

Materials related to Carey et. al. v FEC

The attached documents are as follows (328 pages):

1. (page 1) Initial Complaint, Motion for Preliminary Injunction, supporting documents
2. (page 130) FEC Memorandum in Opposition to Motion for Preliminary Injunction
3. (page 179) Exhibits to FEC Memorandum in Opposition.
4. (page 290) Plaintiffs Reply Memorandum
5. (page 319) FEC Answer to underlying complaint in *Carey v FEC*

Please note that various non-substantive procedural documents have been omitted.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
)
Rear Adm. James J Carey [Ret])
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Kelly S. Eustis)
1431 Q Street)
Apt. 130)
Sacramento, California 95811)
)
National Defense Political)
Action Committee)
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Plaintiffs,)
)
v.) Civil Case No. _____
)
FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
)
Defendant.)
_____)

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Retired Admiral James Carey, Kelly S. Eustis, and the National Defense Political Action Committee (“National Defense PAC”) bring this action for declaratory and injunctive relief, and complain as follows:

INTRODUCTION

1. This case challenges laws that, as interpreted and applied by the Federal Election Commission, abridge the freedom of speech and association guaranteed under the First Amendment to the Constitution. These challenges are brought as applied against 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). National Defense Political Action Committee (“National Defense PAC”) and its donors’ First Amendment rights are infringed by laws enforced and interpreted by the Federal Election Commission that prohibit it from soliciting and accepting funds solely for the purpose of making independent expenditure communications from one bank account while maintaining a separate bank account to accept source and amount limited contributions to fund similarly limited contributions pursuant to § 441a(a)(1)(C).
2. Plaintiff Kelly S. Eustis is protected under the First Amendment to the United States Constitution to make contributions to organizations that share his views on public policy and candidates for public office. Wishing to exercise that right, Plaintiff Kelly S. Eustis would like to make contributions to National Defense PAC in amounts greater than \$5,000 to fund its independent advocacy to support election of military veterans who support limited government to federal office. National Defense PAC is a non-connected political committee that would like to exercise its right to separately receive funding to make contributions to, and support its independent expenditure advocacy of, military veterans running for federal office.

3. In 2009, the District of Columbia Circuit Court of Appeals recognized plaintiffs' rights under the First Amendment. Non-connected political action committees, like National Defense PAC, have the right to accept unlimited contributions from individuals, committees, corporations, and unions to make independent expenditures. Non-connected political action committees, like National Defense PAC, have the concurrent right to accept amount and source limited contributions from individuals and other committees for the purpose of making candidate contributions under 2 U.S.C. § 441a(a)(2)(A). Pursuant to *EMILY's List v. Federal Election Commission*, 581 F.3d 1 (D.C. Cir. 2009), non-connected political action committees, like National Defense PAC, do not lose their rights by choosing to exercise them. Individuals, in turn, have the reciprocal right to make contributions to organizations to associate with and amplify their voice. *Id.* This last term, the U.S. Supreme Court recognized the right of corporations to speak out about candidates and elections as being fully protected under the First Amendment. *Citizens United v. FEC*, 130 S.Ct. 876 .(2010)
4. To date, the Federal Election Commission has failed to implement the ruling of the D.C. Circuit Court of Appeals and the United States Supreme Court as pertains to these rights and in particular these plaintiffs. This occurred most recently in the FEC's failure to grant an affirmative response to plaintiffs' advisory opinion request seeking a declaration that its actions, which accord with nearly identical facts as that in *EMILY's List* and *Citizens United*, would be legal under the Commission's purview. Because of this, National Defense PAC had to forgo its speech during the 2010 electoral timeframe. It is presently stymied in

being able to accept contributions and speak out about the upcoming 2012 election cycle, candidates for office, and issues of the day.

5. The FEC has failed to abide by a controlling opinion for identical issues of law concerning almost-identical conduct issued by the District of Columbia Circuit Court of Appeals. *See EMILY's List*. 581 F.3d 1. This infringes the constitutionally protected rights of plaintiffs – average American speakers – causing injuries by forcing them to seek judicial relief each time they wish to associate and speak freely.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 2201 as a challenge arising under the First Amendment to the Constitution of the United States, the Federal Election Campaign Act, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02
7. Venue is proper in this Court under 28 U.S.C. §1391(e) because Defendant is an entity of the United States Government.

PARTIES

8. Plaintiff Rear Admiral [retired] James J. Carey is a registered voter and the founder and treasurer of National Defense PAC and has served in that capacity since 2000. He resides in Alexandria, Virginia.
9. Plaintiff Kelly Eustis is a registered voter who resides in Sacramento, California.
10. Plaintiff National Defense PAC is a non-partisan, non-connected political action committee registered with the Federal Election Commission with its principal mailing address in Washington, DC.

11. The FEC is the federal agency charged with enforcement of the Federal Election Campaign Act (“FECA”) and is located in Washington, D.C.

STATEMENT OF FACTS

12. A group of military veterans established National Defense PAC with the desire to promote shared patriotic values in government. National Defense PAC advocates in favor of limited government, upholding a national commitment to this nation’s veterans, and publicly defends the rights of American soldiers. In this role, National Defense PAC raises and expends funds in support of candidates for federal office who are military veterans and agree with its values. Such funds are raised subject to the amount and source limits detailed at 2 U.S.C. § 441a(a)(1)(C). National Defense PAC makes contributions to candidates for federal office up to the applicable limit and makes independent expenditures in support or opposition of candidates.
13. In the wake of what most legal experts have deemed a sea change in election law through *Citizens United v. FEC*, 130 S.Ct. 876 (2010), *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir 2010), and *EMILY’s List v. Federal Election Commission*, 581 F.3d 1 (D.C. Cir. 2009), plaintiffs hoped to secure and use the fullest extent of their recently recognized, but always existing, First Amendment rights in two separate ways. First, National Defense PAC sought to engage in independent expenditure campaigns, that is, campaigns advocating the election or defeat of clearly identified candidates for federal office. Part and parcel of National Defense PAC’s ability to engage in this speech is in its ability to raise funds to produce independent expenditures due to the cost of

advertisements, airtime, and print media. Thus, National Defense PAC sought, as recognized in *EMILY's List* and elsewhere, to be free of contribution limits for contributions given for its independent expenditure campaigns. At the same time, Kelly S. Eustis desired to associate and speak with National Defense PAC by giving more than \$5,000 per calendar year to fund independent expenditure campaigns. National Defense PAC sought to maintain a separate bank account from which to accept contributions for candidates subject to source and amount limits.

