



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

June 8, 2012

To: Energy and Commerce Committee Republican Members

From: Majority Staff

Re: Investigation Update: Closed-Door Obamacare Negotiations

Executive Summary

- As part of its agreement with the White House, the Pharmaceutical Research and Manufacturers of America (PhRMA) needed to undertake a “significant public campaign.” PhRMA was willing to spend as much as \$150 million on advertising, with nearly \$70 million spent on two 501(c)(4) groups that could spend unlimited corporate money with little public disclosure: Healthy Economy Now and Americans for Stable Quality Care.
- Healthy Economy Now was created after a meeting at the Democratic Senatorial Campaign Committee (DSCC) organized in part by White House Deputy Chief of Staff Jim Messina. Participants were told that the White House wanted to see ads linking the poor economy to the need for health care legislation, with one attendee remarking that “given who is behind this ask” their group should support the effort.
- In early June 2009, PhRMA representatives met with “the team that is working with the White House on health care reform” to learn about White House messaging and “how our effort can be consistent with that.” The team was a who’s who of Democratic strategists that included a previous head of the DSCC; the producer of the 2008 Democratic National Convention; and two partners at AKPD Message and Media, the advertising firm founded by then Senior Advisor to the President David Axelrod.
- When PhRMA’s representative indicated that PhRMA was not prepared to run advertisements before seeing how the health care legislation developed, the White House team specifically referred to a meeting the PhRMA CEOs had with Jim Messina the day before and to White House efforts on drug importation policy which had been communicated to PhRMA’s chief lobbyist that day.

- PhRMA's chief lobbyist reported that White House Chief of Staff Rahm Emanuel asked for "Harry and Louise ads thru third party" on July 7, 2009, the same day White House officials met with PhRMA CEOs. PhRMA aired the ad a week later.
- Public revelations about the hiring of political firms close to the White House were perceived to be a "big problem." Presumably, because the firms producing and placing some of PhRMA's advertising, including the advertising through both Healthy Economy Now and Americans for Stable Quality Care, had also received over \$340 million to handle advertising for President Obama's 2008 election campaign.
- The White House attempted to steer the advertising and advocacy tactics of a number of organizations, including the AFL-CIO and AARP.

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*"We don't know who's behind these ads and we don't know who's paying for them...A group can hide behind a phony name like 'Citizens for a Better Future,' even if a more accurate name would be 'Corporations for Weaker Oversight.'"*<sup>1</sup>

-President Barack Obama, Weekly Address (08/21/10)

*"But you have these innocuous-sounding names, and we don't know where this money is coming from. I think that is a problem for our democracy."*<sup>2</sup>

-President Barack Obama, Youth Town Hall (10/14/10)

*"As a 501(c)(4), Healthy Economy Now can accept unlimited contributions from individuals, corporations, labor organizations and associations...we are not required to publicly disclose donation amounts."*<sup>3</sup>

-Solicitation Letter from Healthy Economy Now  
after April 15, 2009 meeting with Jim Messina (04/29/09)

*"Rahm asked for Harry and Louise ads thru third party. We've already contacted the agent."*<sup>4</sup>

-PhRMA Lobbyist Bryant Hall's Summary of  
White House meeting with PhRMA CEOs (07/07/09)

*"Can we get immediate robo calls into Nebraska urging nelson to vote for cloture?"*<sup>5</sup>

-E-mail from Jim Messina to AARP Representative (12/15/09)

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<sup>1</sup> President Barack Obama, Weekly Address (Aug. 21, 2010), available at <http://www.whitehouse.gov/the-press-office/2010/08/21/weekly-address-president-obama-challenges-politicians-benefiting-citizen>.

<sup>2</sup> President Barack Obama, Remarks by the President in a Youth Town Hall (Oct. 14, 2010) (transcript available at <http://www.whitehouse.gov/the-press-office/2010/10/14/remarks-president-a-youth-town-hall>).

<sup>3</sup> Letter from Nick Baldick, Director of Healthy Economy Now, to Michelle Nawar, Assistant Director of Legislation, SEIU (Apr. 29, 2009).

<sup>4</sup> The e-mails cited in this report are transcribed as they appear and have not been edited for typos, grammar, or spelling errors. E-mail from Bryant Hall, Vice President of Federal Affairs, PhRMA, to Jeffrey Forbes, Founding Partner, Cauthen Forbes & William (July 7, 2009, 19:16:14) (PhRMA Document Production 2166).

<sup>5</sup> E-mail from Jim Messina, White House Deputy Chief of Staff, to Nancy LeaMond, Executive Vice President of Social Impact, AARP (Dec. 15, 2009, 01:13) (AARP Document Production 000903).

## **I. White House Role in the Creation of the Pro-Obamacare ‘Super PAC’**

On April 15, 2009, White House Deputy Chief of Staff Jim Messina and Senate Finance Committee Chairman Max Baucus’s Chief of Staff Jon Selib convened a meeting with various interest groups involved in health care reform negotiations; the meeting was held at the offices of the Democratic Senatorial Campaign Committee.<sup>6</sup> Representatives from the Service Employees International Union (SEIU), America’s Health Insurance Plans (AHIP), the AARP, PhRMA, the National Federation of Independent Business (NFIB), and the U.S. Chamber of Commerce were invited to attend.

Participants at this meeting were informed of the White House’s wish to link the country’s economic problems to the need for a new health care law and told that they would be contacted in the near future regarding the details of their expected support.<sup>7</sup> The groups subsequently received telephone calls describing the creation of a 501(c)(4) organization known as Healthy Economy Now, a “targeted coalition advertising campaign in 8 to 10 states to support health care reform.”<sup>8</sup> As a 501(c)(4), the group could raise unlimited amounts of corporate money without public disclosure, in the same manner as a ‘Super PAC’.

