

SENATOR MITCH McCONNELL, et al.,

**Civil Action No. 02-0582 (CKK, KLH, RJL)**

**v.**

## CONSOLIDATED ACTIONS

**Defendants.**

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

1. My name is Rocky Pennington.

2. I am a Republican political consultant. I am the owner and President of three Florida companies engaged in political activities: Southern Campaign Resources, Direct Mail Systems, Inc., and Summit Communications. Southern Campaign Resources, which I founded in 1982, does general consulting primarily for Florida state campaigns, but we have also done Congressional races in Florida, including Congressman Cliff Stearns' first race in 1988 in Ocala, Bill Sublette's 2000 campaign in the Eighth Congressional district, and Congressman Jeff Miller's 2001 special election in the Panhandle. Direct Mail Systems, founded in 1981, is a direct mail company with about 100 employees that has done fundraising and voter contact mail for candidates, parties and interest groups in Florida and elsewhere, including doing mail for some of Florida's Republican Congressional delegation, as well as for state Republican parties in many other states. Summit Communications, which I founded in 2000, creates political

advertising for television and radio and buys air time for various campaigns, such as Congressman Miller's 2001 general election campaign. From 1984 to 1986, I worked on federal and state campaigns in Florida, Wisconsin and Washington state. From 1980 to 1984, I served as Executive Director of the Republican Party of Florida. From 1978 to 1980, I was a legislative aide in the Florida state legislature. From 1976 to 1978, I worked for the Republican Party of Florida, starting as a field person for Gerald Ford's 1976 Presidential campaign and other races, and moving up to organizational director at the time I left. I started in politics as a volunteer in legislative races while attending Florida State University in 1974.

3. General consultants like me typically prepare political campaign plans, then work with campaigns on an ongoing basis to make sure the plans are being executed as designed, which includes overseeing the efforts of the campaign manager, the media advisor and the polling advisor. Each general consultant may do these plans somewhat differently, but here is my basic approach. The campaign plan starts with a lot of research, including precinct targeting and in-depth analysis of the strengths and weaknesses of your candidate and your opponents, including primary opponents. You take an accountancy of these strengths and weaknesses, and look at what messages you want to get out about your candidate and your opponents, and what messages they are likely to want to get out about themselves and your candidate. You develop a campaign theme. Then you set up a series of strategic objectives for the campaign to try to reach in order to get to 50% plus one in the election, explaining in narrative form why you need each and how you're going to get there. Then you write a communications plan. This includes a detailed narrative of your broadcast and cable television and radio, what the commercials will say, when they'll go up, when they have to be written and produced by, and so on. The communications plan includes a direct mail plan, and may also include a telemarketing plan to

identify voters or push them one way or the other, and to make get-out-the-vote calls. The organizational section of the campaign plan includes all the grassroots activities, such as precinct walks, signs, and coffees. You develop a budget and a finance plan. Once the plan is complete, you go over it in great detail with the candidate and key advisors, modify it as needed, and try to follow it through election day.

4. An important element running through modern campaign plans is consideration of what role political parties and interest groups are going to play in your campaign. You write the plan thinking about which of these groups can help you and how they can do so most effectively. It's also very important to try to predict what groups are going to come in on the other side, because you have to figure out how to counter what they're going to be doing. Sometimes in recent years candidates have become almost spectators in the process, as others have pretty much hijacked the campaigns.

5. Political parties are important in campaigns at the federal and state levels. In federal races, the national and state parties can both play key roles. Of course parties at both levels run ads to help the campaign, as will be discussed below, but they also help in other ways. The national and state parties work together to help campaigns through grass roots activities. In addition, parties and campaigns often rely on common research and share information. It makes little sense to have the party and the campaign working on the same thing, and so information is often traded back and forth. For example, in preparing to do a poll to test issues that might be used in advertising, research is involved, and relevant information is shared. This happened in Bill Sublette's 2000 campaign for Florida's Eighth Congressional district, in which Ric Keller ultimately won a run-off election against Mr. Sublette and then the general election against the Democratic candidate Linda Chapin. I recall discussing an issue that was ultimately used in ads

run by the National Republican Congressional Committee ("NRCC") against Ms. Chapin relating to the purchase of a bronze frog during the time she was Orange County Chairman. As I recall, in that situation information was shared between our campaign and the Florida Republican Party before a poll was done, and there was general agreement between the Party and our campaign about where Ms. Chapin was vulnerable. Of course, this kind of sharing also happens between federal campaigns and the national parties. In state and local races, the national committees are rarely involved to any great extent. Of course, the state parties are focused on state races and in Florida they sometimes spend a lot of money on those. In my experience, the county parties in Florida are not very involved financially in political campaigns.

6. Interest groups have played an increasingly large role in recent federal and state races. In Florida races, you have to think about a number of groups that may be involved, including the trial lawyers, the physicians, the home builders, the unions, the nursing home operators, and Associated Industries, which is the largest business association in Florida, representing mainly large Florida corporations.