14. While the *Speechnow*, *EMILY's List*, and *Citizens United* courts could not have been clearer protecting these rights, the FEC continues to stonewall and ignore these rulings, causing continued injuries to the speakers before this court.

The Advisory Opinion Request

15. On August 11, 2010, National Defense PAC submitted an advisory opinion request (“AOR”), attached as EXHIBIT A, to the FEC pursuant to 2 U.S.C. § 437f. This request asked whether its actions would be lawful if it:
 - a. Accepted unlimited contributions from individuals, other political committees, corporations, and unions for the express purpose of making independent expenditures, including paying any or all of its own administrative and operating expenses, and
 - b. Accepted contributions from individuals and other political committees only, subject to the limits at 2 USC §§441a(a)(1)(C) and (2)(C), to expend as campaign contributions to candidates, pursuant to 2 USC §441a(a)(2), and
 - c. Recorded and segregated all such contributions by type and maintained separate bank accounts for each type, applying for the purpose of campaign contributions only those contributions expressly made for that purpose as indicated by the contributor at the time of the contribution and subject to the limits at 2 USC §§441a(a)(1)(C) and (2)(C).

16. Pursuant to 11 C.F.R. § 112.1, the FEC accepted the AOR for review, assigned it AOR number 2010-20, and posted it on the FEC's website for public commentary on August 11, 2010.
17. On September 17, 2010, the FEC's general counsel issued a draft advisory opinion in response to National Defense PAC's AOR. The draft advisory opinion, Draft A, concluded that contributions to National Defense PAC made to finance its independent expenditures would be subject to the contribution limits of 2 U.S.C. § 441a(a)(1)(C) and related FEC regulations. This "Draft A" advisory opinion is included as EXHIBIT B.
18. An alternate draft, Draft B, was issued on September 21 and concluded that contributions to National Defense PAC made to finance its independent expenditures would not be subject to the contribution limits of 2 U.S.C. § 441a(a)(1)(C) and related FEC regulations. The alternative "Draft B" advisory opinion is included as EXHIBIT C.
19. On September 23, 2010, at an open meeting of the FEC, the Commission failed by a vote of 2-3 to approve Draft A. The Commission also failed by a vote of 3-2 to approve Draft B.
20. Pursuant to 11 C.F.R. § 112.4(a), the FEC certified on September 28, 2010 that it was unable to approve National Defense PAC's AOR because it lacked the necessary four votes to approve the AOR. This certification is included as EXHIBIT D. The FEC's failure to affirmatively provide a four-vote, binding advisory opinion in response to National Defense PAC's request carries the equivalent legal effect that its proposed actions would be invalid under the FECA

and subject the organization to civil or criminal penalties under 2 U.S.C. § 437g for speaking out about candidates and otherwise engaging in political association.

21. The Commission's refusal to issue an advisory opinion deprives plaintiffs that requested it of a legal reliance defense that they could otherwise receive under 2 U.S.C. § 437f(c). The advisory opinion process in this matter is complete and deprived plaintiffs of a legal right – to engage freely in constitutionally protected speech and association. *See Unity 08 v. Federal Election Commission*, 596 F.3d 861 (D.C. Cir. 2010) (“parties are commonly not required to violate an agency's legal position and risk an enforcement proceeding before they may seek judicial review”); *see also Democratic Senatorial Campaign Committee v. Federal Election Commission*, 918 F.Supp. 1 (D.D.C. 1994).

Ensuing Harm to Plaintiffs

22. At the time of filing the advisory opinion request, several primary elections were less than 60 days away. National Defense PAC filed its request as promptly as possible to ensure that its planned speech and association would be deemed lawful under the FECA and related regulations. Because the elections were so close upon it, National Defense PAC asked for an expedited advisory opinion request pursuant to 11 C.F.R. § 112.4(b) and 72 Fed. Reg. 32,160 (July 7, 2009). More than 40 days later, the Commission decided not to issue an advisory opinion. Given that the FEC could not issue a definitive statement concerning the legality of National Defense PAC's planned actions, it was required to mute itself and curtail its activities during the 2010 election cycle.

23. During the 2010 electoral cycle, National Defense PAC planned to deploy independent expenditure communications targeting several opponents of endorsed candidates nationwide. While National Defense PAC was free to endorse its preferred candidates, it was not legally permitted to solicit more than \$5,000 per calendar year per person to fund independent expenditure campaigns for them. These proposed campaigns included focusing on candidates in the Eighth Congressional District of Michigan, the First Congressional District of Rhode Island, the Eighth Congressional District of Massachusetts, the Ninth Congressional District of New York, and the First Congressional District of Hawaii. A copy of National Defense PAC's endorsements in these campaigns is included as EXHIBIT E. Because the FEC did not permit it to accept unlimited contributions to fund its independent expenditures, National Defense PAC was unable to gather the resources necessary to run independent expenditure campaigns and to be heard during the 2010 electoral cycle.

Ongoing Harm to Plaintiffs

24. As soon as possible, and certainly before the 2012 primary and general elections, National Defense PAC would like to make independent expenditures from its general fund, in various amounts, expressly advocating for or against clearly identified candidates of its choice. A specific example of this is included as EXHIBIT F, which includes a proposed advertisement for Newsmax – a popular Internet destination – expressly advocating against the retention of Anthony Weiner in New York's Ninth Congressional District. This advertisement, with a guaranteed 50,000 views per week, would cost \$6,300.00 to run in the months

leading up to the November 2012 elections. The advertisements in question would include a picture of Anthony Weiner along with the call to “defeat Anthony Weiner” – asking users to click on the advertisement to learn more. *See* EXHIBIT F.

