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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MITCH MCCONNELL, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	Civil Action No.
	:	02-0582 (CKK, KLH, RJJ)
v.	:	
	:	All consolidated cases.
FEDERAL ELECTION COMMISSION, <i>et al.</i>	:	
	:	

DECLARATION OF DONALD F. MCGAHN II

I, Donald F. McGahn II, do depose and state as follows:

1. My name is Donald F. McGahn II. I am currently the General Counsel of the National Republican Congressional Committee ("NRCC"). I have served in this capacity since approximately June of 1999. Through this position, I am familiar with the day-to-day operations of the NRCC.

2. On or about June 3, 2002 and August 6, 2002, the defendants in this case served a subpoena *duces tecum* on the NRCC pursuant to Rule 45 of the Federal Rules of Civil Procedure and, on August 6, 2002, a deposition notice pursuant to Rule 30(b)(6) of the Fed. R. Civ. P. I am submitting this affidavit and its attached exhibits on behalf of the NRCC in lieu of both the NRCC's production of documents called for by the subpoena and the Rule 30(b)(6) deposition.

3. The NRCC is a national party committee of the Republican Party as defined in the Federal Election Campaign Act of 1971, as amended (the "Act"), 2 U.S.C. § 431 and 11 C.F.R. § 110.2(c)(2)(ii).

4. The NRCC is composed of an Executive Committee, as well as the entire elected Republican leadership, who serve as ex-officio, non-voting members of the NRCC. The Executive Committee is selected by the Chairman of the NRCC. It is composed of 38 members,

including the Speaker of the House, the Majority Leader, the Republican Whip, Conference Chairman, the Conference Vice-Chairman, the Conference Secretary, the Policy Chairman and the NRCC Chairman. In addition, the NRCC Chairman appoints thirty members, subject to approval by the Republican Conference.

5. The principal officer of the NRCC is its Chairman, elected on a date and in a manner consistent with the provisions for election of leadership offices under the Rules of the Republican House Conference.

[C]¹6. The NRCC's primary function is to aid the election of Republican House candidates and otherwise support the goals of the Republican Party. The NRCC aids and encourages the election of Republican House candidates and the goals of the Republican Party by, among other things, contributing money to Republican House candidates; making expenditures on behalf of Republican House candidates; recruiting Republican House candidates; providing campaign services to Republican House candidates; advising Republican House candidates; and supporting the production and dissemination of general public communications that promote the Republican Party's position on issues of public concern and create a favorable political environment for Republican House candidates (hereinafter referred to as "issue advocacy communications"). The NRCC also conducts an active program of support for nonfederal electoral candidates, redistricting and other Republican party building activities at the state and local level.

7. The NRCC maintains two affiliated political committees with the Federal Election

¹ Paragraphs in this affidavit designated with [C] are considered "Confidential" under the Protective Order entered by the Court on August 12, 2002. Paragraphs in this affidavit designated with [A] are considered "Attorneys Only" under the Protective Order.

Commission ("FEC") to engage in its normal day-to-day operations. One is called "National Republican Congressional Committee-Contributions," into which it principally collects receipts. The other is called "National Republican Congressional Committee-Expenditures," from which it principally makes disbursements.

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[C]12.

13. The NRCC maintains a series of federal accounts, into which it deposits funds consistent with the source restrictions and contribution limits of the Act. From these accounts, the NRCC makes all its "contributions" and "expenditures," as those terms are defined and used by the Act. The contents of these accounts are sometimes colloquially referred to as "hard money" or "federal funds."

14. The NRCC maintains a series of nonfederal accounts, into which it deposits funds inconsistent with the Act's source restrictions or contribution limits. From these accounts, the NRCC disburses funds to candidates for nonfederal office; to nonfederal accounts of state and national political party committees; and to non-party, non-candidate organizations not registered with the FEC. The NRCC also transfers funds from these accounts to its federal accounts to defray the nonfederal share of disbursements affecting both federal and nonfederal elections, as prescribed by 11 C.F.R. § 106.5. The contents of these accounts are sometimes colloquially referred to as "soft money" or "non-federal" funds.

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15. To ensure compliance with applicable state law, the NRCC segregates its nonfederal funds according to the source of funds received. For example, it maintains separate nonfederal accounts for corporate treasury funds, labor treasury funds, funds donated by individuals, funds donated by federally registered political committees in excess of federal limits, and funds donated by other sources. In some instances, applicable state law may require the NRCC to maintain a nonfederal account specifically for activity in a particular state. Activity in each of these accounts is disclosed on reports filed by the NRCC with the FEC.

16. The NRCC also maintains a building fund into which it deposits funds inconsistent with the Act's source restrictions or contribution limits. The NRCC disburses funds from this account to defray costs incurred for the construction and purchase of its office facility.

[C]17.

