

Record

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Federal Election Commission

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New Rulemaking Search Available

The Commission has launched a new search system for public documents generated in connection with Commission rulemakings. The [Searchable Electronic Rulemaking System](#) allows users to search public documents developed in the course of the Commission's rulemaking process.

Court Cases

Carey v. FEC

On January 31, 2011, Retired Rear Admiral James Carey, Kelly Eustis and the National Defense Political Action Committee (collectively, "the Plaintiffs") filed suit against the FEC. The lawsuit seeks a declaratory judgment that the contribution limits in 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) violate the First Amendment to the extent such laws prohibit a nonconnected political committee from soliciting and accepting unlimited contributions to one bank account designated for independent expenditures, while maintaining a second, separate bank account designated for source- and amount-limited contributions to candidates and their authorized political committees. Plaintiffs also seek injunctive relief enjoining the Commission from enforcing the above-mentioned provisions as applied to Plaintiffs, and concurrently filed a Motion for Preliminary Injunction.

Background

Plaintiff Admiral Carey is the founder and treasurer of National Defense PAC ("NDPAC"). Kelly Eustis is a registered voter who resides in Sacramento, California. NDPAC is a nonconnected political com-

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Advisory Opinions

AO 2011-01

Funds Received and Spent by Legal Defense Fund not Contributions or Expenditures

A legal defense fund may be established to pay the costs incurred by a Congressional campaign committee in defending against a copyright infringement and misappropriation lawsuit. The monies received and spent by the fund would not be "contributions" or "expenditures" as defined in the Federal Election Campaign Act (the Act) and Commission regulations.

Background

Robin Carnahan for Senate (the Committee) is the principal campaign committee for Ms. Carnahan, who was a candidate in the 2010 Senate election in Missouri. On September 15, 2010, Fox News Network, LLC, and Chris Wallace filed a complaint against the Committee alleging that an ad aired by the Committee that contained footage of a Fox News interview infringed Fox News' copyright, invaded Mr. Wallace's rights of privacy and publicity and misappropriated his likeness and persona (the Fox News lawsuit). The

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Court Cases

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mittee registered with the FEC that raises and spends funds to support candidates for federal office who are military veterans and who agree with NDPAC's goals.

On August 11, 2010, NDPAC submitted an advisory opinion (AO) request to the FEC asking whether, based on court decisions in *Citizens*

United and *SpeechNow*¹, and the Commission's conclusions in AOs 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten), it could raise unlimited contributions from individuals, political committees, corporations and unions for the express purpose of making independent expenditures. Simultaneously, NDPAC would raise additional contributions from individuals and political committees subject to the \$5,000 per calendar year contribution limit under 2 U.S.C. §441a(a) in order to make contributions to federal candidates. NDPAC proposed recording and segregating its contributions by type into separate bank accounts. The Commission considered draft responses to the request, but was unable to approve an AO by the required four affirmative votes.

As a result, NDPAC claims that it curtailed its activities during the 2010 election cycle. The committee states that it planned to make independent expenditures targeting several opponents of its endorsed candidates, but the constraints of the \$5,000 per year contribution limit prevented it from gathering the necessary resources. NDPAC says it plans to make similar independent expenditures during the 2012 primary and general election periods and claims to have a donor (Mr. Eustis) willing to give \$1,300 above the \$5,000 statutory limit to fund those expenditures. NDPAC asserts that without the legal authority to solicit unlimited contributions, its speech will be abridged. In addition, the Plaintiffs maintain that NDPAC and Admiral Carey will face a threat of prosecution if they solicit or accept contributions to fund NDPAC's independent expenditures, and that Mr. Eustis will face a threat of prosecu-

tion if he makes contributions above the \$5,000 limit to fund NDPAC's independent expenditures.

Complaint

The Plaintiffs seek a declaratory judgment from the court that the contribution limits in 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) are unconstitutional as applied to them and to any other supporters who wish to make contributions to NDPAC for its independent expenditures. The Plaintiffs also seek preliminary and permanent injunctions enjoining the FEC from enforcing those provisions against them and against any supporters who wish to make contributions to NDPAC for its independent expenditures.

The full text of the complaint is available at http://www.fec.gov/law/litigation/carey_carey_complaint.pdf.