25. National Defense PAC would like to make additional independent expenditures in the months leading up to the 2012 primary and general elections based on issues and candidates that present themselves. Without the ability to solicit unlimited contributions to fund such communications, it will not be able to speak during the 2012 electoral season. Without an immediate ruling from this court, it will not have the necessary time to fundraise and generate support for its message from likeminded individuals.

26. As soon as possible, and certainly before the 2012 primary and general elections, National Defense PAC would like to solicit contributions for its independent expenditures in amounts greater than \$5,000.00 per calendar year. National Defense PAC has contacted donors willing to give more than \$5,000.00 in single contributions to fund independent expenditures, but has not solicited or accepted such amounts due to the effect of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). A specific example of this is included as EXHIBIT G, a letter of intent from Kelly S. Eustis, who wishes to donate \$6,300.00 to help fund independent expenditure communication campaigns against Anthony Weiner but cannot due to the current operation and interpretation of the law by the FEC.

27. As soon as possible, and certainly before the 2012 primary and general elections, Kelly S. Eustis would like to make a \$6,300.00 contribution to National Defense

PAC to help fund independent expenditure communications against Anthony Weiner in the Ninth Congressional District of New York. But for operation and interpretation of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3), Kelly S. Eustis would make this contribution.

28. As soon as possible, and certainly before the 2012 primary and general elections, National Defense PAC would like to make contributions to candidates for federal office subject to source and amount limits found at 2 U.S.C. §§ 441a(a)(1)(C) and (2)(C). Because it plans to make unlimited independent expenditures while receiving unlimited contributions for them, current interpretation of the law by the FEC prohibits National Defense PAC from making source and amount limited contributions out of a separate bank account.

29. As soon as possible, and certainly before the 2012 primary and general elections, National Defense PAC would like to receive contributions to fund contributions, subject to source and amount limits found at 2 U.S.C. §§ 441a(a)(1)(C) and (2)(C), to provide to favored candidates for federal office. Because it plans to make unlimited independent expenditures while receiving unlimited contributions for them, current operation and interpretation of the law by the FEC prohibits it from concurrently soliciting and receiving limited contributions. Were it permissible, National Defense PAC would actively fundraise and accept contributions for making contributions.

National Defense PAC's Structure and Operations

30. National Defense PAC is an unincorporated association in Virginia, registered as a non-connected political action committee with the FEC. The PAC's bylaws

require it to operate independently of political candidates, committees, and political parties. *See* EXHIBIT H. In accord with its bylaws, National Defense PAC does not coordinate any of its activities with candidates or national, state, district or local political party committees or their agents as defined in 2 U.S.C. §§ 441a(a)(7)(B) and (C) and 11 C.F.R. § 109. *Id.* In addition, National Defense PAC does not and will not coordinate its activities with other political committees.

31. National Defense PAC's expenditures for advertisements will be "independent expenditures" under 2 U.S.C. § 431(17) because they will be expenditures by a person "expressly advocating the election or defeat of a clearly identified candidate" that are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized [campaign] committee, or their agents, or a political party committee or its agents." An example of a proposed future independent expenditure is included as EXHIBIT F.
32. National Defense PAC has not yet solicited or accepted any contributions in excess of the \$5000 limit imposed by 2 U.S.C. § 441a(a)(1)(C), because doing so would subject it to civil and criminal penalties.
33. The contribution limits contained in 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3) prevent National Defense PAC from accepting the contributions from Kelly S. Eustis as described in paragraphs 26 and 27 above.
34. The contribution limits contained in 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3) prevent National Defense PAC from soliciting additional contributions above those limits.

35. Even if National Defense PAC could somehow raise enough money in increments of \$5000 or less per donor per calendar year to pay for its advertisements, the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) would, by making it harder to gather funds, limit the type and number of times it could run advertisements. The limits would also diminish National Defense PAC's ability to run additional advertisements concerning other federal candidates in other races. This is precisely the muting effect the law had on National Defense PAC's operations during the 2010 electoral cycle as described in paragraphs 22-23. This constitutes a direct impediment on National Defense PAC's association and speech.

36. National Defense PAC will face a credible threat of prosecution if it solicits or accepts contributions in excess of the limits contained in 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) to fund its advertisements as described herein.

Rear Admiral Carey and Kelly S. Eustis' Activities

37. The contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) prevent plaintiff Kelly S. Eustis from making the contributions he wants to make as described in paragraphs 26 and 27 above, and thus prevents him from associating with National Defense PAC and with other like minded individuals, as well as speaking, for the purpose of producing and distributing the advertisements described herein.

38. Similarly, the contribution limits found in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) prevent Rear Admiral Carey, as an agent of National Defense PAC, from soliciting or accepting contributions as described in paragraphs 24-26 above.

39. Plaintiff Kelly S. Eustis will face a credible threat of prosecution if he makes contributions to National Defense PAC in excess of the limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to fund National Defense PAC's advertisements as described herein. Plaintiff Kelly S. Eustis should not have his contributions to National Defense PAC count against the amount of money he may contribute to federal candidates under 2 U.S.C. § 441a(a)(3).
40. Plaintiff Rear Admiral Carey will face a credible threat of prosecution if he solicits or accepts contributions to National Defense PAC in his role as treasurer in excess of the limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to fund National Defense PAC's advertisements as described herein.

