaries of the FEC's authority, leading National Defense to “steer far wider of the unlawful zone” than it otherwise would. *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (quoting *Baggett v. Bullitt*, 377 U.S. 360, 372 (1964)). National Defense respectfully requests that this Commission clarify its standards, allowing National Defense the ability to exercise its constitutionally protected liberties without fear of civil or criminal penalties.

Sincerely,

/s/ Benjamin T. Barr

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**BYLAWS OF
The NATIONAL DEFENSE COMMITTEE**

**ARTICLE I
Purposes**

The purposes for which National Defense Committee ("the Organization") is to operate is exclusively as a social welfare organization within the meaning of section 501(c)(4) of the Internal Revenue Code and regulations issued there under, and to carry out the programs and activities set forth herein.

Specifically, the Organization shall engage in educational and issue messaging activities, including surveying and analyzing the perception of Congress on a variety of issues, supporting limited government, and engaging in grassroots and volunteer advocacy for improvements to the military absentee voting system, military and veteran re-employment programs, and educational programs for military and veterans, as well as advocating for improved and upgraded military capabilities, particularly with regard to naval vessels and wounded warrior care.

It shall not be the purpose of the Organization to seek or support the election or defeat of any candidate for Federal office, nor shall any but an incidental, de minimis amount of the activity of the Organization serve that purpose. The Organization shall refrain from any activity that would require it to register as a Political Action Committee under the Federal Election Campaign Act ("FECA").

**ARTICLE II
Board of Directors**

Section 1. Number and term of Directors.

The business, property, and affairs of the Organization shall be managed by a Board of Directors ("the Board") composed of the elected officers of the Organization and a number of other Directors as determined by the Board of Directors at their discretion. Each Director shall hold office for the term for which he is elected and until his successor is elected and qualified. Director shall have the same meaning as both Director and Trustee as defined by section 501(c)3 of the Internal Revenue Code.

Section 2. Election and Tenure of Directors.

Directors shall be nominated on bloc by a nominations committee composed of the current President of the Organization and all past presidents who choose to participate in the nomination process. The slate shall be provided to the Board fifteen (15) days in advance of a regularly scheduled election. The nomination slate shall be considered passed by a majority affirmative vote of the voting Board members in office. Failure to pass the entire slate on the first ballot will result in separate elections of individual officers and Board members. Directors shall serve a two year term based on the calendar year. New Director positions may be added to the board at any time by a majority affirmative vote of the Board members in office, and such additional Director position, once filled, shall be considered filled until the next regularly scheduled election.

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Section 3. Vacancies.

Vacancies in the Board of Directors shall be filled by appointment made by the President of the Organization and ratified by a majority affirmative vote of the Board members in office. Email shall be an acceptable form of notification of nomination and ratification by individual Directors. Each person appointed to fill a vacancy shall complete the full term of such Director. A Director position that is vacant may be eliminated by a three-fourths (3/4) majority affirmative vote of the Board members in office if the vacant position has gone unfilled for a continuous period of six (6) months and no new Director has been appointed despite reasonable attempts to do so by the Board.

Section 4. Meetings.

The Board may meet at any time and must meet at least once annually to transact any business which may require the action of a regularly constituted meeting of the Board and any other business which may properly come before the meeting. Meetings of the Board shall be called by the President, or by request of any three members of the Board, time and place of any such meeting shall be as directed by the President. A minimum of fifteen (15) days written notice of the time and place of such meetings is required. In the event of an emergency, waiver of notice may be obtained from the Board. A quorum at any meeting shall be a majority of all Directors. Voting shall be by voice unless otherwise determined at the meeting.

Section 5. Telephonic Conferences.

A Director may participate in a Board meeting by telephone or similar communication equipment by which all persons participating in the meeting may hear each other, if all participants are advised of the communication equipment and the names of the participants in the conference are disclosed to all participants. Participation in the meeting pursuant to this section constitutes presence in person at the meeting.

Section 6. Informal Meetings.

Any action required by law to be taken at a meeting of directors, or any action which may be taken at a meeting of Directors, may be taken without a meeting or by delegation, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

**ARTICLE III
Officers**

Section 1. President.

The President shall be the chief executive officer of the Organization. He shall preside over all meetings of the Board. He shall have general and active management of the business of the Organization and shall see that all orders and resolutions of the Board are carried into effect. He shall have the general powers and duties of supervision and management customarily vested in the office of President of a corporation.