Internal e-mails obtained by the Committee describe the group’s purpose: PhRMA’s Wes Metheny wrote, “WH and Senate looking to link economy and health care (per mtg with Bryant)... Idea to spend 500K next two to three weeks inside the beltway.”<sup>9</sup> The SEIU’s Michelle Nawar shed greater light on how this was to be accomplished:

“Last week I was invited to a meeting by Baucus’s COS at the DSCC. Also present was Jim Messina... They basically want to see adds linking HC reform to the economy and the need to do HC reform now. there were not a lot of details but we were told that we wd be getting a phone call. well that call came today. Nick baldick called and he is setting up a C4 called Help the Economy Now<sup>10</sup>. they want a budget of \$6 million, a million a week to do tv ads in DC and in conservate D states and moderate R states. They plan to hit up the ‘bad guys’ for most of the \$ and will also go the Blues, AMA, AdvaMed. They want us to just put in enough to be able to put our names in it—he is thinking @\$100K...but basically they want to get out as much \$ as they can out of groups like NFIB before they

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<sup>6</sup> See E-mail to Michelle Nawar, Karen Ignagni, Bryant Hall, Amanda Austin, Bill Miller and Jim Messina (Apr. 13, 2009, 12:07) (“Messina and I are organizing a meeting...”) (PhRMA Document Production 0002283); E-Mail from Michelle Nawar to Andy Stern, Anna Burger, and Dennis Rivera (Apr. 22, 2009, 16:50) (“Last week I was invited to a meeting by Baucus’ COS at the DSCC.”) (SEIU Document Production 00001477); E-mail from Jon Selib to Michelle Nawar, Karen Ignagni, David Sloan, Bryant Hall, Amanda Austin, Bill Miller, Jim Messina, Kristin Sheehy, Lai Lam & Brianne Rogers (Apr.13, 2009, 16:07) (AARP Document Production 000565).

<sup>7</sup> *Id.*

<sup>8</sup> Letter from PhRMA Counsel to Fred Upton, Chairman, U.S. House of Representatives Energy and Commerce Committee (May 11, 2012) (Excerpt from the Report of the Federal Integrated Advocacy Campaign Governance Committee to the Board of Directors, May 4, 2009). See also *supra* note 6.

<sup>9</sup> E-mail from Wes Metheny, Senior Vice President for Alliance Development, PhRMA, to Bryant Hall and Mimi Simoneaux Kneuer, Executive Vice President, Government and Public Affairs, PhRMA (Apr. 15, 2009, 17:21) (PhRMA Document Production 0002313).

<sup>10</sup> This group would eventually be named “Healthy Economy Now.”

jump ship and they know that is when they will need us to put in more. I think we should see if these groups bite and if they really do put in real \$, then I'd recommend we put in a modest amount...."<sup>11</sup>

Nicholas Baldick, the individual described as "setting up" Healthy Economy Now, is the founder of Hilltop Public Solutions, a public affairs and political consulting firm. Baldick's Hilltop Public Solutions biography touts him as a "nationally recognized campaign strategist, having been involved in every Democratic presidential campaign since 1992."<sup>12</sup> Baldick was a senior advisor for the 2008 Obama Campaign grassroots efforts in Florida.<sup>13</sup> According to materials obtained by the Committee, Hilltop was directly involved in the establishment of Healthy Economy Now and Americans for Stable Quality Care, another 501(c)(4) advertising coalition that would begin running advertisements in August 2009.<sup>14</sup> Baldick also served as the Director of Healthy Economy Now.

The official solicitation letter from Healthy Economy Now makes it clear that the group was designed to accept unlimited amounts of money, shielded from public scrutiny: "As a 501(c)(4), Healthy Economy Now can accept unlimited contributions from individuals, corporations, labor organizations and associations...Donations of more than \$5,000 will be disclosed to the IRS on the organization's annual return, but we are not required to publicly disclose donation amounts."<sup>15</sup>

Based on the communications obtained by the Committee, it is clear that the White House role in organizing the April 15 meeting was an important factor in the decision by at least one of the attendees to support the group: "It is hard to see how they will come up with enough \$ to do this. But given who is behind this ask, I think we shd support—if they can get the \$."<sup>16</sup> According to a news report, some participants felt distinct pressure to sign up for the group: "What were we supposed to say? No?"<sup>17</sup>

As mentioned above and in the Committee's previous memorandum of May 31, 2012, the President has long claimed to oppose both closed-door negotiations and secretive advertising campaigns in Washington, DC. Not only has President Obama repeatedly objected to the influence of outside groups and special interest money, he has specifically criticized both

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<sup>11</sup> E-mail from Michelle Nawar, *supra* note 6.

<sup>12</sup> HILLTOP PUBLIC SOLUTIONS, [http://www.hilltoppublicsolutions.com/about/team\\_nicholas.htm](http://www.hilltoppublicsolutions.com/about/team_nicholas.htm) (last visited June 6, 2012).

<sup>13</sup> See *Obama senior FL staff growing*, TAMPA BAY TIMES (July 9, 2008), <http://www.tampabay.com/blogs/the-buzz-florida-politics/2008/07/obama-senior-fl.html>; See also Ben Smith, *Obama staffs up in Florida*, POLITICO (July 9, 2008), [http://www.politico.com/blogs/bensmith/0708/Obama\\_staffs\\_up\\_in\\_Florida.html](http://www.politico.com/blogs/bensmith/0708/Obama_staffs_up_in_Florida.html).

<sup>14</sup> See PhRMA Counsel Letter *supra* note 8 (excerpt from the Report of the Federal Integrated Advocacy Campaign Governance Committee, Sept. 4, 2009).

<sup>15</sup> Letter from Nick Baldick, *supra* note 3.

<sup>16</sup> E-mail from Michelle Nawar to Dennis Rivera, Andy Stern, & Anna Burger (Apr. 29, 2009, 14:09) (SEIU Document Production 00001479).

<sup>17</sup> Ben Smith and Ken Vogel, *Dem officials set stage for corporate-baked health care campaign*, POLITICO (Oct. 16, 2009), <http://www.politico.com/news/stories/1009/28362.html>.