U.S. District Court for the District of Columbia: 1:11-cv-00259-RMC (D.D.C. filed Jan. 31, 2010).

—Zainab Smith

Advisory Opinions

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litigation was recently settled by the parties. The Committee's costs to defend the lawsuit total more than \$85,000, and may continue to accrue until the settlement is finalized.

The Committee proposes that a separate legal defense fund (the Fund) be established to defray the Committee's legal costs. The Fund would be independent from the Committee and would not be administered or controlled by the Committee. The Committee would not be involved in soliciting donations to the Fund. None of the individuals involved in establishing, administering or operating the Fund would be federal candidates or federal officeholders. Solicitations for the Fund, either in person or in writing, would be accompanied by a letter

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¹ *Citizens United v. FEC*, 130 S.Ct. 876 (2010) and *SpeechNow.org v. FEC*, 599 F3d 686 (D.C. Cir. 2010).

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Advisory Opinions

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stating the purpose of the Fund and noting that no amounts given to the Fund would be used for the purpose of influencing any federal election. Solicitations for the Fund would be conducted separately from any solicitations for the Committee or any other federal political committee. The Fund plans to accept unlimited amounts from individuals, political committees, corporations and labor organizations. The Fund would terminate once all legal costs were paid, and any excess funds would be refunded or donated to charity.

Analysis

The Act and Commission regulations define the term “contribution” as any gift, subscription, loan, advance or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. §431(8)(A); 11 CFR 100.52(a). Similarly, the term expenditure is defined as any purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made by any person for the purpose of influencing any election for federal office. 2 U.S.C. §431(9)(A); 11 CFR 100.111(a).

The Commission has previously concluded that funds received or disbursed for the purpose of defending against certain types of lawsuits are not for the purpose of influencing a federal election, and are therefore not contributions or expenditures. See AOs 1981-16, 1981-13 and 1980-04.

The money received and disbursed by the Fund would be strictly for the purpose of paying the Committee’s legal costs in connection with the Fox News lawsuit. Specifically, this money would compensate the Committee’s counsel for legal services that enabled the Committee to present a defense to a civil complaint in a lawsuit alleging copyright infringement, invasion of

privacy and right of publicity, and misappropriation of likeness and identity, and to settle the case. The proposed Fund would be established and administered separately and independently from the Committee. Solicitations for the Fund would be conducted separately from any solicitation for the Committee, and all amounts received by the Fund will be held separately from the Committee’s funds. No amounts given to the Fund could be used for the purpose of influencing any federal election. Therefore such receipts and disbursements would not be “contributions” to, or “expenditures” by, the Fund, as defined in the Act and Commission regulations, nor would they be in-kind “contributions” from the Fund to the Committee.

Since the funds received and disbursed by the Fund are not contributions or expenditures, they are not subject to the source prohibitions, amount limitations or reporting requirements of the Act and Commission regulations.

Accordingly, nothing in the Act or Commission regulations would limit or prohibit the Fund from receiving unlimited donations from individuals, political committees, corporations and labor organizations. Also, the Fund would not be required to register or file disclosure reports under the Act or Commission regulations.

Date Issued: February 17, 2011;
Length: 4 pages.

—Isaac J. Baker

AO 2011-02

Campaign Committee May Purchase Copies of Senator’s Autobiography if Publisher Donates Royalties to Charity

The Scott Brown for U.S. Senate Committee (the Committee) may purchase copies of Senator Scott Brown’s autobiography from the publisher at fair market value, and the publisher may donate Senator Brown’s royalties from that purchase to charity. The Committee may additionally post a *de minimis* amount of material promoting the book on its website and social media sites. Senator Brown may also reimburse the Committee personally for the fair market value of the rental of its mailing and e-mail lists to promote the book.

Background

Senator Brown will promote his book in a national book tour. His agreement with the publisher provides for the payment of advances as well as publishing royalties to be determined as a percentage of net sales revenue. Senator Brown and the Committee proposed a number of activities related to the book and the promotional tour.

First, the Committee wishes to purchase several thousand copies of the book for campaign-related activities, such as distributing the books as “thank you” gifts to campaign contributors and supporters. The Committee plans to purchase the books either at the bulk rate or at the usual retail price if the bulk rate is not available. The publisher, under normal industry practice, may make the bulk rate available to large purchasers. Senator Brown proposes to donate the royalties from the Committee’s purchase of the book to a charitable organization. Alternatively, the publisher itself is willing to donate Senator Brown’s royalties from this sale to a charitable organization.