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Section 2. Vice President.

The Vice President shall exercise the powers and perform the duties of the President in the event of death, resignation, disqualification, or absence. The Vice President shall also exercise the powers and perform any other duties as may be assigned to him by the Board. In the event that the Vice President shall serve as President due to a vacancy in that office, then the position of Vice President shall be filled by appointment of the Board as set forth in Section 8, hereof.

Section 3. Secretary.

The Secretary shall keep the minutes and perform the secretarial duties of the Organization. An assistant Secretary may be appointed by the Board and may be required to attend meetings at the discretion of the Board.

Section 4. Treasurer.

The Treasurer shall be the fiscal officer and shall keep proper financial records of the transactions of the Organization. An assistant Treasurer may be appointed by the Board and may be required to attend meetings at the discretion of the Board. The Board may require the Treasurer and assistant Treasurer to be bonded.

Section 5. Other Officers.

In addition to the President, Vice President, Secretary, and Treasurer, who shall be elected, other officers may be appointed by the President and ratified by a majority affirmative vote of the Board members in office.

Section 6. Tenure of Office.

All officers shall hold office for two (2) calendar years or until a successor candidate replaces an officer. The term for an officer who replaces a previous officer shall be the remaining term of the previous officer. Nothing herein shall be construed to prevent the election of an officer to succeed himself.

Section 7. Eligibility.

No one individual may hold more than one the positions of President, Vice President, Secretary, or Treasurer simultaneously.

Section 8. Vacancies.

Vacancies in office, with the exception of the office of President, shall be filled by persons appointed by the Board. The Board shall nominate persons by a majority affirmative vote of the Board members in office. Persons appointed shall serve for the remainder of the term of office.

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Section 9. Duties of Officers.

An officer shall perform his/her duties, including his/her duties as a member of any committee of the Board upon which he/she serves, in good faith, in a manner he/she reasonably believes to be in the best interests of the Organization.

**ARTICLE IV
Conflict of Interest Policy**

Section 1. Purpose.

The purpose of the conflict of interest policy is to protect the interests of the Organization when contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Section 2. Definitions.

1. **Interested Person.** Any Director, officer, or member of a committee with delegated powers from the Board, who has a direct or indirect financial interest, as defined below.
2. **Financial Interest.** A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:
 - a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement; or
 - b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement; or
 - c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual which the Organization is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Section III, paragraph 2, a person who has a financial interest may have a conflict of interest only if the Board or an appropriate committee decides that a conflict of interest exists.

Section 3. Procedures.

1. **Duty to Disclose.** In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board-delegated powers considering the proposed transaction or arrangement.
2. **Determining Whether a Conflict of Interest Exists.** After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is

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discussed and voted upon. The remaining disinterested board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, thereafter, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the best interest of the Organization, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the Organization shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

Section 4. Records of Proceedings.

The minutes of the governing board and all committees with board-delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

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Section 5. Compensation.

A member of the Board or officer may receive compensation, directly or indirectly, from the Organization for services, pursuant to the terms of the Conflict of Interest Policy.

1. Should any member come to receive such compensation through a direct or indirect source, including through acquisition of a going concern that previously was compensated by the Organization, the recipient is precluded from voting on matters pertaining to that compensation.
2. A voting member of any committee whose jurisdiction includes compensation matters and who in any way receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member's compensation.
3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Section 6. Annual Statements.

Each director, principal officer, and member of a committee with governing board-delegated powers shall annually sign a statement which affirms such person:

1. Has received a copy of the Conflicts of Interest Policy;
2. Has read and understands the policy;
3. Has agreed to comply with the policy; and
4. Understands the Organization is charitable and in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 7. Periodic Reviews.

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable based on competent survey information, and the result of arm's-length bargaining.
2. Whether partnerships, joint ventures, and arrangements with management organizations conform to the written policies of the Organization, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit, or an excess-benefit transaction.

Section 8. Use of Outside Experts.

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When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, designate outside advisors. If outside experts are designated, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

**ARTICLE V
Dissolution**

Upon the time of dissolution of the Organization, the Board of Directors shall, after paying or providing for the payment of all liabilities of the Organization, dispose of all of the assets of the Organization exclusively for the purposes of the Organization in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law), as the Board shall determine.