PhRMA's president<sup>18</sup> and a 527 organization supporting John Edwards that was run by the same Nick Baldick:

*"John yesterday said that he didn't believe in 527s,' Obama said, 'He said he's opposed to them – we found out today that there is an outside group spending \$750,000- – just bought three quarters of a million dollars worth of television time – and the individual who's running the group used to be John Edwards's campaign manager. So you can't say yesterday you don't believe in 'em, and today you have three quarters of a million dollars being spent for you. You can't just talk the talk....'*

*Obama was referring to Nick Baldick of the Edwards campaign, who is part of 'Alliance for a New America,' a 527 group formed from SEIU affiliates advocating issues of John Edwards....*

*Obama added, 'I don't just talk the talk, I've walked the walk, I've been doing this all my life and John does not have the same record,' and boasted about his involvement in passing the ethic reform legislation in Congress this year.'*<sup>19</sup>

## **II. Managing the Message: Working with “the White House folks”**

PhRMA's talking points regarding the organization's deal with the White House, discussed in the Committee's May 31, 2012, memorandum, describe the elements of the advertising commitment by PhRMA:

- Healthy Economy Now – The industry provides the majority of financial support for positive TV ads advocating passage of health reform.
- Harry and Louise – PhRMA and Families USA are running ads bringing back Harry and Louise, but this time in favor of passing reform.
- SCHIP – The industry provided the majority of the financial support for a series of TV ads designed to thank lawmakers that supported efforts to expand SCHIP.<sup>20</sup>

While Healthy Economy Now was airing its first ads<sup>21</sup>, PhRMA representatives were meeting with the “team that is working with the White House on health care reform”:

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<sup>18</sup> [PRES] Obama: Billy, YOUTUBE (Apr. 9, 2008), <http://www.youtube.com/watch?v=NCRO0g9CfAw>.

<sup>19</sup> Hanna Siegel, *Obama Blasts Edwards Over Third Party Groups*, ABC NEWS (Dec. 22, 2007), <http://abcnews.go.com/blogs/politics/2007/12/obama-blasts-ed/>.

<sup>20</sup> PhRMA, *Talking Points*, n.d. (PhRMA Document Production 0002281).

<sup>21</sup> Reports indicate that Healthy Economy Now's first ad premiered on May 12, 2009. Ben Smith, *New coalition links health care reform, economy*, POLITICO (May 12, 2009), [http://www.politico.com/blogs/bensmith/0509/New\\_coalition\\_links\\_health\\_care\\_reform\\_economy.html](http://www.politico.com/blogs/bensmith/0509/New_coalition_links_health_care_reform_economy.html). Other ads followed on June 11 and July 14 (*see*

From: Ron Pollack  
To: Steve McMahon; Bryant Hall; Wes Metheny  
Sent: Mon Jun 01 20:38:11 2009  
Subject: Re: Two Rough Cuts

Bryant, Wes, and Steve, The team that is working with the White House on health care reform – Andy Grossman, Erik Smith, John Del Cecato, and Larry Grisolano – would like to get together with us on Wednesday, at approximately 5:00 p.m., to discuss our ad campaign. As I mentioned previously, I wanted to get some guidance from the White House about their messaging and how our effort can be consistent with that. Finally, we have got the opportunity to talk this through.<sup>22</sup>

This meeting occurred on June 3, 2009. The team consisted of several Democratic strategists with close ties to the White House. Grossman had previously led the DSCC.<sup>23</sup> Erik Smith was a paid advisor to the Obama presidential campaign, where he produced the 2008 Democratic National Convention<sup>24</sup>, and Del Cecato and Grisolano are partners at AKPD Message and Media.<sup>25</sup> AKPD Message and Media was founded by David Axelrod,<sup>26</sup> who was a Senior Advisor to President Obama at the time of these meetings.

The close ties between the advertising team and the White House did not go unnoticed. PhRMA Consultant Steve McMahon went to the meeting and later made several references to the advertising team's White House connections:

- “The WH-designated folks...”<sup>27</sup>
- “For reference, and to understand the players and their roles, Grossman, Grizzalano, and DelCecato are very close to Axelrod<sup>28</sup> (Griz and DelCecato are partners in Ax's firm). They have been put in charge of the campaign to pass health reform.”<sup>29</sup>
- “Interesting and very good meeting today with Pollack and the WH folks.”<sup>30</sup>

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Healthy Economy Now, YOUTUBE, <http://www.youtube.com/user/HealthyEconomyNow> (last visited June 6, 2012).

<sup>22</sup> E-mail from Ron Pollack, Executive Director, Families USA, to Steve McMahon, Consultant to PhRMA, Issue and Image, Bryant Hall, & Wes Metheny (June 01, 2009, 20:38:11) (PhRMA Document Production 0002144).

<sup>23</sup> See GROSSMAN SOLUTIONS, <http://www.grossmansolutions.com/about.html> (last visited June 6, 2012).

<sup>24</sup> See BLUE ENGINE MESSAGE & MEDIA, <http://www.blueenginemedia.com/team?id=0001> (last visited, June 6, 2012).

<sup>25</sup> See AKPD MESSAGE & MEDIA, <http://akpdmedia.com/partners> (last visited June 6, 2012).

<sup>26</sup> AKPD still prominently lists David Axelrod on its homepage as the “Founder” of the firm.

<sup>27</sup> E-mail from Steve McMahon to Bryant Hall & Wes Metheny (June 03, 2009, 23:38:47) (PhRMA Document Production 0002269).

<sup>28</sup> At this time Axelrod was a Senior Advisor to the President.

<sup>29</sup> E-mail from Steve McMahon, *supra* note 27.

<sup>30</sup> E-mail from Steve McMahon to Bryant Hall & Wes Metheny (June 03, 2009, 20:21:41) (PhRMA Document Production 0002146).