COUNT 1
Contribution Limits — National Defense PAC

41. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.
42. The application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to National Defense PAC's independent expenditure communications severely burden its right to freedom of speech. In application, these provisions act as expenditure limits, denying National Defense PAC the ability to speak effectively and efficiently.
43. 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) are the functional equivalent of a speech ban imposed by the FEC against certain groups of individuals. As the Supreme Court noted in *Buckley v. Valeo*, 424 U.S. 1, 19 n.18 (1976), "Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single

- tank of gasoline.” The FEC imposes this limit against certain groups of individuals wishing to speak out about candidates for public office without constitutional support.
44. National Defense PAC has prepared advertisements calling for the defeat of candidates for federal office and wishes to distribute those advertisements in the state and district in which those candidates are running for office. But for operation of the law, National Defense PAC is prepared to run independent expenditures in the Ninth Congressional District of New York to defeat Anthony Weiner. *See* EXHIBIT F.
45. National Defense PAC would like to produce and broadcast additional advertisements calling for the election or defeat of candidates for federal office in the 2012 election cycle and in future election cycles.
46. National Defense PAC has a donor who is ready, willing, and able to donate more than \$5000 each to finance its advertisements calling for the election or defeat of candidates for federal office as described herein.
47. Under 2 U.S.C. §§ 431(8), 441a(a)(1)(C), 441a(a)(3), and the FEC’s regulations, as interpreted and applied by the FEC, in contradistinction to the First Amendment and opinions of the D.C. Circuit Court of Appeals in *EMILY’s List v. FEC* and *SpeechNow.org v. FEC*, National Defense PAC is prohibited from accepting these and other contributions that exceed the limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) that are made to finance its advertisements as described herein.

48. The application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to National Defense PAC's independent expenditure communications severely burden its right to associate with its potential donors by placing constitutionally unjustified limits on how much money it may receive from likeminded individuals.
49. National Defense PAC poses no threat of corruption or its appearance because all of its contributions to candidates, party committees or the hard money accounts of other PACs will be made from a separate account comprised of funds received from individuals in amounts of \$5000 or less. It will pay the expense of administering its contributions to candidates from the same account. Independent expenditures will be made from a separate account.
50. The application of contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to National Defense PAC violates its contributors' rights to freedom of speech and association under the First Amendment. By denying National Defense PAC contributors the meaningful ability to associate and speak through the act of contributing, its constitutional rights are abridged.
51. As recognized by the District of Columbia Circuit Court of Appeals, associations of individuals wishing to speak out about candidates for federal office and issues of the day are "constitutionally entitled to raise and spend unlimited money in support of candidates for elected office" *EMILY'S List*, 581 F.3d at 9.
52. It is never constitutionally permissible to restrict the amount of money individuals may contribute to an organization that makes independent expenditures. *See, e.g., EMILY'S List*, 583 F.3d 1; *SpeechNow.org*, 599 F.3d 686; *N.C. Right to Life, Inc.*

v. Leake, 525 F.3d 274 (4th Cir. 2008). As a result, 2 U.S.C. §§ 441a(a)(1)(C), 441a(a)(3), and the FEC's regulations, as interpreted and applied by the FEC must necessarily fail to survive constitutional scrutiny.

COUNT 2
Contribution Limits—Individual Plaintiffs

53. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.
54. Kelly S. Eustis is ready, willing, and able to contribute more than \$5000 to finance National Defense PAC's advertisements as described herein. *See* EXHIBIT G (Letter of Intent, Kelly S. Eustis).
55. Kelly S. Eustis would like to make additional contributions in the future to finance National Defense PAC's advertisements as described herein and as may arise in future circumstances.
56. Under 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) and the FEC's regulations, as interpreted and applied by the FEC, in contradistinction to the First Amendment and opinions of the D.C. Circuit Court of Appeals in *EMILY's List* and *SpeechNow.org*, Kelly S. Eustis is prohibited from making any contributions to National Defense PAC that would exceed \$5000 in any calendar year that are made to finance its advertisements calling for the election or defeat of candidates for federal office.
57. The application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) severely burdens Kelly S. Eustis' rights to associate with National Defense PAC, as well as speak, and its other potential donors for the purpose of calling for the election or defeat of candidates for federal office. As noted by the

- District of Columbia Circuit Court of Appeals, if one person is “constitutionally entitled to spend \$1 million to run advertisements supporting a candidate (as *Buckley* held), it logically follows that 100 people are constitutionally entitled to donate \$10,000 each to a non-profit group that will run advertisements supporting a candidate.” *EMILY’s List*, 581 F.3d at 10.
58. The application of the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) severely burdens Kelly Eustis’ right to freedom of speech. Indeed, organizations like National Defense PAC “offer an opportunity for ordinary citizens to band together to speak on the issue or issues most important to them.” *EMILY’s List*, 581 F.3d at 11 (internal citation omitted).
59. Kelly S. Eustis’ contributions to National Defense PAC pose no threat of corruption or its appearance because National Defense PAC’s contributions to candidates, party committees or the hard money accounts of other PACs will be made from a separate account comprised of funds received from individuals in amounts of \$5000 or less. National Defense PAC will pay the expense of administering its contributions to candidates from the same account. Independent expenditures will be made from a separate account.
60. The application of contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) as applied to National Defense PAC and to Kelly S. Eustis and Rear Admiral Carey violate their right to freedom of speech and association under the First Amendment.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

1. A declaratory judgment that the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3), as well as any applicable rules and regulations regarding these provisions, are unconstitutional as applied to National Defense PAC;

2. A declaratory judgment that the contribution limits contained in 2 U.S.C. §§441a(a)(1)(C) 441a(a)(3), as well as applicable rules and regulations regarding those provisions, are unconstitutional as applied to any contributions that the individual Plaintiffs and other supporters wish to make to National Defense PAC for its independent advertisements as described herein;

3. Preliminary and permanent injunctions enjoining Defendant FEC from enforcing §§441a(a)(1)(C), and 441a(a)(3), as well as any applicable rules and regulations regarding those provisions, against National Defense PAC;

4. Preliminary and permanent injunctions enjoining Defendant FEC from enforcing 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3), as well as any applicable rules and regulations regarding those provisions, against the individual Plaintiffs and National Defense PAC's other supporters for any contributions they may make to National Defense for independent advertisements as described herein;

5. An award of nominal damages of \$1 for the violation of Plaintiffs' constitutional rights;

6. Costs and attorney's fees pursuant to any applicable statute or authority;

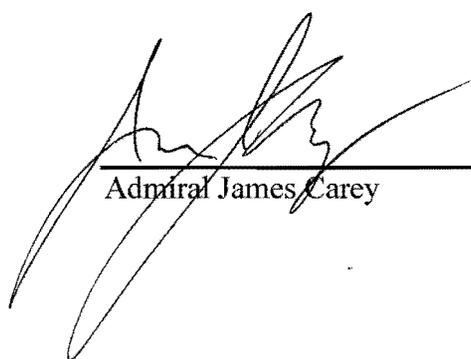
7. Any other relief that the Court deems just and appropriate.

