

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SENATOR MITCH McCONNELL, et al.,)
)
)
) Plaintiffs,) Civil Action No. 02-0582 (CKK, KLH, RJL)
)
)
) v.)
)
) CONSOLIDATED ACTIONS
)
) FEDERAL ELECTION COMMISSION, et al.,)
)
)
) Defendants.)

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

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DECLARATION OF ELAINE BLOOM

1. My name is Elaine Bloom.

2. I am currently engaged in consulting, public speaking, and community activities. In 2001, I was a candidate for Mayor of Miami Beach, Florida. In 2000, I was the Democratic candidate in the general election to represent Florida's 22nd Congressional district, running against the incumbent Republican Clay Shaw, who had served in Congress for nearly 20 years. In this election, Congressman Shaw was declared the winner by a margin of approximately 500 votes out of over 200,000 cast. Prior to this 2000 race, I served as a member of the Florida House of Representatives for over 18 years, from 1974 to 1978 (representing Northeast Dade County) and from 1986-2000 (representing Miami Beach and Miami). I was Speaker Pro-Tempore of the Florida House from 1992 to 1994, and during my time there I also served as chair of several legislative committees, including the Health Care Committee, the Joint Legislative Management Committee, the Joint Legislative Auditing Committee, and the Tourism and Cultural Affairs Committee. During my years in the Florida House, I focused on many issues, including health care, authoring a number

of bills to extend health insurance coverage and to make health care coverage available to more people. From 1993 to 2000, I served on the board of Andrx Corporation, a manufacturer of affordable generic drugs based in Fort Lauderdale, Florida. From 1990 to 1999, I served as Florida development director for Bar-Ilan University, which is based in Israel. From 1981 to 1985, I was Vice-President of the South Florida Broadcasting Company. From the late 1970's to the mid-1980's, I was a government relations consultant for several organizations, including the Florida Association of Jewish Federations, the Florida United Way and the United Protestant Appeal. I have also served on the boards of numerous Florida organizations, including the Greater Miami Chamber of Commerce, the Florida International University Foundation, the Florida Philharmonic, the New World Symphony and the University of Miami Law School Visiting Committee.

3. National, state and local party committees all played important roles in the 2000 campaign to represent Florida's 22nd Congressional district. On the Democratic side, the Democratic Congressional Campaign Committee ("DCCC") provided some staff and other resources to support my campaign. In addition, the national, state and local Democratic parties participated in the "coordinated campaign," whose goal was to help get out the vote for Democratic campaigns at all levels, including the Presidential campaign of then-Vice President Al Gore and Senator Joe Lieberman, Bill Nelson's United States Senate campaign, and my campaign. Parts of the counties of Dade, Broward and Palm Beach comprised Florida's 22nd Congressional district when I ran in 2000 (note: the 22nd is different today), and the Democratic parties of all three of these counties played roles in the coordinated campaign. As I recall, I helped to raise some federal funds ("hard money") and non-federal funds ("soft money") for all of these parties as part of the coordinated campaign. The coordinated campaign did get-out-the-vote, voter registration, and absentee ballot activities. Florida was a targeted state for the 2000 Presidential race, and so the

coordinated campaign was a major effort driven primarily by the Presidential campaign. On the Republican side, the Florida Republican Party and the National Republican Congressional Committee ("NRCC") did a good deal of direct mail in support of Mr. Shaw's campaign, much of it attacking me, in my view unfairly and untruthfully. The congressional campaign committees of both major national parties also ran broadcast ads through their state parties in support of the Congressional candidates in Florida's 22nd district, as will be discussed below.

4. Interest groups were an important factor in the 2000 Congressional election in Florida's 22nd District. There was a lot of television and direct mail supporting Mr. Shaw's campaign by Citizens for Better Medicare, a group that I understand was funded mainly by the Pharmaceutical Research and Manufacturers of America, Inc. ("PhRMA"), which represents major corporations in the pharmaceutical industry. Other interest groups also ran many ads on television and radio in support of both major candidates, as will be discussed below.

5. In my experience in campaigns for federal, state and local office, including my involvement in the television advertising we ran in my race for Congress, no particular words of advocacy are needed for an ad to influence the outcome of an election. Many so-called "issue ads" are run in order to affect election results.