McMahon's e-mails indicate that these individuals were not only selected by the Administration to manage the campaign, but that they continued to communicate directly with top officials in the White House. These individuals also wielded the ability to influence the Administration, for instance by asking senior Administration officials to reassure PhRMA companies that its deal with the White House was holding:

- "I also told them that the industry needs to hear from the admin that it appreciates all it is doing. They asked who, specifically, should hear that, and I said Bryant and Kindler. They said they would take care of it."<sup>31</sup>
- In an e-mail sent shortly after the June 3 meeting to Del Cecato and Grossman: "...it would be very helpful to have someone reach out to Jeffrey Kindler, the CEO of Pfizer and a huge Dem, to let him know a) that you folks understand and appreciate all the industry is doing to be helpful; and b) that you hope they will not only continue doing it, but will do more at the appropriate time; and c) we have talked and we plan to continue talking as we move forward to pass health care reform."<sup>32</sup>
- In late July, after President Obama criticized the pharmaceutical industry, McMahon wrote: "I called Erik Smith, who's one of the guys running the WH health care reform campaign, and pointed it out. Said it wasn't helpful. He understood, and said he would talk to Messina and the WH folks about it."<sup>33</sup>

PhRMA's representatives realized that they had the ability to convince individuals in the Administration to act. Administration officials also realized that they could request assistance from PhRMA in addition to advertising:

From: Munoz, Cecilia  
To: Tchen, Tina; Jarrett, Valerie; Strautmanis, Michael  
Sent: Wed Jul 29 14:03:02 2009  
Subject: From potus

Per Reggie: He got a question from someone in a pharmaceutical company – wants more reps from the industry out there on hlth reform. I have the card of the person who triggered this.<sup>34</sup>

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<sup>31</sup> E-mail from Steve McMahon to Bryant Hall & Wes Metheny (June 03, 2009, 20:41:55) (PhRMA Document Production 0002145).

<sup>32</sup> E-mail from Steve McMahon to John Del Cecato & Andrew Grossman (n.d.) (PhRMA Document Production 0002271).

<sup>33</sup> E-mail from Steve McMahon to David Nicoli, Bryant Hall, Chip Davis, & Wes Metheny (July 21, 2009, 17:07) (PhRMA Document Production 0002272). The next day Hall wrote "It would be good to have Rahm call Kindler to say 'deal is deal.'" E-mail from Bryant Hall to Joel Johnson (July 22, 2009, 22:42) (PhRMA Document Production 0002039).

<sup>34</sup> E-mail from Cecilia Munoz to Tina Tchen, Valerie Jarrett, & Michael Strautmanis (July 29, 2009, 14:03:02) (PhRMA Document Production 0000537).

Hall was not sure this was a possibility: "...don't know if the reps would even do it. It's Axelrod."<sup>35</sup>

The June 3 meeting to obtain guidance from the White House about messaging and the PhRMA effort was "very good," according to McMahon.<sup>36</sup> "They described the advertising they wanted, and what they described was what we had done. When we showed them the ads, they were very complementary and very happy."<sup>37</sup>

Based on a review of White House visitor records, it appears that PhRMA officials participated in at least one West Wing meeting with Jim Messina and Erik Smith, who McMahon described as one of the individuals "running the WH health care reform campaign."<sup>38</sup> Records provided by the White House Counsel list a July 22, 2009, meeting for Billy Tauzin, Bryant Hall, and Erik Smith organized by Messina's assistant.<sup>39</sup> That night Hall wrote: "...all CEOs here tmrw to vote on the big spend."<sup>40</sup>

Smith was a frequent visitor to the White House during the 2009 period when PhRMA was negotiating its deal and discussing the advertising campaign. According to the visitor records<sup>41</sup>, he had 28 appointments scheduled between May and August.<sup>42</sup> Of those appointments, 17 were made through Messina or his assistant.<sup>43</sup> From September until the passage of the Patient Protection and Affordable Care Act, Smith appears on the White House visitor records an additional 25 times, with 24 of those appointments listed as being with Messina's assistant.<sup>44</sup>

### **III. "I also told them if the lines were violated, the money would go elsewhere..."**

Even with its special access to the White House, PhRMA indicated in early June 2009 that it was not yet ready to run ads because of the continuing discussions regarding policies opposed by the association:

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<sup>35</sup> E-mail from Bryant Hall to Jeffrey Forbes (July 29, 2009, 14:43) (PhRMA Document Production 0000537).

<sup>36</sup> E-mail from Steve McMahon, *supra* note 30.

<sup>37</sup> E-mail from Steve McMahon, *supra* note 31.

<sup>38</sup> E-mail from Steve McMahon, *supra* note 33.

<sup>39</sup> Letter from White House Counsel's Office (May 25, 2012); Letter from PhRMA Counsel to Fred Upton, Chairman, U.S. House of Representatives Energy and Committee (May 18, 2011). *See also*, Timothy P. Carney, *Obamacare: A plan of, by and for special interests*, WASH EXAMINER (Mar. 20, 2012), <http://campaign2012.washingtonexaminer.com/article/obamacare-plan-and-special-interests/553881>.

<sup>40</sup> E-mail from Bryant Hall, *supra* note 33.

<sup>41</sup> For the purposes of these calculations we have excluded events attended by large groups of individuals, such as the Fourth of July festivities at the White House.

<sup>42</sup> Letter from White House Counsel, *supra* note 39.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*; THE WHITE HOUSE VISITOR ACCESS RECORDS, <http://www.whitehouse.gov/briefing-room/disclosures/visitor-records> (last visited Jun. 4, 2012).

From: Steve McMahon  
To: Bryant Hall; Steve McMahon; Wes Metheny  
Sent: Wed Jun 03 20:41:55 2009  
Subject: Get the Reid ad up.

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They asked when they were going up, and what the spend was, and I said that depends on how things develop. Then they said, “didn’t they (phrma) have a good meeting yesterday and a good day today?” (Referring to the WH move on re-importation). I told them there were bright lines, but phrma was serious about reform. We agreed that we would talk on a regular basis about what they wanted and what we might be able to do. I also told them if the lines were violated the money would go elsewhere “and that wouldn’t be good.” They get it.”<sup>45</sup>

If the White House was willing to support policies sought by PhRMA, the association would finance advertisements that “the WH-designated folks” wanted on the air.<sup>46</sup>

The timeline of events supports such a conclusion:

- On June 2, PhRMA CEOs attended a meeting with Jim Messina at the White House just prior to a meeting with Senator Baucus on Capitol Hill.<sup>47</sup>
- At 10:33 a.m. on June 3, White House Office of Health Reform Director Nancy-Ann DeParle e-mailed PhRMA’s chief health care reform lobbyist that the White House would oppose importation.<sup>48</sup>
- At “approximately 5:00 p.m.” on June 3, a meeting occurred between McMahon and “The team that is working with the White House on health care reform.”<sup>49</sup>
- At 8:41 p.m. on June 3, Steve McMahon relayed the conversations from that meeting to PhRMA’s chief health care reform lobbyist. McMahon’s summary indicated that “the WH folks” referred to both the June 2 meeting with the CEOs and to the Administration’s actions on importation.<sup>50</sup>

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<sup>45</sup> E-mail from Steve McMahon, *supra* note 31.