7. Some interest groups do what amounts to a vetting process to decide if they will help a particular federal or state candidate. These groups often do a lot of screening before deciding to commit resources and take an active role. Many make the candidates fill out lengthy questionnaires, and then bring them in and essentially grill them in what is almost a Star Chamber atmosphere about their positions on specific issues. Some groups, such as Associated Industries, actually videotape the interview so they can have it to show the candidate if they're successful and the issue comes up in the legislature, to remind them of what their position should be. The groups have gotten pretty sophisticated and pretty aggressive about trying to pin down the elected officials on what their vote's going to be ahead of time.

8. If an interest group does decide to assist your candidate, it's usually helpful in the campaign, and even more helpful if you have good communications with the group and can persuade them to do things that you feel are more productive. Interest groups can help in different ways. They can raise funds from their members, and in federal races this may take the form of raising federal funds ("hard money") and bundling the checks, then delivering them all together. They can also produce and run TV and radio ads, using hard money to do independent expenditures, or non-federal funds ("soft money") to run electioneering that avoids express advocacy. They can create direct mail plans and do mass or targeted mailings, and buy billboards and print ads. They can set up phone banks, or do push polling to create positive impressions of your candidate or negative impressions of your opponent. Just before the election they can do get-out-the-vote calls to help your candidate, or vote suppression calls to tell voters something bad about your opponent. In addition to trying to elect candidates, these groups are often trying to create appreciation or even obligation on the part of successful candidates. And candidates usually do appreciate this kind of help, even when they deny it publicly, which they usually do.

9. Effective electioneering is crucial in political campaigns. Television, an emotion-based medium, is the most effective. Radio can also be effective, depending on the specific market you're trying to reach. For example, if you're in a Republican primary and want to reach Republican males between the ages of 18 and 45, Rush Limbaugh radio is probably a good buy. Direct mail can also be very effective, in a different way, since it is more of an information-based medium. You're reaching voters at different levels, and it's good to have a good mix. The above media are good for both candidate and third party communications in a campaign.

10. I am aware of the distinction between the so-called "magic words" of express advocacy and electioneering that avoids the magic words. Many soft money ads that avoid the

magic words are clearly intended to affect federal elections. Parties and interest groups would not spend hundreds of thousands of dollars to run these ads 15 days before an election if they were not trying to affect the result. These candidate-specific ads are not usually run the year before the election or the week after. The usual final tag line for soft money electioneering is to "call" or "ask" or "tell" a candidate to stop or continue doing something, often something vague like fighting for the right priorities. This is pretty silly, because it's hard to imagine thousands of people calling the candidate in response to the ad and saying, keep doing this, this is wonderful. These standard final words, like "tell," have become the real "magic words" in modern campaigning. I imagine some smart lawyer came up with them, because the real audience for them is not the voters, but the courts who may be examining the ad after the election.

11. Party and interest group attack ads can help a candidate in many ways. In addition to getting out a negative message about the opponent, they allow the candidate to conserve his limited resources and focus them on getting out a positive message about himself. At the same time, the candidate can disavow the negative ads, saying--with a wink--I didn't know anything about it and I condemn these things. I think this now happens in virtually every campaign. Very few politicians would stand up and say, I think it's great, keep it up. Of course, occasionally the approach these groups take is off base, and in those cases the ads may not be that helpful. But usually the ads are helpful and candidates appreciate them.

12. As noted above, I served as general consultant to Bill Sublette's 2000 campaign in Florida's Eighth Congressional district. We also did his direct mail. Mr. Sublette received more votes than Mr. Keller in the Republican primary in early September 2000, but not enough to avoid a run-off. In the run-off in early October 2000, Mr. Keller prevailed, and he went on to win the general election against Ms. Chapin. In my opinion, this race was a good example of a

situation where the candidates' campaigns became almost irrelevant, as parties and interest groups came to dominate the race. The role of the Club for Growth was pivotal. Early in the campaign, I remember Mr. Sublette coming back from a vetting meeting with the Club for Growth, indicating that he did not feel it had gone too well and that the group was talking about becoming very involved in the race. Shortly after that, we learned that Mr. Keller was making it known in Washington and Orlando that the Club for Growth was going to play a major role in his campaign, and to expose Mr. Sublette's record on taxes and other issues. So the group was a cloud looming over our campaign from an early stage.

13. Political party and interest group broadcast "issue ads" played a key role in the 2000 race in Florida's Eighth Congressional district. I am aware that the national party committees often run electioneering ads through the state parties. In the 2000 race, the national Democratic party spent a great deal of money attacking Mr. Sublette with "issue ads" before the Republican primary, because they thought they could paint Mr. Keller as an extremist and defeat him in the general more easily than Mr. Sublette, a moderate Republican who could get Democratic and Independent cross-over votes. These party ads were a factor in Mr. Keller being able to force a run-off with Mr. Sublette. Storyboards representing two Florida Democratic Party ads that I understand were run just before the early October 2000 Republican run-off 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. Based on my observations, these ads were designed to make sure that Mr. Keller was the Republican nominee, especially the one attached at Exhibit 1 at 2 entitled "Sublette Sprawl," which is an entirely negative hit piece.