Date this 28th day of January, 2011.

CAREY VERIFICATION

I, Rear Admiral James Carey, declare as follows:

1. I am the founder and treasurer of National Defense PAC.
2. I have personal knowledge of National Defense PAC and its operations, including those set out in this Complaint, and if called upon to testify I would testify competently as to matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning National Defense PAC are true and correct. Executed on January 20, 2011.



Admiral James Carey

EUSTIS VERIFICATION

I, Kelly S. Eustis, declare as follows:

1. I am an individual residing in Sacramento, California.
2. I wish to make donations to National Defense PAC as described in this Verified Complaint and have personal knowledge of my desires to support the National Defense PAC, including those set out in this Complaint, and if called upon to testify I would testify competently as to matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning my own support of National Defense PAC and wishes to donate to the organization are true and correct. Executed on January 25, 2011.



Kelly S. Eustis

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Backer", written over a horizontal line.

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*Motions for *Pro Hac Vice* to be filed.

EXHIBIT A

Advisory Opinion Request 2010-20



RECEIVED
FEDERAL ELECTION
COMMISSION
PAC • GRASSROOTS • ADVOCACY • NON-PROFIT

2010 AUG 11 PM 2:15

August 11, 2010

By Courier

OFFICE OF GENERAL
COUNSEL

Thomasenia Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20013

AOR 2010-20

Re: National Defense PAC Advisory Opinion Request

Dear Ms. Duncan:

Pursuant to 2 USC §437(f), National Defense PAC (NDPAC) requests an advisory opinion from the Federal Election Commission (FEC). This request addresses a highly significant and time sensitive issue and pertains to communications referencing clearly identified federal candidates and contributions to those candidates, some with primary elections less than 60 days away. NDPAC requests the FEC expedite this request and render an opinion within 20 days pursuant to 74 Fed. Reg. 32,160 (July 7, 2009) or, in the alternative, within 30 days under its general expedited procedures.

I. INTRODUCTION

This request is to verify that the planned conduct of NDPAC is within the scope of the law as it stands subsequent to *Citizens United v FEC*, 130 S.Ct. 876 (2010) and *SpeechNOW v FEC*, 599 F.3d 686 (D.C.Cir. 2010)(en banc), and in light of recently issued FEC Advisory Opinion (AO) 2010-09 and 2010-11 (July 2010).

NDPAC, a qualified non-connected political action committee (PAC), seeks to confirm that its conduct shall be lawful if it:

- (a) accepts unlimited contributions from individuals, other political committees, corporations, and unions for the express purpose of making independent expenditures (IEs), including paying any or all of its own administrative & operating expenses, and
- (b) accepts contributions from individuals and other political committees only, subject to the limits at 2 USC §§441a(a)(1)(C) and (2)(C), to expend as campaign contributions to candidates, pursuant to 2 USC §441a(a)(2), and

(c) records and segregates all such contributions by type and maintains separate bank accounts for each type, applying for the purpose of campaign contributions only those contributions expressly made for that purpose as indicated by the contributor at the time of the contribution and subject to the limits at 2 USC §§441a(a)(1)(C) and (2)(C).

II. BACKGROUND

NDPAC is a qualified, non-connected PAC that raises and expends funds in support of candidates who (a) are military veterans and (b) agree with the values of NDPAC. NDPAC currently accepts contributions from individuals subject to the amount and source limits at 2 USC §441a(a)(1)(C), and makes contributions to individual federal candidates up to the applicable limit, as well as making independent expenditures from such funds. NDPAC does not accept or intend to accept donations from foreign nationals or government contractors.

In response to the rulings in *Citizens United v FEC*, 130 S.Ct. 876 (2010) and *SpeechNOW v FEC*, 599 F.3d 686 (D.C.Cir. 2010)(en banc), as well as AO 2010-09 and AO 2010-11, NDPAC intends to expand the scope of its activities. NDPAC now intends to accept unlimited contributions from individuals, other political committees, corporations, and unions in order to make independent expenditures. NDPAC will also continue to accept contributions from individuals and other committees pursuant to 2 USC §441a(a)(1)(C) for the purpose of making candidate contributions pursuant to 2 USC §441a(a)(2)(A).

NDPAC intends to verify the source of each contribution and the intent of its use for either independent expenditures or candidate contributions (if from an acceptable source of candidate contribution funds). NDPAC will maintain separate bank accounts and otherwise maintain separate accounting for each pool of funds, and provide full reporting to the FEC of all receipts and expenditures by category. NDPAC will pay administrative or operating costs from either account, but most likely wholly from the independent expenditure account. NDPAC will continue to refuse any contribution from foreign nationals or government contractors.

III. DISCUSSION

Recent rulings by the Supreme Court in *Citizens United v FEC*, 130 S.Ct. 876 (2010) and the U.S. Court of Appeals for the District of Columbia in *SpeechNOW v FEC*, 599 F.3d 686 (D.C.Cir. 2010)(en banc) have had a significant impact on permissible and Constitutionally protected election related activities. Core to the holding of each ruling, and as cited in AO 2010-09 and AO 2010-11, was “*that independent expenditures, including those made by corporations,*

do not give rise to corruption or the appearance of corruption.” Citizens United, 130 S. Ct at 909; see SpeechNow, 599 F.3d at 693. See also AO 2010-09, page 3, and AO 2010-11, page 3.