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Advisory Opinions

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Second, the Committee proposes to promote the book by posting information on the Committee's website. Under the Committee's proposal, this information would consume no more than 25 percent of its home page. The Committee also proposes to use the social media sites Facebook, Twitter and LinkedIn by posting promotional information about the book and Senator Brown's book tour.

Third, the Committee proposes to promote the book to individuals on the Committee's e-mail and mailing lists.

Fourth, when Senator Brown travels to promote the book on the national book tour, he proposes to host fundraising events for the Committee in the book tour cities. The travel costs of the book tour will be paid by the book's publisher.

Finally, the Committee proposes to have a campaign staffer collect e-mail addresses from people who attend Senator Brown's book-signing events while on the book tour. The Committee plans to use the e-mail addresses that it collects to apprise people of Committee news and activities and for fundraising.

Analysis

Campaign Purchase of Book.

The Committee may use campaign funds to purchase copies of the book from the publisher at the fair market price under the proposal where the publisher donates to charity the amount that Senator Brown would have otherwise earned as royalties from that purchase.

The Federal Election Campaign Act (the Act) and Commission regulations prohibit the conversion of campaign funds by any person (including the candidate) to "personal use." 2 U.S.C. §439a(b); 11 CFR 113.1(g) and 113.2(e)(5). Under the Act, "a contribution or a donation shall be considered to be converted to personal use if the contribution or

amount is used to fulfill any commitment, obligation or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office." 2 U.S.C. §439a(b) (2). In several previous Advisory Opinions, the Commission has considered whether an authorized committee's purchase of its own candidate's book is personal use. *See, e.g.* AOs 2006-18 and 2001-08. Here, the Committee's funds would be used to purchase the book solely for distribution as gifts to the Committee's financial contributors and political supporters, and thus would be used by the Committee only for the purpose of influencing Senator Brown's election to federal office. As in AO 2001-08, the publisher is willing to donate the resulting royalties to a charitable organization and not increase the royalty calculation that would go to the candidate.

Senator Brown may not personally accept royalties resulting from the campaigns purchase of his book, even if he then makes a charitable donation equal to that amount. Although the Act specifically allows campaign funds to be donated to a charity, it also provides that such a contribution or donation cannot be converted to personal use. 2 U.S.C. §439a(a) and (b)(1). Senator Brown must not receive any benefit, tangible or intangible, from the publisher's donation of the royalty amounts.

Promotional Information. The Committee may post a *de minimis* amount of material promoting the book on its website and on social media sites such as Facebook, Twitter and LinkedIn without violating the restriction of personal use of campaign funds. The use of an authorized committee's asset, such as the Committee's website, to promote the candidate's book would ordinarily constitute a prohibited personal use. However, the Commission has previously determined that the addition of one or two sentences of promotional material about a

candidate's book to an authorized committee's website did not constitute personal use of campaign funds, since the amount of promotional material and the cost to the candidate's committee were *de minimis*. *See* AO 2006-07. The Commission concluded in this case that the Committee's proposal to devote up to 25 percent of the Committee website's homepage, Facebook page and LinkedIn page to book promotion, and up to 10 percent of the Committee's Twitter page, is not *de minimis*. The Committee may, however, consistent with Advisory Opinion 2006-07, post a *de minimis* amount of material on its own website and social media sites.

Committee E-mail and Mailing Lists. Senator Brown may personally reimburse the Committee for the fair market value of the rental of its e-mail and mailing lists, based on an independent list appraisal, and then use the e-mail and mailing lists to promote the sale of his book. Commission regulations provide that the transfer of campaign committee assets does not constitute personal use, provided that the transfer is for fair market value. 11 CFR 113.1(g) (3). The Commission has previously determined that a committee's mail-

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Advisory Opinions

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ing lists are assets that have value and are frequently sold, rented or exchanged. *See, e.g.,* AOs 2002-14 and 1982-41. Since Senator Brown will receive royalties from the sale of the book, the use of the Committee's e-mail and mailing lists for promotion of Senator Brown's book are subject to the personal use regulations. However, since Senator Brown proposes to reimburse the Committee personally for the fair market value of the lists, this will not result in prohibited personal use of campaign funds.