14. The Republican national and state parties were also active against Ms. Chapin prior to the Eighth district Republican run-off in October 2000. These parties were trying to keep Ms. Chapin from building up a head of steam while Mr. Sublette and Mr. Keller were still duking it out in the primary and run-off. Storyboards representing two Florida Republican Party ads that I understand were run just before the Republican run-off are attached as Exhibit 2 to this declaration. The NRCC also ran ads against Ms. Chapin before the run-off. Storyboards representing two of these NRCC ads are attached as Exhibit 3 to this declaration. The NRCC ad attached at Exhibit 3 at 1 ("FL/NRCC Chapin Spend and Tax"), focuses on the frog issue. As noted above, I had been involved with the state party in the research on which this ad was based. All of these ads were clearly intended to affect the election results.

15. Interest group broadcast ads had a very significant effect on the outcome of the 2000 Congressional race, especially the ads run by the Club for Growth. As noted above, the Club for Growth and Mr. Keller had made their relationship well known, and the Club for Growth ads clearly reflect an intent to help elect Mr. Keller. Storyboards representing two of these ads are attached as Exhibit 4 to this declaration. In my view, the ad entitled "Keller Sublette Higher Taxes," represented here at Exhibit 4-1, was a very, very effective one, and had it not run just before the primary, I believe Mr. Sublette would have reached 50% and there would have been no run-off. Our polling at that time indicated that we were in good shape, until the Club for Growth ads began. The other ad that is attached ran just before the run-off.

16. Other interest groups also ran ads trying to elect Mr. Keller in the Republican primary and the run-off. One ad run against Mr. Sublette that I thought probably cost us a couple points in the primary was a radio spot run, as I recall, primarily on conservative talk radio and maybe some Christian stations by Americans for Limited Terms. This ad attacked Mr. Sublette



on tax and other issues, basically calling him a big government liberal, while praising Mr. Keller as a real conservative. I also recall another business group running a broadcast ad attacking Mr. Sublette for not being conservative enough, though I can't remember which group it was.

17. Mr. Keller received benefits beyond the immediate messages these interest groups delivered on his behalf. The group ads allowed Mr. Keller to conserve his resources for a focused positive message about himself. Without the intervention of these groups, there is no way he could have gotten out a negative message about Mr. Sublette, while still getting his own name I.D. up enough to be competitive. The groups took a major burden off his campaign, and based on my experience in situations like this, it is likely that his campaign knew what the interest groups were going to be doing and adjusted their campaign plan to account for it.

18. One group that did step in to try to support Mr. Sublette in the primary and runoff was the Republican Leadership Council ("RLC"), a moderate Republican group. Storyboards representing two ads RLC ran are attached as Exhibit 5 to this declaration. Although I was generally aware that the RLC was going to run ads against Mr. Keller, I had no knowledge of details as to the content or size of the ad buy. Our campaign plan was written without any anticipation of the RLC's involvement. As I understand it, these ads were funded primarily by the Florida sugar industry. Mr. Keller had worked in a law firm that was a leader in a ballot initiative that would have raised the price of sugar, and the sugar industry did not want him in Congress messing with their subsidies. Frankly, I did not think these ads were very effective, though as a consultant I was grateful that someone was pounding on Mr. Keller while the Club for Growth was pounding on Mr. Sublette.

19. I agree with the public statements I understand were made by Mr. Sublette, former Republican Member of Congress Joe Scarborough, and the Club for Growth itself, to the effect

that the Club for Growth was the reason Mr. Keller survived the primary and won the run-off in the 2000 Florida Eighth district Congressional race. The Club for Growth ran the powerful broadcast ads described above, and also bundled significant hard money contributions for Mr. Keller. Mr. Keller's success in this race was basically a product of the Club for Growth.

20. I support the goals of the new McCain-Feingold legislation. Based on my observations, the use of soft money in federal elections has gotten out of hand. I say that even as someone who makes money from this system, because I am also a voting American. Money has taken over the system. The people who paid huge amounts during the 1996 election cycle in order to sleep in the Lincoln Bedroom at the White House wanted access. And I don't feel that is an appropriate way to spend corporate treasury funds, whether it takes the form of soft money donations or interest group electioneering. I think that in general companies should stay out of that kind of government process, and the government should stay out of the market. If a company like Enron can't survive without using money to affect government policy, it ought not to survive. That kind of activity is a distortion of the market.

21. I understand that the new McCain-Feingold legislation, in addition to the national party soft money ban, prevents federal candidates from raising soft money for state and local parties, and also prevents the state and local parties from using soft money transferred among themselves to affect federal elections. Based on my experience, without these additional limits I think it's a fairly good prediction that soft money would flow to the state and local parties and still be used to influence federal elections.

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

A handwritten signature in dark ink, appearing to be 'Rocky Pennington', written over a horizontal line.

Rocky Pennington

Executed on this 13 day of September, 2002