Any such assets not so disposed of shall be disposed of by the means proscribed, including by the direction of, the Office of Attorney General in the Commonwealth of Virginia or any other government unit in Virginia with supervisory oversight of charitable organizations, or by a court of competent jurisdiction of the jurisdiction in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

**ARTICLE VI
Fiscal Year**

The Fiscal Year of the Organization shall begin on the first day of January and end on the last day of December in each year.

**ARTICLE VII
Amendments**

The bylaws may be amended by any duly constituted meeting of the Board by a majority affirmative vote of all Directors whether or not actually in attendance, and shall be effective by the signature of the President of the Organization, and verification as to proper form by Counsel to the Organization.

**ARTICLE VIII
Parliamentary Authority**

The proceedings and meetings of the Organization shall be governed by the current edition of *Robert's Rules of Order Newly Revised* in all cases in which they are applicable and not inconsistent with the bylaws of the Organization.

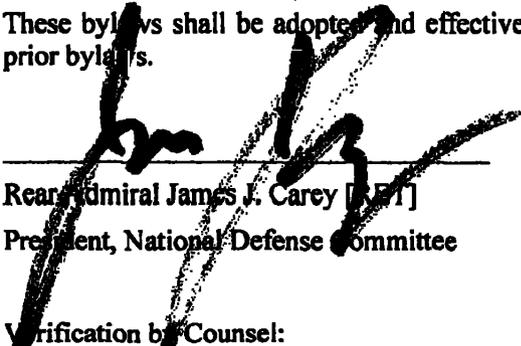
The National Defense Committee

PO BOX 75021 • Washington, DC 20013 • www.NationalDefenseCommittee.org

ARTICLE IX

Adoption

These bylaws shall be adopted and effective as of June 1, 2012, and amend, replace, and expunge all prior bylaws.



Rear Admiral James J. Carey [RETI]
President, National Defense Committee

June 1, 2012
Date

Verification by Counsel:


Dan Backer, Esq.
Counsel, National Defense Committee

6/25/12
Date

The National Defense Committee

PO BOX 75021 • Washington, DC 20013 • www.NationalDefenseCommittee.org

Flatland Productions

Videos Quote

Client: National Defense Committee

Ladd Ehlinger Jr.
ladd@filmladd.com
256-759-3286

Producer: Flatland Productions, Inc. / Ladd Ehlinger Jr.

Flatland Productions, Inc.
3109 Ivy Ave SW
Huntsville, AL 35805

Description: Producer shall create seven videos using still photos, basic animation, and voice-overs for the following scripts:

1. Let's Make History

"America needs a strong military capable of meeting the threats of tomorrow. Nydia Velázquez repeatedly introduced and supported bills like HR 3638 that would cut off funding for frontline troops. Rather than standing up for America, Nydia Velázquez is one of the least effective members of Congress. This fall, let's make history by changing this. Protect our freedom. Defend our nation. Learn about HR 3638."

2. Ethically Challenged

"Nydia Velázquez. Ethically challenged. A key supporter of the Troubled Asset Relief Program. Calls bailed-out Wall Street greedy one day, but takes hundreds of thousands from it the next. A leader you can believe in? Call Nydia Velázquez and let's make sure we end the bailouts that bankrupt America."

3. ObamaCare

"Nancy Pelosi and ObamaCare, what a pair! Even though most Americans opposed ObamaCare, Pelosi maintained her support of socialized medicine. But we can't let ObamaCare win. Our proud patriotic voices must stand against ObamaCare and vote socialized medicine out. Support conservative voices and public servants ready to end ObamaCare's reign."

4. Military Voting Matters

"Military voting matters. That's why Nancy Pelosi is such a disappointment for service men and women. Instead of supporting express delivery of overseas military ballots, Pelosi favored sluggish postal unions. Shouldn't military voices and votes matter? Shouldn't yours? Be heard this fall."

5. Military Voting Hindered

"Our heroes on the front lines knew that Obama's assault on America's military is putting their lives, the care of wounded warriors, and the GI and Veterans' benefits they were promised at risk. Is that why Obama's Justice Department and Congressional liberals refuse to stand up for military voting rights? Shouldn't those who dodge bullets for our freedom be free to vote their conscience and vote out those who won't keep their promises? Take a stand with us and make sure military voting is taken seriously."