Travel Expenses. The Commission could not approve by the required four votes a response to the question of whether Senator Brown may host fundraising events in cities where the book's publisher pays his travel costs as part of the book's promotion.

Collection of E-mail Addresses by the Committee. The Commission could not approve by the required four votes a response to the question of whether the Committee could collect the e-mail addresses of people who attend the Senator's book-signing and promotional events for the purpose of soliciting contributions in the future.

Date Issued: February 17, 2011;
Length: 9 pages.

—Myles Martin

Advisory Opinion Requests

AOR 2011-03

Use of recount fund for litigation expenses (DSCC, RNC, NRCC, DCCC, NRSC, February 7, 2011)

AOR 2011-04

Membership organization posting candidate position papers on a members-only website (AIPAC, February 24, 2011)

Electronic Filing

Mandatory Electronic Filing

Since January 1, 2001, filers that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or that have reason to expect to do so, have been required to submit all reports, statements and designations to the FEC electronically. 11 CFR 104.18(a)(1). This article answers some frequently asked questions about the FEC's mandatory electronic filing requirements.

Who is affected? Is it just political committees or are individuals and other unregistered entities required to file electronically too?

Anyone—registered or not—who is required to file a report, statement or designation with the FEC and meets the \$50,000 threshold must file electronically.

What about Senate campaigns?

No. Senate candidate committees (and other persons who support/oppose only Senate candidates) file with the Secretary of the Senate and are not required to file electronically. They may, however, voluntarily file unofficial copies of their reports electronically.

What happens if an electronic filer mistakenly files a report on paper?

Any filer who is required to file electronically, but instead files on paper, will be considered a nonfiler and may be subject to enforcement action. 11 CFR 104.18(a)(2). Note that this consequence applies to both political committees and individual/non-committee filers.

Can an e-filer submit anything on paper?

No. Electronic filers should plan to communicate with the FEC paperlessly.¹ All FEC reporting forms are available for e-filing, and filers may respond to inquiries and explain transactions using the memo text function in their electronic filing software or a miscellaneous electronic submission (Form 99).

What is meant by "Reason to Expect to Exceed the Threshold?"

Once filers actually exceed the \$50,000 threshold, they have "reason to expect" to exceed the threshold in the following two calendar years. 11 CFR 104.18(a)(3)(i). As a result, they must begin to file electronically with their next report, statement or designation and continue to file electronically for the two years (January through December) following the year in which they exceeded the threshold. Filers with no historic data on which to base their calculations should expect to exceed the threshold if they either receive contributions or make expenditures that exceed one-quarter of the threshold amount in the first quarter of the calendar year, or they receive contributions or make expenditures that exceed one-half of the threshold amount in the first half of the calendar year. 11 CFR 104.18(a)(3)(ii).

The regulations allow an exception to the requirement of filing for the following two calendar years for candidate committees:

- That have \$50,000 or less in net debts outstanding on January 1 of the year following the election;

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¹ Exceptions include Debt Settlement Plans (FEC Form 8), copies of refund checks, copies of redesignation or reattribution letters, loan agreements, Schedule C-1 with original signatures and statements of forgiveness for candidate personal fund loans. A committee's initial Form 1 and a candidate's initial Form 2 are also filed on paper.

Electronic Filing

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- That anticipate terminating prior to the next election year; and
- Whose candidate has not qualified as a candidate for the next election and does not intend to become a candidate in the next election. 11 CFR 104.18(a)(3)(i).

While all committees must file electronically in the year in which they exceed the threshold, authorized candidate committees meeting these requirements do not “expect to exceed the threshold” in the following two calendar years and, therefore, need not file electronically during those years unless they actually exceed the threshold.

Who do I contact if I have further questions?

For more information, contact the following offices between 8:30 a.m. and 5:30 p.m. Eastern time:

- For general information on reporting requirements, call the Information Division at 800/424-9530 (press 6) or 202/694-1100 (e-mail info@fec.gov);
- For information about a specific report you are filing with the FEC, call your Campaign Finance Analyst (the person who reviews your report) in the Reports Analysis Division at 800/424-9530 (press 5) or 202/694-1130.
- If you have problems uploading your reports or any other technical issue, contact Technical Support at 800/424-9530 (extension 1307).
- For information about how to obtain a password, FECFile software or other technical questions, contact the Electronic Filing Office at 800/424-9530 (extension 1667).