18. The NRCC discloses information to the FEC about each person that donates an aggregate amount exceeding \$200 during a calendar year to its federal accounts, its nonfederal accounts and its building fund, respectively. This information includes, but is not limited to the person's name and address, and the date of receipt and amount of each particular donation.

19. The NRCC discloses information to the FEC about each person to which it makes disbursements in an aggregate amount exceeding \$200 in a calendar year from its federal accounts, its nonfederal accounts and its building fund, respectively. This information includes the person's name and address, and the date, amount and purpose of each particular disbursement.

20. The NRCC raises funds in a variety of ways to support its organizational purposes and functions.

[A]21. The NRCC directs its efforts to raising funds generally without regard to their type, while preferring to raise federal funds. Usually, when seeking funds from large donors, NRCC Members and staff solicit federal and nonfederal funds simultaneously. Most NRCC fundraising events are designed to raise both federal and nonfederal funds. When donors have reached their federal contribution limit, the NRCC frequently encourages them to make additional donations to the NRCC's nonfederal account.

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[A]27. NRCC fundraising employees assist Republican House Members and Republican House candidates in raising funds for the NRCC. For example, NRCC fundraising employees identify prospective donors for Republican House Members and Republican House candidates, and provide information that might be useful in the course of a solicitation. An example of a document reflecting such methods is attached at Tab A.

[A]28. Similarly, NRCC fundraising employees prepare letters to be signed by Republican House Members and NRCC senior staff, thanking individuals for their donations or requesting support. Examples of such letters are attached at Tab B.

[A]29. The donors whom Republican House Members contact on behalf of the NRCC are selected in a number of ways. Principally, they are selected based on their previous support of the NRCC. Other times, it is because of personal or political relationships with Republican House Members. For example, the NRCC sometimes asks a Republican House Member to contact a particular donor because that donor had supported the Member's previous campaigns, and thus might be likely to respond favorably to an appeal by that Member to support the NRCC.

Similarly, the NRCC sometimes asks a Republican House Member to contact a particular donor

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from that Member's home state. House Members sometimes request those who have made the maximum contributions to their campaigns to contribute to the NRCC.

[A]30. Sometimes, the NRCC asks Republican House Members to contact particular donors because of shared public policy views. For example, the NRCC has sought and received assistance from particular Republican House Members in fundraising from different constituencies, such as gun owners or small businesses, based upon common public policy views, because those Members had a strong public record of support for those issues.

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C.

[A]33. The NRCC relies principally on Republican House Members to raise funds for its federal and nonfederal accounts.

[A]34. On some occasions, the NRCC and its leadership request Republican House Members to raise funds in specified amounts, or to devote specified periods of time to fundraising. However, the amount of time each Member spends raising funds for the NRCC varies from Member to Member, with the Chairman and the Speaker normally devoting the largest portions of time.

[A]35. The NRCC uses no formal so-called "credit" or "tally" program, or otherwise makes spending decisions based upon such a program, to encourage fundraising by Republican House Members or Republican House candidates. However, the NRCC may advise Republican House Members of the amounts they have raised for the NRCC, and the NRCC is aware of which Members have raised funds for the NRCC. The purpose is to encourage Members to aid in furthering their collective interest in preserving a majority and any records of the amounts raised by Members are not kept for the purpose of influencing expenditure decisions by the NRCC.

[A]36. Republican House Members use a variety of methods to raise funds for the NRCC's federal and nonfederal accounts. These methods include contacting individuals via telephone and asking them to give or raise funds; meeting individuals in person and asking them to give or raise funds; participating in events that are designed to elicit donations, including joint fundraising events; and lending their names to written appeals for funds. Documents reflecting such methods may be found at Tab D.

[A]37. For example, Republican House Members sometimes make telephone solicitations for funds on behalf of the NRCC from its headquarters. Similarly, Republican House Members sometimes travel to particular cities and meet face-to-face with prospective

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donors in those cities, asking them to help raise or donate funds. Similarly, Republican House Members sometimes serve as featured guests at receptions where individuals are asked to donate funds to the NRCC as a condition of attendance. Similarly, Republican House Members sometimes sign direct mail fundraising letters prepared by NRCC staff or consultants.

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39. In this joint fundraising effort, the NRCC and the NRSC form a separate joint fundraising committee under FEC regulations. A joint fundraising committee collects and deposits contributions, pays related expenses, allocates proceeds and expenses to the participants, keeps required records, and discloses overall joint fundraising activity to the FEC.

40. The NRCC and the NRSC, as participants in the joint fundraising committee, agree to a formula for allocating proceeds and expenses.

41. The NRCC hosts several different types of events to motivate persons to donate funds. These events are often attended by Republican House Members, Republican House candidates, other Republican federal officeholders, Republican Cabinet officials, Republican state and local officeholders, and other celebrities who neither seek nor hold federal office.

