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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
THREE JUDGE COURT, WASHINGTON, D.C.

MCCONNELL, et al.,

Plaintiffs,

v.

Case No. 02-0582

FEDERAL ELECTION COMMITTEE,

CONSOLIDATED CASES

et al.,

Defendants

Deposition of PLAINTIFFS CITIZENS FOR BETTER

MEDICARE BY

TIMOTHY C. RYAN

INDIVIDUALLY AND AS 30(b)(6)

Washington, D. C.

Tuesday, September 24, 2002

9:35 a.m.

Job No: 12-5007



Manhattan Reporting Tel 212-557-7400
Advocate Reporting Tel 212-697-6565
Reported by: Amy L. Massengale, RPR
Global court reporting • large case specialists • legal videography • litigation support

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Deposition of PLAINTIFFS CITIZENS FOR BETTER
MEDICARE BY TIMOTHY C. RYAN, held at the offices of:
UNITED STATES DEPARTMENT OF JUSTICE
901 E Street
Seventh Floor
Washington, D. C. 20004
(202) 514-3358

Pursuant to agreement of counsel, before
Amy L. Massengale, Registered Professional
Reporter and Notary Public in and for the District
of Columbia.

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A P P E A R A N C E S

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A P P E A R A N C E S C O N T I N U E D

ON BEHALF OF THE UNITED STATES DEPARTMENT

OF JUSTICE:

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C O N T E N T S

EXAMINATION OF TIMOTHY C. RYAN	PAGE
By Mr. Gilligan	6

E X H I B I T S

(Attached to the transcript.)

RYAN EXHIBIT NUMBER		PAGE
1	Videotape, Cold Harbor Films	25
2	Storyboard	34
3	Videotape, CBM0024	42
4	Storyboard	47
5	Newsweek Article	52
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8	Star Tribune Article	72
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10	Survey, 400 Likely Voters	115
11	Survey, 400 Likely Voters	115
12	Survey, 403 Likely Voters	115

1 COUNSEL ONLY - TIMOTHY C. RYAN

2 P R O C E E D I N G S

3 TIMOTHY C. RYAN, INDIVIDUALLY AND AS 30(b)(6)

4 witness, having been duly sworn, testified as

5 follows:

6 EXAMINATION BY COUNSEL FOR THE

7 UNITED STATES DEPARTMENT OF JUSTICE

8 BY MR. GILLIGAN:

9 Q Could you state your name for the record,
10 please.

11 A Timothy C. Ryan.

12 Q And by whom are you employed, Mr. Ryan?

13 A I'm currently by Sawyer Miller Weber
14 Shandwick.

15 Q What kind of firm is that?

16 A A PR firm, an advertising firm.

17 Q How long have you been with Sawyer Miller?

18 A Since March 1st of this year.

19 Q And what sort of job did you do for Sawyer
20 Miller?

21 A I'm their vice president for advertising
22 here in Washington, and also to advise clients on
23 PR, public relations issues, that kind of thing.

24 Q Before you took a position at Sawyer
25 Miller, who were you employed by?

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2 A Citizens for Better Medicare. I was
3 executive director.

4 Q And why did you leave Citizens for Better
5 Medicare to take a position at Sawyer Miller?

6 A I originally left to take time off and
7 look for another position, but really the job was
8 coming to an end. I was looking to move on. I had
9 been there for two and a half years and was looking
10 for new professional challenges.

11 Q When you say the job was coming to an end,
12 what do you mean by that?

13 A Oh, after September 11, I think there was
14 a conventional wisdom the Congress was going to be
15 preoccupied with terrorism and security issues for
16 the year and weren't going to get to the issue of
17 prescription drug benefits.

18 And at that point, I had been there
19 for over two years and was thinking it was time to
20 step out of here now and transition and do something
21 else with my life.

22 Q Is Citizens for Better Medicare still in
23 existence, as far as you know?

24 A It is, yes, as far as I know.

25 Q Can you describe for me your duties and

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2 employed there. Fair enough.