—Dorothy Yeager

Contribution Limits for 2011-2012

Type of Contribution	Limit
Individuals/Non-multicandidate Committees to Candidates per Election	\$2,500
Individuals/Non-multicandidate Committees to National Party Committees per Year	\$30,800
Biennial Limit for Individuals	\$117,000 ¹
National Party Committee to a Senate Candidate	\$43,100 ²

¹ This amount is composed of a \$46,200 limit for what may be contributed to all candidates and a \$70,800 limit for what may be contributed to all PACs and party committees. Of the \$70,800 portion that may be contributed to PACs and parties, only \$46,200 may be contributed to state and local party committees and PACs.

² This limit is shared by the national committee and the Senate campaign committee.

Inflation Adjustments

Contribution Limits for 2011-2012

Under the Federal Election Campaign Act (the Act), certain contribution limits are indexed for inflation every two years, based on the change in the cost of living since 2001, which is the base year for adjusting these limits.¹ The inflation-adjusted limits are:

- The limits on contributions made by persons to candidates and national party committees (2 U.S.C. §441a(a)(1)(A) and (B));
- The biennial aggregate contribution limits for individuals (2 U.S.C. §441a(a)(3)); and
- The limit on contributions made by certain political party committees (2 U.S.C. §441a(h)).

Please see the chart above for the contribution amount limits applicable for 2011-2012. The inflation adjustments to these limits are made only in odd-numbered years. The per-election limits on contributions to candidates are in effect for the two-year election cycle beginning the day after the general election and ending on the date of the next general election (i.e., November 3, 2010 – November 6, 2012). All other contribution limits are in effect for the two-calendar-year period beginning on January 1 of the odd-numbered year and ending on December 31 of the even-numbered year (i.e., January 1, 2011 – December 31, 2012).

Please note, however, that these limits do not apply to contributions raised to retire debts from past elections. Contributions may not exceed the contribution limits in effect on the date of the election for which those debts were incurred. 11 CFR 110.1(b)(3)(iii).

The Act also includes a rounding provision for all of the amounts that

¹ The applicable cost of living adjustment amount is 1.23152.

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Inflation Adjustments

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are increased by the indexing for inflation.² Under this provision, if the inflation-adjusted amount is not a multiple of \$100, then the amount is rounded to the nearest \$100.

—Elizabeth Kurland

2011 Coordinated Party Expenditure Limits

The 2011 coordinated party expenditure limits are now available. The limits are:

- \$88,400 for House nominees in states that have only one U.S. House Representative;
- \$44,200 for House nominees in states that have more than one U.S. House Representative; and
- A range from \$88,400 to \$2,458,500 for Senate nominees, depending on each state’s voting age population.

Party committees may make these special expenditures on behalf of their 2011 general election nominees. National party committees have a separate limit for each nominee. The national Senatorial and Congressional committees do not have separate coordinated party expenditure limits, but may receive authorization to spend against the national limit or state party limits. Each state party committee has a separate limit for each House and Senate nominee in its state. Local party committees do not have their own separate limit. One party committee may authorize another committee of that party to make an

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² This provision also affects the indexing of coordinated party expenditure limits and Presidential expenditure limits in 2 U.S.C. §§441a(b) and 441a(d), as well as the disclosure threshold for lobbyist bundled contributions in 2 U.S.C. §434(i)(3)(A).

Authority to Make Coordinated Party Expenditures on Behalf of House and Senate Nominees

National Party Committee	May make expenditures on behalf of House and Senate nominees. May authorize ¹ other party committees to make expenditures against its own spending limits. National Congressional and Senatorial campaign committees do not have separate limits.
State Party Committee	May make expenditures on behalf of House and Senate nominees seeking election in the committee’s state. May authorize ¹ other party committees to make expenditures against its own spending limits.
Local Party Committee	May be authorized ¹ by national or state party committee to make expenditures against its limits.