42. At NRCC fundraising events, individuals who raise funds for or donate funds to the NRCC, including representatives of corporations and associations, often interact directly with

Republican House Members, Republican House candidates and other featured attendees. The nature and types of these interactions vary from event to event. Individuals who attend these events and who are so inclined may take the opportunity to discuss policy matters with House Members and candidates.

43. Donors and fundraisers sometimes attend receptions, or breakfasts, lunches or dinners, along with one or more Republican House Members, followed or accompanied by remarks from a Republican House Member or senior NRCC employee who serves as the featured guest. In these circumstances, donors and fundraisers have the opportunity to speak with Republican House Members and NRCC employees. Examples of materials related to such events are attached at Tab E.

44. NRCC fundraising events sometimes involve retreats in which a series of events are scheduled for donors, fundraisers, Republican House Members, Republican House candidates, and other featured guests. At such events, donors and fundraisers sometimes participate in group discussions with Republican House Members, Republican House candidates, and other featured guests. At such events, donors and fundraisers also sometimes engage in recreational activities with Republican House Members, Republican House candidates, and other featured guests. Examples of materials related to such events are attached at Tab F.

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[A]48. In making spending decisions, the NRCC considers a number of different variables, all related to the NRCC's organizational purposes and functions. For example, the NRCC transfers federal and nonfederal funds to state political parties to support issue advocacy communications when it wants to advocate its position on issues of public concern, or it believes that the political situation and issue environment make such advertising likely to indirectly benefit the Republican ticket in that state, including Republican House candidates.

[A]49.

political party committees, to receive financial assistance from the NRCC's nonfederal program. These recommendations are made for different reasons. While the NRCC may consider these recommendations in weighing its own plans, it retains sole discretion over the manner in which it spends its funds.

50. The NRCC makes donations from its nonfederal account to candidates for state and local office. Examples of checks making such donations are attached at Tab I.

[A]51.

52. The NRCC supports the activities of Republican state political party committees in several ways.

53. The NRCC transfers funds from its federal account to the federal accounts of Republican state political party committees.

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54. The NRCC transfers funds from its nonfederal accounts to the nonfederal accounts of Republican state political party committees in the manner permitted by applicable state law. Examples of sign-off sheets for such transfers are attached at Tab J.

55. The NRCC also supports Republican state political party committees in producing and disseminating issue advocacy communications. In my experience, the large majority of the NRCC's nonfederal transfers to state and local party committees have been to support the nonfederal share of issue advocacy communications. Examples of sign-off sheets for such transfers are attached at Tab K. Frequently, these communications refer to Republican House candidates or their Democratic opponents, while not expressly advocating any candidate's election or defeat.

56. In addition to supporting issue advocacy communications, the NRCC transfers federal and nonfederal funds to state and/or local party committees for voter identification, voter registration and get-out-the-vote efforts. These efforts have a significant effect on the election of federal as well as state and local candidates. In addition, the NRCC transfers nonfederal funds to assist with redistricting support and in support of ballot initiatives.

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[A]58. When the NRCC transfers funds to state party committees, including nonfederal funds, for the purpose of disseminating issue advocacy communications, it first develops the communications in consultation with the state party and media consultants, and then provides the communications to the state party, together with the necessary funds to distribute them locally. State parties may, but generally do not, reject the communications.

[A]59. The NRCC participates in the creative development of issue advocacy communications it supports and works with the state parties and consultants to determine their content, timing and placement. For example, the NRCC's political staff expresses views on questions of communications strategy. The NRCC's research staff review scripts of proposed communications in advance for accuracy, and I, as NRCC's counsel, review them for legal compliance. The NRCC does not permit issue advocacy communications it supports to be recorded or produced until they have been approved by me, as NRCC counsel, and NRCC senior employees.

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64. The NRCC sometimes assists the RNC and NRSC in order to promote the interests of the Republican Party as a whole, notwithstanding the fact that the NRCC remains a separate organization with discrete political objectives.

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66. The NRCC sometimes donates nonfederal funds to one of the other Republican national political party committees.

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70. Sometimes the NRCC has reacted to advertising and other activities by other interests. For example, attached at Tab L is a copy of an October 1997 fundraising letter reacting to activities of the AFL-CIO. Also, attached at Tab M is a filing made by the NRCC with the FEC in 1996 concerning the advertising by the AFL-CIO.

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72. The NRCC hires employees with a variety of previous work experiences. In some instances, individuals work for the NRCC after having served on the campaign staff of a Republican candidate for public office.

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74. The NRCC sometimes makes independent expenditures in House races, and in some cases to influence elections in which it has also made coordinated expenditures.

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I declare under penalty of perjury that the foregoing is true and correct.



Donald F. McGahn II

Executed on September 27, 2002.