3 The United States Chamber of Commerce
4 was also a member, correct?

5 A Correct.

6 Q And an organization called 60 Plus?

7 A Correct.

8 Q At least during the time you were there,
9 how was CBM financed?

10 A Through underwriters, through PHRMA
11 members. That is pharmaceutical companies.

12 Q Pharmaceutical corporations?

13 A Yes.

14 Q In fact, there were assessments placed on
15 the pharmaceutical corporations on a routine basis;
16 were there not?

17 MR. BERGER: Objection, leading. You may
18 answer.

19 THE WITNESS: We solicited funding from
20 the pharmaceutical companies to underwrite our
21 efforts.

22 BY MR. GILLIGAN:

23 Q And what proportion of CBM's funding did
24 these contributions from the pharmaceutical
25 corporations account for?

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2 A All. I mean, if you look at it from a
3 purely financial sense, all, but obviously others
4 put time, energy, effort on winning on the issue and
5 I always made the argument, at least to reporters,
6 that counted for something. It just wasn't all done
7 by ads.

8 Q And the amount of money that CBM received
9 from pharmaceutical corporations amounted to tens of
10 millions of dollars per year; is that right?

11 MR. BERGER: Objection. Leading. You may
12 answer.

13 THE WITNESS: Correct.

14 BY MR. GILLIGAN:

15 Q You said Mr. Dixon was the head of the
16 Kidney Cancer Association?

17 A Yes.

18 Q Did he have any affiliation with PhRMA, as
19 far as you know?

20 A I don't know. You would have to ask him.

21 Q You mentioned the ads a moment ago. CBM
22 spent a lot of money on advertising in 1999 and
23 2000; did it not?

24 A Yes, it did.

25 Q I have seen some estimates that between

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2 1999 and 2000 CBM spent somewhere in the
3 neighborhood of \$65 million on television
4 advertising. Does that sound about right?

5 A That's about right.

6 Q And when CBM spends that much money, that
7 kind of money on TV and radio advertising, who
8 approved those expenditures?

9 A Ultimately, I did.

10 Q All right. Did the pharmaceutical
11 companies who were underwriting these efforts have
12 anything to say about it?

13 A Yes, I regularly conferred with the
14 underwriters to our effort as well as our national
15 coalition members, my board and our underwriters to
16 ask them what they thought of what we were doing.

17 Q And generally speaking, they gave their
18 approval to what you were proposing?

19 A I wouldn't characterize it as approval. I
20 would characterize it as me soliciting advice on
21 what do you think of our campaign going forward.

22 There was regular some planned, not
23 planned intervals, where we sought such advice and
24 counsel from our underwriters, and we would have
25 been stupid not to since they were the ones we were

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2 something closer to -- akin to Medicare reform but
3 it was a market-based plan.

4 Q Do you recall any ads referring to
5 specific members of Congress?

6 A At that time?

7 Q Yes.

8 A We didn't run any ads at that point
9 mentioning members of Congress.

10 (Thereupon, Exhibit No. 3 was marked for
11 identification and attached to the transcript.)

12 MR. GILLIGAN: That's Strengthen and
13 Improve Fletcher, correct?

14 Can you pop it out? I want to make sure
15 we have the right copies here.

16 MR. KESSELMAN: Yes.

17 MR. BERGER: Does it have a document
18 production number on it?

19 MR. GILLIGAN: The original is marked CBM
20 0024.

21 THE WITNESS: Are these all rough cuts?

22 BY MR. GILLIGAN:

23 Q Well, actually --

24 A Is this also labeled rough cut?

25 Q Why don't we let the witness examine the

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2 Q And is it through this media monitoring by
3 CMAG, is that how you came to learn that the AFL-CIO
4 had been running advertisements against
5 Mr. Fletcher?

6 A Yes.

7 Q Were you also aware that it was running
8 the advertisement we saw against Mr. Bass?

9 A We were aware of the markets where they
10 were running, you know, the first or ultimately both
11 ads.

12 Q Okay. Did they have -- were they running
13 one or the other of these ads against Congresswoman
14 Heather Wilson?

15 A I believe so.

16 Q How about Brian Bilbray?

17 A I believe so.

18 Q Also a congressman?

19 A Uh-huh.

20 Q Congressman Jay Dickey?

21 A I believe so.

22 Q Congressman Robin Hayes?

23 A Yes.

24 Q Congressman George Nethercutt?

25 A Yes.

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Q Congressman Anne Northup or Northrup?

A Northup, no R.

Q Well, one R.

A Okay, one R. You are the lawyer.

Q How about Congressman Don Sherwood?

A I believe so.

Q Congressman Clay Shaw?

A I believe so.

Q Congressman Dooley?

A I don't think they were saying anything about Congressman Dooley.

Q How about Congressman Charles Taylor?