Therefore, a corporation or union may, subject to applicable reporting requirements, (a) spend an unlimited amount of treasury funds on IE’s, *Citizens United*, 130 S. Ct at 913, (b) spend an unlimited amount of treasury funds to pay some or all of the administrative or operating costs of an IE-only PAC, AO 2010-09 pg. 4 ¶ 1, that need not be an SSF, *id.*, pg. 5 ¶ 6, directly or through contribution to that PAC, *id.*, pg. 5 ¶ 6, and (c) spend an unlimited amount of treasury funds to pay some or all of the administrative or operating costs of an SSF which may conduct IE’s and raise funds from its restricted class to contribute to candidates, 2 USC §441b(b)(2)(C).

Individuals or group of individuals may expend unlimited personal funds on IE’s themselves, AO 2010-11, pg. 3 ¶ 2, or in contribution to an IE-only PAC, *id.*, pg. 3 ¶ 3, including paying for any or all of the administrative or operating costs of that committee directly or through their contributions. However, no individual or group of individuals has an equivalent vehicle as an SSF to make unlimited contributions to the administrative or operating expenses of a committee that may raise and expend funds for direct campaign contributions.

As a result, corporations and unions now have greater political rights and greater ability to affect the outcome of elections of federal candidates than any individual and in most cases even very large groups of individuals. A cursory analysis of FEC data indicates that SSF’s (corporations and unions) outnumber non-connected committees (largely grassroots and citizens organizations) by nearly 2-to-1, with an even greater disparity in funds raised and expended. Further, non-connected committees expend on average 40% of funds raised for administrative or operating expenses, up to 75% for smaller PACs. SSFs generally have these costs paid by their connected organization, allowing use of virtually all funds raised for direct candidate contributions.

A non-connected political committee has two choices with virtually identical reporting obligations. It may operate as an IE-only PAC and raise and expend unlimited funds from any corporation, union, or individual for IE’s only. Or, it may operate as a non-IE-only PAC, raise and expend amount-limited contributions from individuals and other political committees only, and make amount-limited direct contributions to candidates as well as unlimited expenditures for IE’s. Either approach requires the same accounting of receipts, sources, and expenditures.

Non-connected PACs must therefore choose between (a) unlimited receipts and unlimited distributions for IE’s, and (b) strict limitations on the sources and amounts of receipts in order to enjoy a greater degree of free speech. In short, speakers are being forced to choose between two forms of protected speech, either of which they may engage in, but not at the same time.

There is no constitutional basis to prohibit a non-connected committee from performing both lawful, constitutionally protected functions – engaging in political speech - at the same time. There is no constitutional basis to restrict political speech such that speakers must sacrifice one mode of speech for another. There is no constitutional basis to restrict freedom of association such that individuals and entities may not do in concert what they may lawfully do individually.

The Commission has expressly recognized that *“Following Citizens United and SpeechNow, corporations, labor organizations, and political committees may make unlimited independent expenditures from their own funds, and individuals may pool unlimited funds in an independent expenditure-only political committee. It necessarily follows that corporations, labor organizations and political committees also may make unlimited contributions to organizations such as the Committee that make only independent expenditures. Given the holdings in Citizens United and SpeechNow, that “independent expenditures do not lead to, or create the appearance of, quid pro quo corruption,” Citizens United, 130 S.Ct. at 910, the Commission concludes that there is no basis to limit the amount of contributions to the Committee from individuals, political committees, corporations and labor organizations.”* AO 2010-11, page 3.

A non-IE-only, non-connected committee has long been able to directly contribute to candidates and, further, expend unlimited amounts on IE’s. Therefore, there is clearly no “appearance of or actual quid pro quo corruption,” from a PAC performing both functions. The receipts and expenditures for each function can be separately accounted for through as simple a mechanism as separate bank accounts to insure no funds are used for candidate contributions other than those raised, subject to applicable limits, from individuals and other committees for that purpose. This eliminates any greater risk of actual or apparent quid pro quo corruption than currently exists.

If both functions are individually constitutionally protected, there is no basis to prohibit them from being conducted at the same time by the same committee, provided that they are separately accounted for. If funds are raised, received, held, and accounted for separately, they are not susceptible to improper allocation between categories. Therefore, these activities pose no greater risk of apparent or actual quid pro quo corruption than has long existed from non-connected committees making both contributions and IE’s. Prohibiting non-connected committees – the vehicle by which individuals engage in collaborative political speech – from pursuing this proposed course of action would violate individual rights of free speech and free association while providing corporate entities greater political rights than individuals.

IV. QUESTIONS PRESENTED

1. May a non-connected political action committee (a) raise unlimited contributions from individuals, other committees, corporations, and unions to make independent expenditures only, and (b) raise amount and source restricted funds from individuals and other committees only for the purpose of making candidate contributions, provided such receipts are held in separate bank accounts by intended use and separately accounted for in FEC reporting?
2. May a non-connected political action committee pursuing the course of action outlined above allocate any or all of its administrative or operating expenses between its accounts as it sees fit, including paying all expenses from its independent expenditure account?

V. CONCLUSION

As a result of the rulings in *Citizens United* and *SpeechNow*, and as recognized by the commission in AO 2010-09 and AO 2010-11, the permitted and constitutionally protected conduct of participants in the campaign finance regime administered by the FEC has changed. Participants in this system, specifically the non-connected committee, now enjoy greater protection and range of operations, including to insure that individuals enjoy at least the same political rights and opportunity to engage free political speech as corporations and unions.

NDPAC therefore seeks confirmation that it may pursue the outlined course of action, namely (a) accepting unlimited contributions from individuals, corporations, unions, and other committees to make independent expenditures; (b) accepting limited contributions from individuals and other committees only to make candidate contributions; (c) separately raising, holding, expending, and accounting for these two activities; and (d) reporting all sources of all funds and all expenditures within the FEC reporting structure and adhering to all other applicable FEC regulations.

We would appreciate an expedited response to our request. If you need additional information, please call me at 202-210-5431 or email me at dbacker@DBCapitolStrategies.com.