<sup>46</sup> E-mail from Steve McMahon, *supra* note 27 (stating that “The WH-designated folks really like the testimonials and want them on the air.”).

<sup>47</sup> E-mail from Rebecca Kuhn to Mimi Simoneaux Kneuer, Bryant Hall, & Rick Smith (June 2, 2009, 13:00) (PhRMA Document Production 0001645). *See also* Letter from PhRMA Counsel, *supra* note 39.

<sup>48</sup> E-mail from Nancy-Ann DeParle, Director, White House Office of Health Reform, to Bryant Hall (June 3, 2009, 10:33:15) (PhRMA Document Production 0002143).

<sup>49</sup> E-mail from Ron Pollack, *supra* note 22.

<sup>50</sup> E-mails Steve McMahon, *supra* notes 30 and 45.

It seems clear a deal was struck: If PhRMA got the policies they wanted<sup>51</sup>, then they would fund the advertising campaign the White House designated individuals requested.

### *Linkage Between Policy Outcomes and Public Advertising Campaign*

McMahon suggested that attendees of the June 3 meeting understood that if PhRMA did not get what it wanted, not only would PhRMA decline to finance the ads the White House was seeking, but it could in fact mount a campaign against a health care reform bill: “They understand that we a lot of resources and have some bright lines, and if they are violated, we walk, or worse.”<sup>52</sup> Internally, PhRMA personnel discussed how their resources could be used to either support or oppose any legislation. If the deal was violated, PhRMA would “rapidly pivot” its “positioning and advocacy”, yet they knew that “...we need to do the HEN ads, for the WH. At least as long as we have a chance of holding the deal.”<sup>53</sup>

Hall replied to McMahon’s summary of the June 3 meeting: “We need some assurances before we do this. We aren’t getting any. 100B is not reasonable.”<sup>54</sup> A week later PhRMA representatives met with both Jim Messina and Nancy-Ann DeParle to discuss the legislation, and were told “They are looking for over 100B from the pharma industry.”<sup>55</sup> The final agreement limited PhRMA’s contribution to \$80 billion over ten years,<sup>56</sup> reflecting apparently tens of billions of dollars in policy concessions by the White House from the original \$100 billion figure. The timing of those concessions coincided with the agreement by PhRMA to pledge millions of dollars for the White House-coordinated advertising campaign.

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<sup>51</sup> As detailed in the Committee’s May 31, 2012, memorandum, PhRMA agreed to proposals to help fill in the donut hole, an expansion of the Medicaid rebate, and to pay a health reform fee, while the White House agreed that price controls and a government-run Part D plan would not become law, while savings from any Follow-on Biologics proposal would be applied to PhRMA’s \$80 billion commitment.

<sup>52</sup> E-mail from Steve McMahon, *supra* note 27. PhRMA was well aware of the resources at its disposal. In May PhRMA’s chief lobbyist sent President Billy Tauzin the phone number of DeParle: “...this is a great opportunity to reiterate all we are doing to move health reform in a way no one can.... We have brought considerable resource to the table. We cab bring more as you discussed w her in her office.” E-mail from Bryant Hall to Billy Tauzin (May 5, 2009, 13:03) (PhRMA Document Production 0001817).

<sup>53</sup> PhRMA Counsel Letter, *supra* note 14; E-mail from Steve McMahon to Bryant Hall, Bob Filippone, D. Mohler & Wes MEtheny (Aug. 09, 2009, 11:46:01) (PhRMA Document Production 0002284).

<sup>54</sup> E-mail from Bryant Hall to Steve McMahon & Wes Metheny (June 4, 2009, 05:01:13) (PhRMA Document Production 0002269).

<sup>55</sup> E-mail from Kirsten Axelsen to Sandra Beaty (June 10, 2009, 19:24) (Pfizer Document Production 0010).

<sup>56</sup> PhRMA *Talking Points*, *supra* note 20. Some have claimed that PhRMA’s deal eventually cost the industry over \$100 billion. This ignores the fact that the Congressional Budget Office not only scored \$73 billion in savings from the industry, they also scored the provisions of the PhRMA/White House deal for the Medicare Coverage Discount Program as costing the Federal government \$43 billion over a ten year budget window. *See* Letter from Douglas W. Elmendorf, Director, Congressional Budget Office to the Honorable Nancy Pelosi, Speaker, U.S. House of Representatives (Mar. 20, 2010), *available at* <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/113xx/doc11379/amendreconprop.pdf>.

The White House continued to influence the advertising campaign throughout the summer. During the July 7, 2009, White House meeting to “affirm the deal”<sup>57</sup>, the topic came up:

From: Jeffrey Forbes  
To: Bryant Hall  
Sent: Tue Jul 07 19:12:51 2009  
Subject:

How was wh mtg?

I think [Redacted] is ready to go to reconciliation unless this is just duvalk<sup>58</sup>

From: Bryant Hall  
To: Jeffrey Forbes  
Sent: Tue Jul 07 19:16:14 2009  
Subject:

I saw Rol Call.

Went great. No reason to go reconciliation. We are ready to goo. 100 percent.

Rahm asked for Harry and Louise ads thru third party. We’ve already contacted the agent.<sup>59</sup>

One week after this e-mail was sent, PhRMA and Families USA aired an advertisement featuring the original Harry and Louise.<sup>60</sup>

#### **IV. New Name, Same Players**

By the end of July, top PhRMA personnel had identified a problem: Bloomberg was ready to report on the close ties between the political consultants running PhRMA’s advertising campaign and the White House.

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<sup>57</sup> E-mail from Bryant Hall to Rodger Currie (July 6, 2009, 10:18) (PhRMA Document Production 0002162).