6. Television and radio advertising by political parties and interest groups had a tremendous influence on the outcome of the 2000 Congressional election in Florida's 22nd District. I do not believe there had never been a congressional race at any time, anywhere in Florida, with anywhere near what was spent on television by the campaigns, the parties, and interest groups. Although I did not have much time to watch television toward the end of the race, my campaign taped ads, showed them to me and made sure I was aware of what was going on. The AFL-CIO and the Florida Democratic Party ran many television "issue ads" in support of my campaign towards

the end of the race, and these surely influenced the outcome to my benefit. However, based on my observations, broadcast "issue ads" run in the last few weeks of the campaign by groups representing business interests, particularly the PhRMA group Citizens for Better Medicare, and by the Republican Party were deciding factors in this extremely close race, particularly because, in my view, they were mean-spirited attack ads. We did extensive polling in the race, including daily tracking polls over the final few weeks. As I recall, this polling indicated that the ads run in the last few weeks by these interest groups and the NRCC (through the Florida Republican Party) caused my numbers to decline substantially, from well over 50% to essentially a dead heat at the end. Of course, my campaign was not the only entity with access to tracking polls in this race. In my view, the extraordinarily intense ad spending toward the end of the race by these groups indicates that they had information that I was likely to win. Long time incumbents like Mr. Shaw rarely receive that kind of attention unless they are in danger of losing. The groups rushed to defend Mr. Shaw, who had been their ally for many years in Congress and who served on the important House Ways and Means Committee. The major pharmaceutical companies PhRMA represents felt they had much to lose if the 107th Congress passed a Democratic version of a Medicare prescription drug bill, and Citizens for Better Medicare spent massively nationwide for ads in support of people like Mr. Shaw who they felt would work to prevent that. I also feel that, given my background on health care issues, the pharmaceutical industry would have been especially displeased to see me in Congress.

7. The role that so-called "issue ads" run by political parties and interest groups played in the 2000 race in Florida's 22nd Congressional district was also a subject of public and private discussion between my campaign and Mr. Shaw's campaign. As I recall, there were two significant interactions between our campaigns about it. The first, in September 2000, occurred when Mr. Shaw held a press conference and announced that he had sent a letter to me offering for both of us to

disavow party or independent entity "issue ads." As I recall, he had the letter delivered at least one day after he went to the press with it. At that point, the AFL-CIO had done some ads in the Palm Beach media market critical of Shaw's positions, but no group had yet come forward in support of him or in opposition to me. Further, the DCCC, through the State Party, had just begun television advertising.

8. When the press called me for a response to Mr. Shaw's letter, I said that if Mr. Shaw was serious about campaign finance reform, he should go back to Washington and get the Shays-Meehan legislation to the floor of the House and help to pass it. I also said I had no control over the ads that the AFL-CIO or the DCCC were running. I rejected his offer because I understood that he was attempting to end the election before it really got underway. He was the incumbent; he had much higher name ID; he was approaching \$1 million in PAC money, and he and I both knew he was ahead in the polls. I said at the time that he had the opportunity to change the law by voting for Shays-Meehan and he failed to do so. When Senator John McCain came to Palm Beach to campaign for Shaw, I made the same points. I was not going to live by the rules he had voted against.

9. In October, there was a televised debate between Mr. Shaw and me, and the issue came up again. In the debate, Mr. Shaw said he thought soft money ads improperly swayed elections. Immediately after the debate, I challenged him to agree to end all negative ads by himself and by groups supporting him. I said, "I will agree not to mention your name in my ads and ask those supporting me to do the same, if you will agree to do likewise." Mr. Shaw did not accept my offer.

10. The Florida Democratic Party ran so-called "issue ads" directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. Storyboards representing four of these ads, which I understand were run on television in the two months prior to the general

election, are attached as Exhibit 1 to this Declaration. I understand that these storyboards and all ~~others attached to this Declaration were provided by the Brennan Center for Justice, which had~~ obtained them by arrangement with the Campaign Media Analysis Group ("CMAG"). My understanding is that these ads were actually DCCC ads run through the Florida Democratic Party to get the better hard money-soft money allocation rate. Obviously, I did not know anything about the content of these ads or how frequently they would run until after they began running. As I recall, Mr. Shaw publicly objected to the ads attached at Exhibit 1 at 1 and 4, arguing that although they said he had voted with Republican leaders nearly 90% of the time, in fact the correct number was only 87% or 89%. As I recall, the ad attached at Exhibit 1 at 4 was run extensively in September 2000, and I believe it may have been a factor in Mr. Shaw's request that we call off the soft money ads at around that time. These Florida Democratic Party ads were clearly run for the purpose of electing me.

11. The Florida Republican Party also ran broadcast ads directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. Storyboards representing two of these ads, which were run on television very heavily in the two months prior to the general election, are attached as Exhibit 2 to this Declaration. My understanding is that, as on the Democratic side, these ads were actually NRCC ads run through the Florida Republican Party. I believe that the attack ad attached at Exhibit 2 at 1 ("FL/FLGOP Bloom Cheating Seniors"), which was run just before the general election, had a particularly strong effect on the outcome. As I recall, the Florida Republican Party also ran a significant number of "issue ads" against me on radio prior to the election. All of these ads were clearly intended to help defeat me in the election.