Calculating 2011 Coordinated Party Expenditure Limits

	Amount	Formula
Senate Nominee	See table on page 8	The greater of: \$20,000 x COLA or 2¢ x state VAP ² x COLA ³
House Nominee in States with Only One Representative	\$88,400	\$20,000 x COLA
House Nominee in Other States	\$44,200	\$10,000 x COLA
Nominee for Delegate or Resident Commissioner⁴	\$44,200	\$10,000 x COLA

¹The authorizing committee must provide prior authorization specifying the amount the committee may spend.

²VAP means voting age population.

³COLA means cost-of-living adjustment. The applicable COLA is 4.42246.

⁴American Samoa, the District of Columbia, Guam, the Virgin Islands and the Northern Mariana Islands elect Delegates; Puerto Rico elects a Resident Commissioner.

Coordinated Party Expenditure Limits for 2011 General Election Senate Nominees

State	Voting Age Population	Expenditure Limit
Alabama	3,599,303	\$318,400
Alaska*	527,205	\$88,400
Arizona	4,940,296	\$437,000
Arkansas	2,195,465	\$194,200
California	27,795,779	\$2,458,500
Colorado	3,865,036	\$341,900
Connecticut	2,727,907	\$241,300
Delaware*	685,978	\$88,400
Florida	14,616,271	\$1,292,800
Georgia	7,324,792	\$647,900
Hawaii	1,006,338	\$89,000
Idaho	1,143,651	\$101,200
Illinois	9,777,437	\$864,800
Indiana	4,861,307	\$430,000
Iowa	2,313,538	\$204,600
Kansas	2,133,356	\$188,700
Kentucky	3,323,606	\$294,000
Louisiana	3,397,965	\$300,500
Maine	1,048,523	\$92,700
Maryland	4,385,947	\$387,900
Massachusetts	5,203,385	\$460,200
Michigan	7,623,767	\$674,300
Minnesota	4,038,685	\$357,200
Mississippi	2,194,892	\$194,100
Missouri	4,589,980	\$406,000
Montana*	764,058	\$88,400
Nebraska	1,359,656	\$120,300
Nevada	1,977,693	\$174,900
New Hampshire	1,043,155	\$92,300
New Jersey	6,691,782	\$591,900
New Mexico	1,514,872	\$134,000
New York	15,167,513	\$1,341,600
North Carolina	7,188,327	\$635,800
North Dakota*	511,050	\$88,400
Ohio	8,840,340	\$781,900
Oklahoma	2,796,489	\$247,300
Oregon	2,986,164	\$264,100
Pennsylvania	9,880,374	\$873,900
Rhode Island	833,168	\$88,400
South Carolina	3,515,754	\$311,000
South Dakota*	620,912	\$88,400
Tennessee	4,847,129	\$428,700
Texas	18,210,592	\$1,610,700
Utah	1,951,049	\$172,600
Vermont*	500,054	\$88,400
Virginia	6,103,947	\$539,900
Washington	5,170,543	\$457,300
West Virginia	1,439,342	\$127,300
Wisconsin	4,372,515	\$386,700
Wyoming*	417,319	\$88,400

* In these states, which have only one U.S. House Representative, the spending limit for the House nominee is \$88,400. In other states, the limit for each House nominee is \$44,200.

Inflation Adjustments

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expenditure against the authorizing committee's limit. Local committees may only make coordinated party expenditures with advance authorization from another committee within the party.

Coordinated party expenditure limits are separate from the contribution limits; they also differ from contributions in that the party committee must spend the funds on behalf of the candidate rather than give the money directly to the campaign. Although these expenditures may be made in consultation with the candidate, only the party committee making the expenditure—not the candidate committee—must report them. (Coordinated party expenditures are reported on FEC Form 3X, line 25, and are always itemized on Schedule F, regardless of amount.)

The accompanying tables on pages 7-8 include:

- Information on which party committees have the authority to make coordinated party expenditures;
- The formula used to calculate the coordinated party expenditure limits; and
- A listing of the state-by-state coordinated party expenditure limits.

—Elizabeth Kurland

2011 Lobbyist Bundling Threshold

The Federal Election Campaign Act, as amended by the Honest Leadership and Open Government Act of 2007 (HLOGA), requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrant PACs once the contributions exceed a specified threshold amount.

