

**May 7, 2003 -- Democracy 21: Court Documents Unsealed by District Court**

During the course of the lawsuit challenging the new campaign finance law, a number of documents were submitted in the case to the court under seal and not made available to the public.

In an opinion issued on May, 2, 2003 by Judge Kollar-Kotelly, a member of the three-judge District Court panel that heard the case, the court took the position that the only information that would be made public from the documents under seal is information used in the opinions issued in the case.

Set forth below is some of the information from these opinions that previously had been under court seal. The information illustrates, among other things, the role played by federal officeholders in raising soft money, the interests of Fortune 100 companies in using soft money to gain access and influence with federal officeholders, the pressures felt by Fortune 100 companies to contribute soft money and the use of "issue ads" to influence federal elections.

**Information Cited by Judges in Their Opinions from Documents Under Seal**

- **Memorandum from a Fortune 100 company's legislative advocate to a high-level executive, dated March 4, 1999 , [citation sealed] (Opinion of Judge Kollar-Kotelly at 170-72, Opinion of Judge Leon at 237)**

[w]ith both houses of Congress and the White House hotly contested this cycle, the importance of soft money, and consequently the efforts by the parties to raise even more soft money, is greater than ever. On the Democratic side, [our company's] advocates have already fielded soft money calls from House Democratic Leader Gephardt, House Democratic Caucus Chairman Frost, Democratic Congressional Campaign Chairman Kennedy, and Democratic Senatorial Campaign Chairman Torricelli. Similar contacts to raise soft money have been made by Republican congressional leaders. In addition to the increased pressure from party and congressional leaders, it is clear that our direct competitors and potential competitors are weighing in with big soft money donations.

As Judge Kollar-Kotelly notes, "[t]he nonfederal [soft money] budget request was justified by a

number of rationales":

First, due to a significant [sic] in the number of events scheduled by the parties for their donors, the number of opportunities . . . to develop relationships with elected and administration officials has never been greater. As the parties compete more vigorously for soft money dollars, the number and quality of events for interacting with both the leadership and rank and file Members has been greatly increased. Between the six main committees (DNC, DSCC, DCCC, RNC, NRCC, NRSC) there are events both in and out of [ Washington , D.C. ] almost every day of the week.

Two, . . . the parties have become increasingly reliant on soft money and both feel it is critical to their success in coming elections. Not surprisingly, this has made the parties especially sensitive to which companies contribute soft money, and which don't. As noted, our traditional competitors continue to contribute large amounts of soft money and as [our company] expands its business into new areas (e.g. cable, internet, networking) it faces new types of competitors, primarily in the computer and high tech industry, that also contribute heavily. Failure to maintain our soft money participation during this election cycle - given the heightened scrutiny those contributions will receive in the current competitive climate - may give our new and traditional competitors an advantage in Washington .

Three, the next Administration will also be determined in this election cycle. Consequently, we will be asked to use soft money contributions to support both national parties at an even greater level than during a non-Presidential year. Funding for the national conventions and next year's national party committee requests should be anticipated in this year's budget and contributed when appropriate to foster the development of relationships with the key officials of the next Administration. Finally, because both parties will be working to influence redistricting efforts during the next two years, we anticipate that we will be asked to make soft money contributions to these efforts. Redistricting is a key once-a-decade effort that both parties have very high on their priority list. Given the priority of the redistricting efforts, relatively small soft money contributions in this area could result in disproportionate benefit.

- **Internal Fortune 100 company memorandum entitled "Justification for donation to [DSCC]" ( October 25, 2000 ) [citation sealed] (Opinion of Judge Kollar-Kotelly at 133, Opinion of Judge Leon at 234)**

I am requesting a check for \$50,000.00 to the Democratic Senatorial Campaign Committee (DSCC). Senator Robert Torricelli is the chairman for the DSCC and in a recent conversation

with the Senator, he requested the above amount from [our company]. Senator Torricelli has been a friend to [our company] for many years and he has shown himself to be a thoughtful voice regarding issues in our industry. He currently serves on the Judiciary, Foreign Relations & Governmental Affairs and Rules and Administration Committees. I feel this would be a great opportunity to strengthen our relationship with Senator Torricelli and the DSCC.