12. The AFL-CIO ran television ads directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. Storyboards representing three of these ads, which

were run on television prior to the general election, are attached as Exhibit 3 to this Declaration.

~~Television ads by the AFL-CIO, as I recall particularly ads on repetitive motion injuries like the one~~ attached at Exhibit 3 at 1 (“AFLCIO/Call Clay Shaw”), were a key factor in Mr. Shaw’s request in September 2000 that we call off the groups running soft money ads. The storyboard attached at Exhibit 3 at 3 (“AFLCIO/Sherwood Sided With Drug Industry”) actually names a candidate other than Mr. Shaw, and I understand this is because it is a “cookie cutter” ad run in more than one race, which the CMAG technology records the same way after the first time it sees the ad. In other words, when this ad ran in the 22nd district, it named Mr. Shaw instead of Mr. Sherwood. As Mr. Shaw suggested, these ads were intended to affect the election results in my favor, and I think they did have that effect.

13. The Florida Women’s Vote project of EMILY’s List also ran ads directed at influencing the outcome of the 2000 election in Florida’s 22nd Congressional district. A storyboard representing one of these ads, which I understand was run on television fairly heavily in the two months prior to the general election, is attached as Exhibit 4 to this Declaration. This ad (“FL/FLWV Shaw Says He Fights for Seniors”) was run to increase the number of people voting for me in the election, and I think it had that effect.

14. Citizens for Better Medicare ran a massive number of broadcast “issue ads” directed at influencing the outcome of the 2000 election in Florida’s 22nd Congressional district. Storyboards representing five of these ads, which were run on television in the two months prior to the general election, are attached as Exhibit 5 to this Declaration. As I recall, Citizens for Better Medicare also ran a large number of “issue ads” against me on the radio in the final weeks of the campaign. The television ads were all focused on promoting Mr. Shaw by praising his record and position on the prescription drug benefit. Obviously this was an important issue in Congress in the years

surrounding this election, and one in which the large drug companies PhRMA represents had a great interest, but the timing, placement and content of these ads show that their primary purpose was to insure that Mr. Shaw remained in Congress, so he could vote their way on the issue. The average age of residents in Florida's 22nd Congressional district is one of the highest in the nation, so these ads had a big impact on the viewers. As explained above, my campaign's tracking polls indicated that these Citizens for Better Medicare ads affected the election outcome in Mr. Shaw's favor. Older people, even Democrats, were confused. My response ads, saying that the ads attacking me were not true, could not match the frequency of the PhRMA ads or the Republican Party ads.

15. The Business Roundtable also ran ads directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. A storyboard representing a television ad the group ran frequently on television for Mr. Shaw in the final weeks of the general election is attached as Exhibit 6 to this Declaration. The storyboard for this ad ("BRT/Shaw From The Start"), the script of which actually names a different candidate because it is apparently a "cookie cutter" ad, features shots of babies. The ad mentions education and jobs in a general way, but it is meaningless except as an attempt to persuade voters that the candidate in question was generally on the side of children. It was intended to help elect Mr. Shaw.

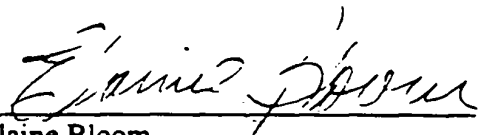
16. The United States Chamber of Commerce also ran so-called "issue ads" directed at influencing the outcome of the 2000 election in Florida's 22nd Congressional district. A storyboard representing a television ad that I understand the group ran on television against me in the final weeks of the general election is attached as Exhibit 7 to this Declaration. The storyboard for this ad ("KY/COC Jordan Scaring Seniors Rx"), which names a different candidate because it is apparently a "cookie cutter" ad, criticizes the candidate for her position on the prescription drug benefit. I

believe this was not a huge ad buy, but running the ad would still allow the Chamber to let Mr. Shaw know that they had done something to help him survive the serious challenge he faced.

17. I appreciated the ads described above that were run by political parties and interest groups to assist my 2000 Congressional campaign, even though I had no advance knowledge of what they would say or where they would air. I understood them to be lawful and in compliance with FEC rules.

18. I support the restrictions in the new McCain-Feingold legislation on the use of soft money to affect federal elections through donations to parties and so-called "issue ads." In fact, I have worked for the passage of comparable state legislation here in Florida. Mr. Shaw, despite the help he received from Senator McCain, voted against the Shays-Meehan bill in 2002.

19. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.


Elaine Bloom

Executed on this 2nd day of October, 2002