<sup>58</sup> E-mail from Jeffrey Forbes to Bryant Hall (July 7, 2009, 19:12:51) (PhRMA Document Production 2165-67).

<sup>59</sup> E-mail from Bryant Hall, *supra* note 4.

<sup>60</sup> Elizabeth Gorman, *They’re Baaack – New ‘Harry and Louise’ Ad Is for Health Care Reform*, ABC NEWS (July 16, 2009), <http://abcnews.go.com/blogs/politics/2009/07/the-note-theyre-baaack-new-harry-and-louise-ad-is-for-health-care-reform/>.

From: Ken Johnson  
Sent: Thursday, July 30, 2009 1:21 PM  
To: Mimi Simoneaux Kneuer; Bryant Hall; Wes Metheny; Neal Comstock  
Subject: Urgent: heads up on Bloomberg story

I want to alert everyone to a potential problem. Bloomberg is getting ready to report that “political consultants” close to the White House – more specifically close to Rahm Emanuel – will be running our 100 million plus dollar campaign.... I simply told them “no final decisions have been made and any discussion about what we will or will not do this fall would be wildly speculative.”

I also get the impression from talking to the reporter that we will get a heavy dose of criticism for selecting these particular consultants....<sup>61</sup>

Hall responded: “This is a big problem.”<sup>62</sup> Baldick, the Director of Healthy Economy Now, suggested two possible solutions—either 1) “HEN say we picked the consultants” or 2) say “AKPD is not working for PhRMA.”<sup>63</sup> Baldick offered to have the press team from Healthy Economy Now call the reporter.<sup>64</sup>

Eventually Bloomberg ran a story on the connection, but the Healthy Economy Now angle was mooted because by then the group had shut down and gone “dormant.”<sup>65</sup> However, while Healthy Economy Now ended, a new “massive campaign for Obama” was about to hit the air.<sup>66</sup> This time, the advertising front group was Americans for Stable Quality Care.<sup>67</sup>

During the weeks that followed the creation of Healthy Economy Now, PhRMA secured a deal with the White House that required the organization to undertake a significant public campaign.<sup>68</sup> PhRMA would subsequently pour six times as much money into Americans for Stable Quality Care than the organization had given to Healthy Economy Now.<sup>69</sup>

While the name of the front organization running industry-financed advertisements in favor of health care reform had changed, the individuals behind it had not – Americans for Stable

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<sup>61</sup> E-mail from Ken Johnson to Mimi Simoneaux Kneuer, Bryant Hall, Wes Metheny, & Neal Comstock (July 30, 2009, 13:21) (PhRMA Document Production 0002181).

<sup>62</sup> E-mail from Bryant Hall (July 30, 2009, 13:23) (PhRMA Document Production 0002181).

<sup>63</sup> E-mails from Nick Baldick to Bryant Hall (July 30, 2009, 14:10:56 and 14:14) (PhRMA Document Production 0002181).

<sup>64</sup> *Id.*

<sup>65</sup> Timothy J. Burger, *Obama Campaign Ad Firms Signed On to Push Health-Care Overhaul*, BLOOMBERG (Aug. 15, 2009), <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aV3dLt6wmZH4>.

<sup>66</sup> Mike Allen, *Massive campaign for Obama hits air*, POLITICO, (Aug. 13, 2009), <http://www.politico.com/news/stories/0809/26076.html>. See also *Americans for Stable Quality Care – Mean For You*, YOUTUBE (Aug. 12, 2009), <http://www.youtube.com/watch?v=6cqQ13lZzzE>.

<sup>67</sup> According to a September 2009 report by PhRMA, polling indicated that voters wanted to hear about what health insurance legislation meant to them. See PhRMA Counsel Letter, *supra* note 14.

<sup>68</sup> PhRMA Counsel Letter, *supra* note 8 (Excerpt from the Report on Health Care Reform to the Federal Integrated Advocacy Campaign Governance Committee, July 14, 2009).

<sup>69</sup> E-mail from PhRMA Counsel to Energy and Commerce Committee Staff (Apr. 26, 2012, 17:02).

Quality Care was still managed by Hilltop Public Solutions and AKPD remained an advertising consultant along with GMMB. AKPD and GMMB had “received \$343.3 million to handle advertising for Barack Obama’s White House run...”<sup>70</sup> According to an internal report of PhRMA’s Federal Integrated Advocacy Campaign Governance Committee, AKPD was hired by Hilltop Public Solutions before PhRMA joined the initial coalition.<sup>71</sup> Yet, the facts uncovered in the Committee’s investigation raise questions about who influenced Hilltop’s decision to hire AKPD:

- The meeting that led to Healthy Economy Now was organized in part by Jim Messina on April 15, 2009.<sup>72</sup>
- Hilltop Public Solutions began calling individuals to participate in Healthy Economy Now as early as April 22.<sup>73</sup>
- Despite paying \$10,200,000 for Healthy Economy Now’s \$12 million national advertising campaign, PhRMA did not choose AKPD and the firm was hired before PhRMA joined the coalition.<sup>74</sup>

If the participant at the April 15 meeting who gave the vast majority of Healthy Economy Now’s funding had no role in the hiring of AKPD, then that decision was likely made by the organizers of the meeting (Jim Messina or Jon Selib) or Hilltop Public Solutions.

In mid-August 2009, Nick Baldick sent Steve McMahon the transcript of an advertisement “...we would like to run.”<sup>75</sup> McMahon forwarded the script to Metheny at PhRMA and said: “The script below is a cut together version of an Obama Saturday morning radio address that the WH folks would like to cut into a television ad to test.”<sup>76</sup> Americans for Stable Quality Care eventually produced an advertisement containing excerpts from President Obama’s radio address.<sup>77</sup> The group continued to run advertisements supporting health care legislation and the passage of the Patient Protection and Affordable Care Act; PhRMA contributed \$59,480,399 to the effort.<sup>78</sup>

While PhRMA eventually gave nearly \$70 million to these two 501(c)(4) advocacy groups, the association was also funding other advertisements as well. News reports indicated

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<sup>70</sup> Burger, *supra* note 65.

<sup>71</sup> PhRMA Counsel Letter, *supra* note 14.