The Commission must adjust the threshold amount at the beginning

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Inflation Adjustments

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of each calendar year based on the change in the cost of living since 2006, which is the base year for adjusting this threshold.¹ The resulting amount is rounded to the nearest multiple of \$100. 2 U.S.C. §441a (c) (1)(B)(iii). Based on this formula, the lobbyist bundling disclosure threshold for 2011 is \$16,200.

—Elizabeth Kurland

800 Line

Testing the Waters

Before deciding to campaign for federal office, an individual may want to “test the waters”—in other words, explore the feasibility of becoming a candidate. An individual who merely test the waters, but does not campaign for office, does not have to register or report as a candidate even if the individual raises more than \$5,000—the dollar threshold that would normally trigger registration. Nevertheless, funds raised to test the waters are subject to the Federal Election Campaign Act’s (the Act) contribution limitations and prohibitions. See Advisory Opinion 1998-18.

Once an individual begins to campaign or decides to become a candidate, funds that were raised or spent to test the waters apply to the \$5,000 threshold for qualifying as a candidate. 11 CFR 100.72(a) and 100.131(a). Once that threshold is exceeded, the individual must register with the FEC (candidates for the House of Representatives or President) or the Secretary of the Senate (candidates for the Senate), and begin to file reports.

Testing the Waters vs. Campaigning. An individual may conduct a variety of activities to test the waters. Examples of permissible testing-the-waters activities include polling, travel and telephone calls to determine whether the individual should become a candidate. 11 CFR 100.72(a) and 100.131(a).

Certain activities, however, indicate that the individual has decided to become a candidate and is no longer testing the waters. In that case, once the individual has raised or spent more than \$5,000, he or she must register as a candidate. Intent to become a candidate, for example, is apparent when individuals:

- Make or authorize statements that refer to themselves as candidates (“Smith in 2012” or “Smith for Senate”);
- Use general public political advertising to publicize their intention to campaign;
- Raise more money than what is reasonably needed to test the waters or amass funds (seed money) to be used after candidacy is established;
- Conduct activities over a protracted period of time or shortly before the election; or
- Take action to qualify for the ballot. 11 CFR 100.72(b) and 100.131(b).

Contribution Limits. Contribution limits apply to all the support given to an individual who is testing the waters. The limits apply, for example, to:

- Gifts of money, goods and services;
- Loans (except bank loans);
- Certain staff advances until repaid;
- Endorsements and guarantees of bank loans; and
- Funds given or personally loaned to the individual to pay for his or her living expenses during the testing-the-waters period.

For additional information on contributions, including current contribution limits, please review the FEC’s [Contributions Brochure](#).

Prohibitions. An individual who is testing the waters must comply with the Act’s prohibitions. The Act specifically prohibits money from:

- Labor organizations (although funds from a labor separate segregated fund are permissible);
- Corporations, including nonprofit corporations (although funds from a corporate separate segregated fund are permissible);
- Foreign nationals; or
- Federal government contractors. 11 CFR 114.2(a),(b), and (d), 110.20(a)(3), 115.2.

Recordkeeping. An individual who tests the waters must keep financial records. If the individual later becomes a candidate, the money raised and spent to test the waters must be reported by the campaign as contributions and expenditures. 11 CFR 101.3. The money raised and spent for testing the waters must be disclosed on the first report the principal campaign committee files.

Separate bank account. Although this is not a requirement, an individual who tests the waters may want to consider segregating testing-the-waters funds from personal funds by setting up a separate bank account for the deposit of receipts and the payment of expenses. If the individual later becomes a candidate, a campaign account must be established to keep campaign funds separate from anyone’s personal funds. 11 CFR 102.10, 102.15, 103.2, 103.3(a).

Organizing a Testing-the-Waters Committee. An individual may organize a committee for testing the waters. An exploratory committee or a testing-the-waters committee is

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¹ The applicable cost of living adjustment amount is 1.08163.

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not considered a political committee under the Act and is not required to register with the FEC or to file reports. The name of the testing-the-waters committee and statements made by committee staff must not refer to the individual as a candidate. Thus, for instance, a testing-the-waters committee may be named “Sam Jones Exploratory Committee,” but not “Sam Jones for Congress.”