- **Internal Fortune 100 company memorandum entitled "Justification for donation to [DSCC]" ( December 12, 2000 ) [citation sealed] (Opinion of Judge Kollar-Kotelly at 133-34)**

I am requesting a check in the amount of \$50,000 to the Democratic Senatorial Campaign Committee (DSCC). Senator Patty Murray (D-WA) is the new chairman of the DSCC . . . . Senator Murray sits on the Senate Committees on Appropriations, Budget, Health, Education, Labor and Pensions, and Veterans Affairs. This donation would further enhance our ties with the DSCC and get our relationship with Senator Murray off to a good start.

- **Internal Fortune 100 company memorandum entitled "[DCCC]/Congressman Bill Luther" ( May 7, 2001 ) [citation sealed] (Opinion of Judge Kollar-Kotelly at 134)**

I am requesting a check for \$25,000.00 to the [DCCC] to support party building activities in response to a request from Congressman Bill Luther. Congressman Luther has been a friend to [our company] for many years . . . . He currently serves on the Commerce Committee, the Subcommittees for Telecommunications, Trade & Consumer Protection as well as the Finance and Hazardous Materials. I feel this would be a great opportunity to strengthen our relationship with Congressman Luther.

- **Internal Fortune 100 company memorandum entitled "Georgia Senate 2002" ( July 19, 2001 ) [citation sealed] (Opinion of Judge Kollar-Kotelly at 134)**

I am requesting a check for \$10,000.00 on behalf of Georgia Senate 2002. Senator Cleland has been reaching out to his key supporters and he has contacted [our company] for financial assistance with Georgia Senate 2002. This is very important to Senator Max Cleland and over the years, Senator Cleland has been a good friend to [our company]. I feel this would be a great opportunity to strengthen our relationship with Senator Cleland.

- **Internal Fortune 100 company memorandum entitled "NRCC Leadership Dinner 2000," dated April 4, 2000 , [citation sealed] (Opinion of Judge Kollar-Kotelly at 134-35, Opinion of Judge Leon at 234-35)**

I think we established some goodwill with [Congressman] Tauzin, both by [our company] contributing at the \$100,000 level to the NRCC dinner he chaired last month and by my participation in the NRCC Finance Committee for the dinner. Tauzin understood that [our company] participated at the same level as the major . . . companies [in our industry] did, and he expressed genuine interest in trying to begin to reach out to the competitive industry. In sum, I think the event was a real positive for [our company]."

- **Internal Fortune 100 company memorandum ( Oct. 26, 2000 ), [citation sealed] (Opinion of Judge Kolar-Kotelly at 173-74, Opinion of Judge Leon at 137)**

Attached please find an invoice from the NRSC for [our company's] commitment of \$25,000 in soft money. As you know, this request was approved during the PAC meeting this week. We recently approved a soft money donation to the New Dominion Fund, requested by Senator Chuck Robb. At the time this request was approved, the team determined that our support in this race would be equal. The request attached balances [our company's] support in this race, as a contribution to the RNSC has been requested by George Allen.

In addition, the following quoted information also comes from the opinions issued by the judges from documents under court seal.

- A call sheet for a call that took place in RNC Chairman Jim Nicholson's office, which included " handwritten comments, including: 'Gary Miller sponsoring Brownfield Legislation. Boehlert + Bliley against. Working w/ Speaker. Asked JN help. JN agreed to talk to Boehlert @ the possible time. When appropriate. . . . Call Sen. Abraham about support homebuilders - Property Rights Bill . . . . Lott good friend of homebuilders." Opinion of Judge Kollar-Kotelly at 114. Also included on the sheet were "instructions to thank the group for upgrading to Team 100," an RNC major donor group that requires an initial contribution of \$100,000 and annual contributions of \$25,000 in the three subsequent years for membership. As Judge Kollar-Kotelly wrote, "It is clear that political parties are involved in efforts to influence federal officeholders with regard to the passage or defeat of specific legislation." Opinion of Judge Kollar-Kotelly at

113.

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- A California Democratic Party call sheet from 1996, which includes the notation that a potential donor should be asked "if they might be able to do \$25,000 for a small mtg with the President, you know it's steep, but want to include them in these types of meetings." Judges Leon and Kollar-Kotelly cited this as an example of the link between soft money donations and access to elected officials. Opinion of Judge Leon at 228; Opinion of Kollar-Kotelly at 166-68.
  
- A note written on the stationary of RNC's Team 100 Director, stating "they have pretty much decided to join T-100 . . . . They want access to political players. . . . Their top issue is tort reform." Both Judge Leon and Judge Kollar-Kotelly cited this type of evidence as examples of party leaders facilitating communications between soft money donors and lawmakers on policy matters. Opinion of Judge Leon at 219-21; Opinion of Judge Kollar-Kotelly at 135.
  