6. Stop the Liberal Agenda

"Harry Reid: Willing to put America's service men and women at risk through his risky sequestration gamble. Willing to put politics above common sense and protecting the men and women who defend our nation. Stop the insanity, stop sequestrations, stop Reid's twisted liberal agenda. This fall, get educated about Harry Reid, get engaged, and get active."

7. Don't Trust Harry Reid

"What kind of leader is Harry Reid? Ineffective. Ultra-liberal. Unrepresentative of Nevada values. Harry Reid voted for increasing Tricare premiums to nickel and dime America's heroes. Veterans and service men and women know better than to trust Harry Reid. This November: support new voices, support your military, support Nevada values."

Terms and Conditions

Costs: \$2,000.00 Payable up-front; quote valid for three business days from issuance of quote. 6/21/2012



Flatland Productions

Online Video Distribution Quote

Ladd Ehlinger Jr.
ladd@filmladd.com
256-759-3286

Client: National Defense Committee

Producer: Flatland Productions, Inc. / Ladd Ehlinger Jr.

Flatland Productions, Inc.
3109 Ivy Ave SW
Huntsville, AL 35805

Description: Assist in distributing seven videos online via Stumbleupon, YouTube, Facebook, and Google with an online media purchasing budget of \$1000.00 for all seven videos, to include copywriting and design of advertisements to drive traffic to the videos.

Items shall include:

1. \$500.00 x \$0.1 = 5,000 "Stumbles" or unique hits to web page that video is embedded on.
2. \$150 in YouTube "promoted video" purchasing, approximately 100-600 views.
3. \$150 in Facebook ad purchasing, approximately 100-600 views.
4. \$50 in Google ad words purchasing, approximately 100-600 views.

Terms and Conditions

Due to the nature of Facebook, YouTube and Google advertising, which is based on highest bidding, no guarantees on final view count delivered by any of these services can be made. Please allow at least a week for these services to accept and approve ads. Stumbleupon advertising is usually approved within a 24 hour period during normal working days.

Costs:

\$1,000.00 payable up-front; quote valid for three business days from issuance of quote.

6/21/2012





2012 Media planning

<u>Scheduling</u>	<u>Advertisement</u>	<u>Production cost</u>	<u>Distribution cost</u>
August 1 – 14:	Let's Make History	\$290	\$150 TOTAL \$50 Google \$100 Stumbleupon
August 15 – 31:	Ethically Challenged	\$285	\$125 Stumbleupon
September 1 – 15:	Military Voting Matters	\$285	\$200 TOTAL \$150 YouTube \$50 Stumbleupon
September 15 – 30:	Military Voting Hindered	\$285	\$200 TOTAL \$150 FaceBook \$50 Stumbleupon
October 1 – 15:	ObamaCare	\$285	\$125 Stumbleupon
October 16 – 31:	Stop the Liberal Agenda	\$285	\$100 Stumbleupon
November 1 – 6:	Don't Trust Harry Reid	\$285	\$100 Stumbleupon





NDC AOR
Dan Backer

to:
JSelinkoff, NStipanovic
07/26/2012 10:05 AM

Cc:
"Allen Dickerson", benjamin.barr

Hide Details

From: "Dan Backer" <DBacker@DBCapitolStrategies.com>

To: <JSelinkoff@fec.gov>, <NStipanovic@fec.gov>,

Cc: "Allen Dickerson" <adickerson@campaignfreedom.org>, <benjamin.barr@gmail.com>

1 Attachment



2012-07-09 NDC AOR Final v3.pdf

Dear Jessica,

Pursuant to our conversations, please find attached the corrected National Defense Advisory Opinion for publication to the FEC website.

Additionally, per discussion amongst counsel, we note that:

1. The language of the advertising within the AOR body is the language for consideration by the Commission; the language in the production quotes was an early version, since changed, but updating the production quotes was not feasible for our client.
2. With respect to the "visuals" of the advertising to be created, the production vendor will determine and create those once production commences as part of the creative process.
3. The \$3,000 budget for the activity described in the request is part of a larger budget for activity that is dissimilar to that described in the request, for which National Defense is unable to provide details.

Regards,

Dan Backer, Esq.
202-210-5431 office
202-478-0750 fax

DB Capitol Strategies PLLC

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