Sincerely,



Dan Backer, Esq.
Counsel & Assistant Treasurer
National Defense PAC

RECEIVED
FEDERAL ELECTION
COMMISSION



"Dan Backer"
<DBacker@DBCapitolStrategies.com>
08/16/2010 10:03 PM

To <WPowers@fec.gov>
cc
bcc
Subject RE: National Defense PAC

2010 AUG 17 PM 3: 21

OFFICE OF GENERAL
COUNSEL

Dear Mr. Powers,

1. I confirm your understanding of my use of that term as per our conversation, except that I would additionally consider an "in-kind" contribution within the scope of a "political contribution" even though not directly made to a candidate or committee, and not an "administrative and operating expense."
2. Yes, that is correct.

Please feel free to contact me at any time for additional information. Thank you for your time and consideration of our request.

Regards,

Dan Backer, Esq.
202-210-5431

DB Capitol Strategies

PAC * GRASSROOTS * ADVOCACY * NONPROFIT
Home of The Strategist, a monthly PAC update
www.DBCapitolStrategies.com

From: WPowers@fec.gov [mailto:WPowers@fec.gov]
Sent: Monday, August 16, 2010 5:19 PM
To: dbacker@DBCapitolStrategies.com
Subject: National Defense PAC

Dear Mr. Backer:

Following up on our telephone conversation from this afternoon (Aug. 16, 2010) regarding your advisory opinion request, please confirm our understanding of the following facts:

1. On page 1 of the request, and elsewhere, when you use the term "administrative and operating expenses" you mean: all expenditures or disbursements that are not direct contributions to candidates, political parties, or political committees, or that are not direct independent expenditures (or other electoral-based disbursements). These expenses would include such items as salary, rent, advertising expenses related to running the PAC, telephone bills, etc. It would also include fundraising costs, which would be paid out of the general accounts of the PAC unless a commission was paid directly from the funds raised.
2. The PAC is a volunteer-based organization, and at this time does not have a physical office. It is incorporated in Virginia, and receives its mail at a post office box in the District of Columbia.

Thank you very much.

William A. Powers
Attorney, Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463
Tel: (202) 694-1631
Fax: (202) 219-

EXHIBIT B

FEC Advisory Opinion 2010-20, Draft “A”

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COMMISSION
SECRETARIAT



FEDERAL ELECTION COMMISSION
Washington, DC 20463

2010 SEP 23 A 9:26

AGENDA ITEM

September 23, 2010

For Meeting of 9-23-10

MEMORANDUM

SUBMITTED LATE

TO: The Commission

FROM: Christopher Hughey *CH (by RCS)*
Acting General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

William A. Powers *WAP*
Attorney

Subject: Draft AO 2010-20 (NDPAC) — Revised Draft A

Attached is Revised Draft A of the subject advisory opinion. We have been asked to place this draft on the agenda for September 23, 2010.

Attachment

1 This response constitutes an advisory opinion concerning the application of the
2 Act and Commission regulations to the specific transaction or activity set forth in your
3 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
4 of the facts or assumptions presented, and such facts or assumptions are material to a
5 conclusion presented in this advisory opinion, then the requestor may not rely on that
6 conclusion as support for its proposed activity. Any person involved in any specific
7 transaction or activity which is indistinguishable in all its material aspects from the
8 transaction or activity with respect to which this advisory opinion is rendered may rely on
9 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
10 conclusions in this advisory opinion may be affected by subsequent developments in the
11 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
12 The cited advisory opinions are available on the Commission's Web site at
13 <http://saos.nictusa.com/saos/searchao>.

14

“[I]f an individual or association was permitted to fund the entire operation of a political committee, all moneys solicited by that committee could be converted into contributions, the use of which might well be dictated by the committee’s main supporter. In this manner, political committees would be able to influence the electoral process to an extent disproportionate to their public support and far greater than the individual or group that finances the committee’s operations would be able to do acting alone. In so doing, they could corrupt the political process in a manner that Congress, through its contribution restrictions, has sought to prohibit.”

1 ADVISORY OPINION 2010-20

2
3 Dan Backer, Esq.
4 DB Capitol Strategies
5 P.O. Box 75621
6 Washington, D.C. 20013

REVISED DRAFT A

7
8 Dear Mr. Backer:

9 We are responding to your advisory opinion request on behalf National Defense
10 PAC (“NDPAC”), concerning the application of the Federal Election Campaign Act of
11 1971, as amended (the “Act”), and Commission regulations to a proposed plan to accept
12 unlimited contributions from individuals, other political committees, corporations, and
13 labor organizations to fund independent expenditures from a separate bank account and to
14 allocate the cost of all of the Committee’s administrative and operating expenses between
15 accounts as it sees fit. The Commission concludes that the Act and Commission
16 regulations do not permit NDPAC’s proposed course of action.

17 ***Background***

18 The facts presented in this advisory opinion are based on your letter received on
19 August 11, 2010 and emails received on August 17, 2010 and September 7, 2010.

20 NDPAC is a nonconnected committee that is incorporated in Virginia and that
21 maintains a post office box in Washington, D.C. At this time, NDPAC has no physical
22 office. It filed a statement of organization on July 20, 2000, and has filed regular reports
23 with the Commission since that time. NDPAC qualified as a multicandidate committee
24 on May 17, 2004.

25 NDPAC intends to make both contributions to candidates and independent
26 expenditures. NDPAC will incur administrative and operating expenses, as well as

1 fundraising costs. NDPAC will accept unlimited contributions from individuals, other
2 political committees, corporations, and labor organizations for the purpose of making
3 independent expenditures, or paying for administrative and operating expenses, but
4 NDPAC will not accept contributions from foreign nationals or Federal contractors,
5 national banks, or organizations organized by act of Congress. NDPAC will maintain
6 two separate bank accounts. It will deposit in one account all contributions it receives
7 that will be used for making independent expenditures. The second account will contain
8 all contributions it receives to make contributions to candidates. The contributions
9 deposited in the second account will comply with the Act's amount limitations and
10 source prohibitions.