A I don't know if -- I mean, there was 12 in all and I don't remember -- some of the more obvious ones you mentioned I might recall, but my recollection is there were about 12 or a dozen districts they started these advertisements in.

Q Well, I have one more on my list, so let's polish it off. Congressman Mark Foley?

A I don't recall him specifically.

Q Okay. Why was it that CBM contracted with CMAG to monitor, I take it, it was paid media on the prescription drug issue?

A We wanted know what was being said in the

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2 public debate. We contracted them in 1999
3 throughout the whole discussion of what was being
4 said.

5 Q And you wanted to know what was being said
6 so that you could respond to it, if necessary; is
7 that right?

8 MR. BERGER: Objection, leading.

9 THE WITNESS: We wanted to know what was
10 being said in the public discourse about this
11 as well.

12 We were also tracking earned media. We
13 were tracking what members of Congress were
14 coming out into the swamp.

15 We were interested in shaping this debate,
16 and so when President Clinton made appearances,
17 we tracked everything across this debate
18 wherever it occurred. That was our mission.

19 BY MR. GILLIGAN:

20 Q Shaping the debate, meaning responding to
21 what other people are saying in the debate, correct?

22 A In part, sometimes, yes.

23 Q Now, the ad we saw with Ms. DeCarlo --

24 A DeCarlo.

25 Q Yes, DeCarlo, Ardell DeCarlo, that

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2 mentions Congressman Fletcher, CBM also ran that ad,
3 that identical ad in other Congressional districts
4 around the country except instead of referring to
5 Congressman Fletcher, it would refer to other
6 members of Congress, correct?

7 A Correct.

8 Q And these were the members of Congress,
9 were they not, who had come under attack in the
10 AFL-CIO's ads, correct?

11 A AFL-CIO and others.

12 Q These were congressmen who had voted for
13 the Hastert/Thomas legislation, correct?

14 A Correct.

15 Q And who were being attacked for having
16 voted for the Hastert/Thomas legislation?

17 A Absolutely.

18 Q And these would include, so the record is
19 clear, Ms. Wilson?

20 A Correct.

21 Q Mr. Bass?

22 A Yeah.

23 Q Mr. Bilbray?

24 A Yes.

25 Q Mr. Dickey?

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2 A Yes.

3 Q Mr. Hayes?

4 A Yes.

5 Q Mr. Nethercutt?

6 A I believe so.

7 Q Ms. Northup?

8 A Yes.

9 Q And Mr. Sherwood?

10 A Yes.

11 Q And Mr. Shaw?

12 A Yes.

13 Q And Mr. Taylor?

14 A I don't know if he was being -- I don't
15 know if he was being attacked or not.

16 MR. GILLIGAN: Let's mark this as No. 8.

17 (Thereupon, Ryan Exhibit No. 8 was marked for
18 identification and was attached to the transcript.)

19 BY MR. GILLIGAN:

20 Q For the record, what we have marked as
21 Exhibit 8 is an article from the Minneapolis/St.
22 Paul Star Tribune dated September 10, 2000.

23 A Yeah, I have read the article.

24 Q All right. The article refers to a
25 Mr. Dan Zielinski, correct?

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2 characterization of those advertisements, that they
3 were rebuttal?

4 MR. BERGER: I will object to the question
5 because there is a huge preface to it, but go
6 ahead and answer the question.

7 THE WITNESS: Well, it is a little odd
8 because Tom Peterson is a Democrat and the
9 AFL-CIO -- this was typical of the kind of
10 quality reporting you got from reporters on
11 this thing, but the -- we were trying to
12 correct the issue debate. The AFL-CIO was out
13 there making distortions about people's voting
14 record on this, and we were trying to correct
15 the issue debate and counter the distortions in
16 the ads that we just saw.

17 BY MR. GILLIGAN:

18 Q So it is fair then to characterize them as
19 a rebuttal to the AFL-CIO campaign?

20 A If you want to characterize them as a
21 rebuttal, that is your characterization. I will say
22 we were trying to counter the distortions they were
23 putting on the airwaves. That is how this reporter
24 characterized it.

25 Q According to the reporter, that is how

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2 Mr. Zielinski characterized it. Do you have any
3 reason to believe his remarks were mischaracterized?