<sup>72</sup> E-mail to Michelle Nawar, *supra* note 6, and E-mail from Michelle Nawar, *supra* note 6.

<sup>73</sup> *Id.*

<sup>74</sup> E-mail from PhRMA Counsel, *supra* note 69. Kenneth P. Vogel, *David Axelrod’s ties targeted in health fight*, POLITICO (Aug. 19, 2009), <http://www.politico.com/news/stories/0809/26240.html>.

<sup>75</sup> E-mail from Nick Baldick to Steve McMahon (Aug. 14, 2009, 20:19:54) (PhRMA Document Production 0002286).

<sup>76</sup> E-mail from Steve McMahon to Wes Metheny (Aug. 14, 2009, 22:33) (PhRMA Document Production 2286).

<sup>77</sup> See *ASQC – Missing*, YOUTUBE (Sept. 30, 2009), [http://www.youtube.com/watch?v=q5n3qYgL6pk&list=UUwBRk5w-xLEW-kuT6\\_NXqUg&index=4&feature=plcp](http://www.youtube.com/watch?v=q5n3qYgL6pk&list=UUwBRk5w-xLEW-kuT6_NXqUg&index=4&feature=plcp)

<sup>78</sup> E-mail from PhRMA Counsel, *supra* note 69.

that PhRMA's total spending commitment on advertisements during the push for health care legislation could have been as high as \$150 million.<sup>79</sup>

Why did PhRMA not pay for its own advertisements free of the logistics of establishing two 501(c)(4)s and handing over operational control to outside consultants? For example, the "Harry and Louise" advertisement bears a tagline stating the ad was paid for by PhRMA and Families USA. The only differences between the advertisements bearing the name of PhRMA and those that did not would appear to be the following: the ads produced by Healthy Economy Now and Americans for Stable Quality Care were attributed to groups with, as President Obama described it, "innocuous-sounding names," and the effort was overseen by individuals described as "the WH folks."

## **V. Influence on Other Groups**

The White House also exerted influence on advertising campaigns related to health care reform beyond Healthy Economy Now and Americans for Stable Quality Care. Documents obtained by the Committee indicate that Jim Messina, for example, was personally engaged in advertising and advocacy discussions with other interest groups that had a stake in health care reform and had been at the bargaining table as policy decisions were reached.

In December 2009, Messina received a message announcing a new AFL-CIO television advertisement from Andrew Grossman (previously identified as one of the "WH folks" at the meeting with PhRMA in early June and past leader of the DSCC). The release announcing the advertisement indicated that the "ad will run inside the Beltway beginning Sunday, then in key Senate states...."<sup>80</sup> Messina wrote to an AFL-CIO representative:

From: Messina, Jim  
To: Bill Samuel  
Sent: 12/4/2009 3:08:07 PM  
Subject: Fw: RELEASE – New Ad

Bill: dc buy is fine, you guys run this ad in key senate states and you are declaring war<sup>81</sup>

Samuel replied:

From: Bill Samuel  
Sent: Friday, December 04, 2009 3:27 PM  
To: Messina, Jim  
Subject: Re: RELEASE: New Ad

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<sup>79</sup> Duff Wilson, *Drug Makers to Back Baucus Plan With Ad Dollars*, NY TIMES (Sept. 12, 2009), <http://prescriptions.blogs.nytimes.com/2009/09/12/drug-makers-plan-to-back-baucus-plan-with-ad-dollars/>.

<sup>80</sup> Press Release, AFL-CIO, New AFL-CIO TV Ad: "Pass Health Care. Don't Tax Health Benefits." (Dec. 4, 2009) (AFL-CIO Document Production 000008).

<sup>81</sup> E-mail from Jim Messina to Bill Samuel (Dec. 4, 2009, 15:08:07) (AFL-CIO Document Production 000019).

To be clear-they are running in Virginia, Delaware, ND, and Indiana. NOT in Louisiana, Nebraska, Arkansas, Maine or Connecticut.<sup>82</sup>

Messina questioned the need for one of the ads: “Why [N]orth Dakota, he is down 16 points. Bill, that’s madness[.]”<sup>83</sup>

Samuel responded: “We’ll review ND.”<sup>84</sup>

This was not the only indication that the White House was advising on the AFL-CIO’s advertisements. On December 7, 2009, representatives from the union went to the White House to meet with Messina; DeParle; and Patrick Gaspard, White House political director, to discuss the excise tax proposals in health care legislation. Before the meeting, Samuel wrote: “...some anger that about being lead on by the WH; i.e. being asked not to fight it in Finance and not to run ads....”<sup>85</sup>

Similar to the PhRMA discussions, it appears that the White House was involved with another group, this time the American Medical Association, about the potential for advertisements as critical policy issues were being discussed:

From: Richard Deem  
Sent: Monday, October 05, 2009 6:06 PM  
To: DeParle, Nancy-Ann M  
Subject:

Nancy Ann

Within in the next 24 hrs, I have to answer two questions.

First, do I tell my colleagues at AMA headquarters to proceed with a \$2m TV buy on a permanent SGR fix without agreement on the pathway that will get the provision through conference and signed into law.

Second, tomorrow at noon, I will be discussing with the four large physician groups (Family Physicians, Surgeons, Internal Medicine and Osteopaths) the grassroots and lobbying strategy for the Senate floor.

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<sup>82</sup> E-mail from Bill Samuel to Jim Messina (Dec. 4, 2009, 15:27) (AFL-CIO Document Production 000019).

<sup>83</sup> E-mail from Jim Messina to Bill Samuel (Dec. 4, 2009, 16:17:48) (AFL-CIO Document Production 000019).

<sup>84</sup> E-mail from Bill Samuel to Jim Messina (Dec. 4, 2009, 16:19) (AFL-CIO Document Production 000019).

<sup>85</sup> E-mail from Bill Samuel to Nathanael Tamarin (Dec. 4, 2009, 17:50:04) (AFL-CIO Document Production 000267).