- Testimony from the Executive Director of the DSCC, the General Counsel of the NRSC, the General Counsel of the NRCC, and the Executive Director of the DCCC, which Judge Kollar-Kotelly characterized as "admit[ting] that they retain control over the advertisements their nonfederal money transfers are used to purchase." Opinion of Kollar-Kotelly at 56-58. Judge Leon likewise found that the NRSC and NRCC testimony revealed that "[m]ost of the transfers are used to pay for issue ads." Opinion of Judge Leon at 176.
  
- A declaration by DNC Political Director Gail Stoltz, where she explains "In my experience, issue ads affect elections. The ads can either demoralize or confuse voters so that they do not vote, or they can energize a voter base for or against a party or its candidates. During a presidential election year, the ads definitely make a difference when a presidential candidate is featured." Opinion of Judge Kollar-Kotelly at 30-31.
  
- A financial statement from the Republican Party of New Mexico, which shows that "it received revenues of \$1,524,634 in nonfederal transfers from other Republican organizations, \$1,110,987 in individual contributions, and just \$389,552 in federal transfers from Republican organizations. . . . [and] spent over one-third of its 1998 revenue, \$1,062,095, on 'issue advocacy' television, radio and mail." Judge Kollar-Kotelly cited this document as a "good example" of a system wherein "[s]tate political parties use a large portion of the transferred nonfederal money to finance public communications that support or oppose a federal candidate." Opinion of Judge Kollar-Kotelly at 52-53; see also Opinion of Judge Leon at 176 (observing that "[m]ost of [these] transfers [received by the New Mexico Republican Party] are used to pay for issue ads.").
  
- In 1996 a group known as The Coalition: Americans Working for Real Change, ran an "issue ad" campaign (Coalition). Judge Kollar-Kotelly found that "The evidence demonstrates

that similar to the AFL-CIO's issue advertising campaign during the 1996 election cycle, business interests (known as The Coalition-Americans Working for Real Change) responded with their own issue advocacy campaign designed to influence the election and paid for with corporate general treasury funds thereby permitting these corporations to evade FECA's source limitations." Opinion of Judge Kollar-Kotelly at 247

- "The Coalition retained two polling organizations in 1996, the Tarrance Group and American Viewpoint, to test whether specific Coalition and AFL-CIO advertisements would make participants more or less likely to vote for particular federal candidates." Opinion of Judge Leon at 277.

- A June 28, 1996, memo prepared by the Tarrance Group for the Coalition stated that "The net result among swing voters in Cleveland was that 25% of participants were moved closer to voting for a Republican candidate for Congress and about half of the participants were moved against national labor leaders. In other words, the response ads not only leveled the playing field, but put some points on the board for Republican candidates as well." Opinion of Judge Kollar-Kotelly at 249; Opinion of Judge Leon at 277.

- In 1996, the Coalition "sought proposals from advertising firms for a 'campaign to re-elect a pro-business Congress.' Media consultant Alex Castellanos of National Media, Inc. opened his proposal to the Coalition by stating, 'Thank you for the opportunity to present two 30 second television and one 60 second radio scripts, as requested, to your campaign to re-elect a pro-business Congress.'" Opinion of Judge Leon at 277 (internal citations omitted); Opinion of Judge Kollar-Kotelly at 248.

- Information regarding the AFL-CIO issue ad campaign in 1996 is also cited by the judges. Judge Kollar-Kotelly and Judge Leon rely on a September 18, 1996, polling memorandum that "analyzed the potential impact of five issue advertisements in terms of their likely effect on voters." Opinion of Judge Kollar-Kotelly at 240 (citing Memorandum from Guy Molyneux and Molly O'Rourke of the polling firm Peter D. Hart Research Associates, Inc., to the AFL-CIO's Special Assistant for Public Affairs, Denise Mitchell, "Ad Targeting" (Sept. 18, 1996)); *see also* Opinion of Judge Leon at 273.

\* Both judges likewise cite an October 9, 1996 AFL-CIO internal memorandum, that "discussed where media buys might be placed to help Dick Durbin in his Illinois Senate race, based on Mr. Durbin's lack of resources to air advertisements in certain markets." Opinion of Judge Kollar-Kotelly at 242 (citing Memorandum from Brian Weeks to Mike Klein, "Electronic Buy for Illinois Senator" (Oct. 9, 1996)); *see also* Opinion of Judge Leon at 275.