4 MR. BERGER: Objection, argumentative.

5 BY MR. GILLIGAN:

6 Q You can answer.

7 A Well, again, the statement, I would find
8 it strange that Dan would say that because the
9 AFL-CIO was not criticizing Colin Peterson, and they
10 weren't running ads.

11 He is a Democrat, and I doubt they
12 were running attack ads on Colin Peterson, so I
13 think this whole statement is flawed, I think, in my
14 opinion.

15 Q If you look a few paragraphs down, it
16 says, Zielinski contended that House members,
17 plural, quote, have been the target of a very
18 vicious campaign to smear that vote, unquote.

19 A That I agree with.

20 Q Okay. And let's go again back to the
21 House members in particular that we have been
22 talking about, including Mr. Fletcher.

23 Again, to recap, these were members
24 of the House of Representatives who had voted for
25 the Hastert/Thomas market plan, correct?

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2 A Correct.

3 Q The plan that CBM and the pharmaceutical
4 industry preferred, correct?

5 MR. BERGER: Objection. Mischaracterizes
6 testimony.

7 THE WITNESS: It was the plan that
8 Citizens for Better Medicare supported.

9 BY MR. GILLIGAN:

10 Q And that its members supported?

11 A In large part, although, as I said, we
12 would have preferred a slightly broader plan.

13 Q Okay. We mentioned before that
14 Mr. Fletcher was in a close re-election race.

15 Were you aware whether any of these
16 other members of the House that we were speaking of
17 were in close re-election races?

18 A Presumably, that is where the AFL-CIO was
19 directing their attacks, on members that were
20 engaged in close races.

21 Q Do you recall checking with the Cook
22 Report to see whether these races that these members
23 of Congress were in were rated as competitive or
24 toss-ups or otherwise close?

25 A I'm sure we would have, that and the

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2 Rothenberg Report and other press reports about who
3 is being attacked on this issue.

4 Q Okay. And so do you recall then being
5 aware at the time that these members of Congress
6 were in fact in close re-election races?

7 A That was a presumption, but what we were
8 more interested in was the fact they were being
9 attacked on an issue we cared about on the central
10 policy question that the Congress was faced with
11 that had not been resolved yet.

12 Q And weren't you concerned that if you
13 didn't respond to those attacks by the AFL-CIO, that
14 these members of Congress might lose their bids for
15 re-election?

16 MR. BERGER: Objection. Leading. You may
17 answer.

18 THE WITNESS: That was not our central
19 concern. Our central concern was these members
20 were being attacked on the policy position that
21 we cared about, and we were responding to the
22 negative distortions that the AFL-CIO and
23 others, candidates for office, other third
24 party interest groups, local groups were doing
25 in the earned media that were attacking these

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2 Q And let's talk about the mandate. If the
3 AFL-CIO's ads were not responded to and these
4 members of Congress who had supported a market-based
5 plan were defeated and were perceived to have been
6 defeated for that reason, weren't you concerned that
7 under those circumstances support for a market-based
8 plan on Capitol Hill would erode?

9 A We wanted to provide good policy support
10 for our policy position, and so we were charged with
11 communicating with the issue debate wherever it
12 occurred, and the fact it occurred in and around an
13 election is something we couldn't help. That was
14 something thrust upon us.

15 But we did feel the need to counter
16 the attacks and distortions by the AFL-CIO and
17 others and in places where they were attacking
18 members for that specific vote.

19 And we were coming in with very
20 specific legislation that said this was a good vote
21 in favor of the seniors, that would help seniors,
22 that would provide them with a prescription drug
23 benefit.

24 And, as you see, they were positive
25 communications in support of that member's policy

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2 position, our policy position that we shared with
3 them.

4 Q Did you discuss with anybody whether to
5 respond to the AFL-CIO's attack ads?

6 A Sure.

7 Q Who?

8 A We discussed it with our consultants. We
9 had a discussion about what we should do. We had a
10 discussion about whether we should engage in a
11 response or not.

12 Q Who did you have those discussions with
13 specifically?

14 A We had discussions with our internal
15 consulting team. That would include National Media.
16 That would include the other consultants, Bill
17 McIntyre, some of the consultants at Clark and
18 Weinstock as well as Apco and others about what we
19 should be doing to respond to these distortions.

20 Q Did you discuss it with anybody at PhRMA?

21 A I'm sure we did.

22 Q Who did you discuss it with at PhRMA?

23 A As I said, we had regular intervals where
24 we would -- regular times where we would come in and
25 report on our updates and activities, and I believe

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2 the discussions were centered on us proposing what
3 we should do to respond and to respond to these
4 distortions.