I would appreciate a meeting with you and Jim Messina as soon as possible to discuss how we can possibly resolve the current situation in a manner that is satisfactory to all the interested parties.<sup>86</sup>

Deem sent a similar message to Messina asking for a meeting “to resolve the pathway for repealing the SGR that get us through conference and signed into law.”<sup>87</sup> It appears from these e-mails that reassurance on the SGR was being sought and linked to the decision to run \$2 million in television ads. It is unclear if this specific advertisement plan ran, but 17 days later reports indicated that the AMA was participating in a \$2 million ad buy: “The AMA has run \$200,000 worth of ads in a dozen states in the past week and has pledged to spend upwards of \$1.8 million on more.”<sup>88</sup> While PhRMA’s policy agreements that were reached alongside a commitment to spend as much as \$150 million in advertising on health care reform were ultimately included in the enacted legislation, it appears that the AMA’s \$2 million ad buy did not secure the SGR policy the organization wanted; an SGR fix was not included in the health care legislation.

Another powerful interest group, the AARP, was also a key player in White House efforts to direct advocacy campaigns and push legislation over the finish line. In December 2009, when health care legislation was one vote short in the Senate, Messina communicated with the AARP:

From: Messina, Jim  
Sent: Tuesday, December 15, 2009 12:49 PM (GMT)  
To: LeaMond, Nancy  
Subject: Hey

We need barry rand to go meet with ben nelson personally and just lay it on the line. “We will be with you, we will protect you. But if you kill this bill, seniors will not forget.”

We are at 59, we have to have him<sup>89</sup>

Messina did not just want a meeting; he wanted phone calls, and lots of them. Messina asked the AARP: “Can we get immediate robo calls into Nebraska urging nelson to vote for cloture?”<sup>90</sup> Messina also forwarded the AARP a list of “top 25 targets list from house leadership” that were “to get thanked with ads after the vote.”<sup>91</sup> Yet, during the push for health

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<sup>86</sup> E-mail from Richard Deem, Senior Vice President, Advocacy, American Medical Association, to Nancy-Ann DeParle (Oct. 5, 2009, 18:06) (AMA Document Production 000944).

<sup>87</sup> E-mail from Richard Deem to Jim Messina (Oct. 5, 2009, 22:40 GMT) (AMA Document Production 000945).

<sup>88</sup> Jay Newton-Small, *Latest Threat to Health Reform: Docs’ Reimbursement*, TIME (Oct. 21, 2009) <http://www.time.com/time/politics/article/0,8599,1931330,00.html>.

<sup>89</sup> E-mail from Jim Messina to Nancy LeaMond (Dec. 15, 2009, 12:49 GMT) (AARP Document Production 000902). See also E-mail from Jim Messina to Nancy LeaMond (Dec. 15, 2009, 20:44) (AARP Document Production 000900).

<sup>90</sup> E-mail from Jim Messina to Nancy LeaMond (Dec. 15, 2009, 01:13 GMT) (AARP Document Production 000903).

<sup>91</sup> E-mail from Daniel Turton to Patrick Dillon (Nov. 3, 2009, 09:32) (AARP Document Production 000922).

care legislation, AARP was overwhelmed with calls opposing the health care legislation: “Our calls against reform are coming in 14 to 1.”<sup>92</sup>

Phone calls were not the only thing letting AARP know that embracing the White House push for any health care law might not be publicly supported. When the White House Office of Public Engagement approached AARP to provide an official for a roundtable, a representative replied: “...I think we will try to keep a little space between us and the White House on the issue. Our polling shows we are more influential when we are seen as independent, so we want to reinforce that positioning.”<sup>93</sup> Ten days later an AARP representative forwarded Messina and DeParle a press release announcing “Survey Finds AARP Members Back Critical Provisions of Health Care Reform Legislation.” Messina replied: “Excellent.”<sup>94</sup>

The AARP endorsed both the House health care bill and the Senate health care bill.<sup>95</sup>

## Conclusion

The Committee began its investigation into closed-door health care negotiations more than a year ago in an effort to shine light on a process that excluded both the American people and many of their elected representatives. Despite the White House’s unwillingness to make those negotiations public, even in light of the President’s many statements concerning the importance of transparency in government, this Committee has finally been able to show a clear picture of the tactics used by the Obama Administration.

As the memoranda from the Committee have shown, the Obama Administration led a closed-door process that used numerous tools at the disposal of the White House, from scheduling meetings through Administration aides to threatening the use of the President’s radio address, to secure a narrow, partisan victory on a piece of legislation that the public is rejecting in greater numbers every day.

This investigation has shown that the White House gave away billions of dollars in policy concessions to PhRMA in exchange for millions of dollars in advertising. These PhRMA dollars were funneled to two new ‘Super PACs’, created and managed in part by White House officials, in order to win public support for the President’s bill.

Four years after the President’s oft-repeated promises to conduct the passage of a health care law with openness and transparency and three years after that process was marred by

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<sup>92</sup> E-mail from Nora Super to Lauren Aronson (July 24, 2009, 08:14) (AARP Document Production 000834).

<sup>93</sup> E-mail from John Rother to Ann Widger (Nov. 6, 2009, 12:01) (AARP Document Production 000621).

<sup>94</sup> E-mail from Jim Messina to Nancy LeaMond (Nov. 16, 2009, 15:25) (AARP Document Production 000912).

<sup>95</sup> Huma Khan, *AARP, AMA Endorse House Health Care Bill*, ABC NEWS (Nov. 5, 2009), <http://abcnews.go.com/WN/HealthCare/aarp-endorses-house-health-care-bill-protestors-gathered/story?id=9004609#.T8wR7r-CVTs>; Eric Zimmermann, *AARP endorses Senate health bill*, THE HILL’S BLOG BRIEFING ROOM (Dec. 12, 2009), <http://thehill.com/blogs/blog-briefing-room/news/72343-aarp-endorses-senate-health-bill>.

closed-door meetings and secret agreements, the full details of what led to the Patient Protection and Affordable Care Act are finally being revealed. This Committee has uncovered a clandestine process that shielded the public from knowledge of who was at the bargaining table developing the law while they were simultaneously told that if you like what you have, you can keep it – a promise that has repeatedly been proven false. As public support for the law plummets and the true cost becomes more apparent, the Committee believes that the flawed process is an integral reason why the American people ended up with such a bad piece of legislation.