If the committee’s activities go beyond the testing the waters and the committee begins to campaign, the committee must register with the FEC. The funds raised during the testing-the-waters phase automatically become contributions, and the funds spent, including polling costs, become expenditures. These contributions and expenditures count toward the threshold that triggers candidate status. Once the contributions exceed \$5,000, the individual becomes a candidate and must register under the Act. To download registration and reporting forms, please visit the FEC webpage for “[Forms for Candidates and Authorized Committees](#).”

If an individual decides not to run for federal office, there is no obligation to report these finances, and the donations made to the testing-the-waters committee will not count as contributions.

Further information on organizing a campaign committee can be found in the [Campaign Guide for Congressional Candidates and Committees](#) [PDF].

—Stephanie Caccamo

Outreach

DC Seminar for House and Senate Campaigns

On April 6, 2011, the Commission will hold a one-day seminar for House and Senate campaign committees at its headquarters in Washington, DC.¹ This seminar is recommended for:

- Treasurers and staff of House and Senate campaigns who have responsibility for compliance with federal campaign finance laws;
- Attorneys, accountants and consultants who have clients that are any of the above;
- Anyone who wants to gain in-depth knowledge of federal campaign finance law as it applies to campaign committees; and
- Anyone who wants to learn about recent and possible future changes resulting from legislation and litigation.

The seminar will address fundraising and reporting rules, as well as recent changes to the law. Specific workshops are designed for those seeking an introduction to the basic provisions of the law, as well as those with more experience in campaign finance law. Experienced FEC staff and Commissioners will conduct the workshops.

The registration fee for this seminar is \$100 per attendee. Payment by credit card is required prior to the seminar. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your registration.

¹ This seminar replaces the FEC’s annual Washington, DC, conference for campaign committees. For additional information, see the [October 2010 Record](#), page 14.

A full refund will be made for all cancellations received before 5 p.m. EDT on April 1, 2011. Complete information is available on the FEC web site at <http://www.fec.gov/info/conferences/2011/candidateseminar.shtml>, along with the seminar agenda and a list of hotels located near the FEC. Questions about the seminar should be directed to the Information Division by phone at 800/424-9530 (press 6), or locally at 202/694-1100, or via e-mail to Conferences@fec.gov.

—Katherine Carothers

DC Seminar for Corporations and Their PACs

On May 11, 2011, the Commission will hold a one-day seminar for corporations and their PACs at its headquarters in Washington, DC.¹ This seminar is recommended for:

- Treasurers and staff of corporations and their PACs who have responsibility for compliance with federal campaign finance laws;
- Attorneys, accountants and consultants who have clients that are corporations;
- Anyone who wants to gain in-depth knowledge of federal campaign finance law as it applies to corporations; and
- Anyone who wants to learn about recent and possible future changes resulting from legislation and litigation.

The seminar will address fundraising and reporting rules, as well as recent changes to the law. Specific workshops are designed for

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¹ This seminar replaces the FEC’s annual Washington, DC, conference for corporate PACs. For additional information, see the [October 2010 Record](#), page 14.

Outreach

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2011 Conferences and Seminars

Seminar for House and Senate Campaigns

April 6, 2011
FEC Headquarters
Washington, DC

Seminar for Corporations and Their PACs

May 11, 2011
FEC Headquarters
Washington, DC

Seminar for Trade Associations, Labor Organizations, Membership Organizations and Their PACs

June 8, 2011
FEC Headquarters
Washington, DC

Regional Conference For Campaigns, Party Committees and Corporate/Labor/Trade PACs

September 7-8, 2011
Minneapolis, MN

Regional Conference For Campaigns, Party Committees and Corporate/Labor/Trade PACs

October 25-26, 2011
San Diego, CA

ment by credit card is required prior to the seminar. The FEC recommends waiting to make hotel and air reservations until you have received confirmation of your registration. A full refund will be made for all cancellations received before 5 p.m. EDT on May 6, 2011. Complete information is available on the FEC web site at <http://www.fec.gov/info/conferences/2011/corporateseminar.shtml>, along with the seminar agenda and a list of hotels located near the FEC. Questions about the seminar should be directed to the Information Division by phone at 800/424-9530 (press 6), or locally at 202/694-1100, or via e-mail to Conferences@fec.gov.

—Katherine Carothers

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