5 So it was probably in the form of a
6 meeting where we came in and proposed a
7 communications campaign that would include
8 advertising that we saw to company representatives
9 as well as PhRMA staff.

10 Q Okay. Company representatives, meaning
11 representatives of the underwriters?

12 A Correct.

13 Q The pharmaceutical corporations?

14 A Correct.

15 Q Members of the Prescription Drug Coverage
16 Task Force?

17 A Could be.

18 Q During these discussions, didn't you
19 discuss the electoral ramifications for these
20 members of Congress if you didn't respond to those
21 AFL-CIO ads?

22 A We did not know. We were agnostic as to
23 who won or lost. What we cared about was how the
24 issue was being discussed.

25 Q And you cared about how much support there

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2 was on Capitol Hill?

3 A For our policy position.

4 Q For your policy position, and if these
5 members of Congress who were the target of the
6 AFL-CIO's ads who had supported the Hastert/Thomas
7 bill lost, then you would have lost some support for
8 your policy position on Capitol Hill, correct?

9 MR. BERGER: Objection, leading. You may
10 answer.

11 THE WITNESS: That may be a consequence of
12 the electoral cycle determining that, but I
13 would submit when the AFL-CIO changed to other
14 subjects to attack these members and we did
15 not, that that was evidence that we supported,
16 we cared about an issue and how that issue was
17 being debated.

18 BY MR. GILLIGAN:

19 Q But didn't you --

20 A But not other subjects, mainly to score
21 political points.

22 Q But that is not my question. My question
23 is, did it not concern Citizens for Better Medicare
24 that if these individuals lost their bids for
25 re-election, then it would have lost support for its

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2 policy position on Capitol Hill?

3 MR. BERGER: Objection, asked and
4 answered, argumentative. You may answer again.

5 THE WITNESS: That would be a consequence
6 of the electoral cycle, but if they lost on
7 Social Security or guns or other issues, we had
8 no control over that, and we had no control
9 over how those issues were being debated.

10 We had a mandate to correct the issue
11 debate, educate seniors and other people who
12 desperately wanted a prescription drug benefit,
13 that these members had in fact supported a good
14 policy position and that policy position needed
15 support.

16 MR. GILLIGAN: Can I hear that answer
17 again?

18 (The Reporter read the preceding answer.)

19 BY MR. GILLIGAN:

20 Q Of all issues they could have lost on,
21 wasn't it important to your organization that it not
22 be perceived on Capitol Hill that these members of
23 Congress lost re-election over the prescription drug
24 coverage issue?

25 A Again, I think the electoral outcome was

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2 something that we -- that was not our objective.

3 Our objective was to --

4 Q I'm --

5 A Maybe you can say it again.

6 Q We are talking about a dozen or so
7 legislators in the House that had voted to support a
8 marketplace-based plan for prescription drug
9 coverage, right?

10 A Right.

11 Q It was a very close vote in the House,
12 wasn't it?

13 A Yes.

14 Q And it was also a -- the policy issue was
15 very close in the Senate, too, correct?

16 A Yes.

17 Q Regardless of why they might have lost,
18 these dozen or so members of the House, was it not a
19 concern of your organization that if these
20 individuals lost, for whatever reason, and then were
21 replaced by legislators who supported a Clinton
22 plan, that as a result your legislative goal on this
23 issue might be defeated?

24 MR. BERGER: I object to the form of the
25 question. It has been asked and answered, but

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2 you can answer it again.

3 THE WITNESS: We were concerned about
4 whether folks in -- people in these districts
5 understood what this policy debate was really
6 about and that there were two sides of the
7 equation. And we wanted to make sure that they
8 understood that this was a good, good vote.

9 What we were -- we were -- so we were
10 primarily concerned about how the policy is
11 being discussed in this particular environment.

12 We weren't concerned that if the issue of
13 prescription drugs was the thing that turned
14 the elections. Then that is why we were going
15 in, trying to provide balanced information so
16 that people understood what our policy position
17 was about and that is what we were trying to
18 do.

19 It was not -- if they won or lost, that
20 was fine, as long as they didn't lose and win
21 over our issue because we wanted to make sure
22 they understood -- the constituents in those
23 districts understood that this was a good vote
24 and the policy that the member had supported
25 was a good policy in the wake of distortions