11 NDPAC will maintain records for each account, and fully disclose all receipts and
12 disbursements on the reports it files with the Commission as required by the Act and
13 Commission regulations.

14 ***Legal Background***

15 The Act and Commission regulations prohibit any individual from making
16 contributions that in the aggregate exceed \$5,000 per year to a political committee that is
17 not an authorized committee of a candidate or a political party committee. 2 U.S.C.
18 441a(a)(1)(C); 11 CFR 110.1(d). In addition, the Act and Commission regulations
19 prohibit any individual from making contributions to political committees (that are not
20 national party committees), which in the aggregate exceed \$69,900 per biennial period.
21 2 U.S.C. 441a(a)(3)(B); 11 CFR 110.5.¹ The Act and Commission regulations also limit
22 contributions made by multicandidate political committees (that are not national party

¹ Similarly, the Act prohibits political committees from knowingly accepting contributions in excess of these limitations. 2 U.S.C. 441a(f).

1 committees) to \$5,000 per year. 441a(a)(2)(C); 11 CFR 110.2(d). Finally, the Act and
2 Commission regulations prohibit corporations and labor organizations from making
3 contributions. 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1).

4 The Supreme Court has long distinguished between limits on contributions and on
5 independent expenditures: “Contribution limits ... unlike limits on independent
6 expenditures, have been an accepted means to prevent *quid pro quo* corruption.” *Citizens*
7 *United v. Federal Election Commission*, 130 S. Ct. 876, 909 (2010) (citation omitted).
8 Restrictions on both the amount and source of contributions received by political
9 committees have been upheld by the Supreme Court as a means of preventing corruption.
10 *See Buckley v. Valeo*, 424 U.S. 1, 26-27 (*per curiam*) (upholding individual contribution
11 limits); *California Medical Association v. Federal Election Commission*, 453 U.S. 182,
12 197-98 (1981) (“*CalMed*”) (same); *Federal Election Commission v. Beaumont*, 539 U.S.
13 146, 154 (2003) (upholding source prohibitions).

14 In *Beaumont*, the Supreme Court recognized that section 441b’s corporate
15 contribution “ban was and is intended to prevent corruption or the appearance of
16 corruption” and that “restricting contributions by various organizations hedges against
17 their use as conduits for circumvention of valid contribution limits.” *Id.* at 154-55
18 (internal quotation marks omitted). Likewise, in *CalMed*, the Supreme Court also upheld
19 individual contribution limits to political committees that, in turn, make contributions
20 themselves because such limits are aimed to prevent corruption. *See* 453 U.S. at 197-98
21 (“Congress enacted § 441a(a)(1)(C) in part to prevent circumvention of the very
22 limitations on contributions that this Court upheld in *Buckley*.”); *CalMed*, 453 U.S. 203
23 (Blackmun, J., concurring) (“contributions to multicandidate political committees may be

1 limited to \$5,000 per year as a means of preventing evasion of the limitations on
2 contributions to a candidate or his or her authorized campaign committee upheld in
3 *Buckley*”).

4 Recent court decisions and Commission advisory opinions have concluded that
5 limits on independent expenditures, and the contributions received by organizations,
6 including political committees, that only make independent expenditures, are not
7 supported by the same corruption and anti-circumvention rationales as contribution
8 limits. *See SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (“*SpeechNow*”)
9 (contribution limits of 2 U.S.C. 441a(a)(1)(C) and 441a(a)(3) are unconstitutional as
10 applied to independent expenditure-only political committees); *see also* Advisory
11 Opinions 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten) (concluding that
12 an independent expenditure-only committee may accept unlimited contributions from
13 individuals, political committees, corporations, and labor organizations). However, each
14 of these decisions and Advisory Opinions was expressly limited to organizations that
15 make only independent expenditures, and that do not make contributions. *See Citizens*
16 *United*, 130 S.Ct. at 909 (“*Citizens United* has not made direct contributions to
17 candidates, and it has not suggested that the Court should reconsider whether contribution
18 limits should be subjected to rigorous First Amendment scrutiny.”); *SpeechNow* 599
19 F.3d at 689 (“we only decide these questions as applied to contributions to *SpeechNow*,
20 an independent expenditure-only group”); Advisory Opinion 2010-09 (Club for Growth)
21 (“because the Committee, like *SpeechNow*, intends to make only independent
22 expenditures, there is no basis to impose contribution limits on the Committee”).

1 In sharp contrast, NDPAC, a political committee that makes contributions to
2 candidates, proposes to establish a separate account for making independent
3 expenditures, and to accept unlimited contributions from individuals, other political
4 committees, corporations, and labor organizations to that account. Although the
5 Commission has concluded that the Act's amount limitations and source prohibitions do
6 not apply to contributions to a political committee that makes only independent
7 expenditures, *see* Advisory Opinions 2010-09 (Club for Growth) and 2010-11
8 (Commonsense Ten), NDPAC makes both independent expenditures and contributions.
9 The Commission therefore concludes that neither recent court decisions nor these
10 advisory opinions apply to NDPAC, which, like all other committees that make
11 contributions to candidates, remains subject to the Act's amount limitations and source
12 prohibitions.²

13 ***Questions Presented***

- 14 1. ***May NDPAC, a nonconnected committee that makes both contributions and***
15 ***independent expenditures, accept unlimited contributions from individuals, other political***
16 ***committees, corporations, and labor organizations to make independent expenditures***
17 ***only, provided such receipts are held in separate bank accounts by intended use and***
18 ***separately accounted for in reporting to the Commission?***
- 19 2. ***May NDPAC, a nonconnected committee that makes both contributions and***
20 ***independent expenditures, allocate any or all of its administrative or operating expenses***

² The comment submitted by the Center for Competitive Politics underscores this conclusion by drawing attention to the distinction between a union (or corporation) spending its own general treasury funds for independent expenditures or for administering its separate segregated fund (a political committee), and the committee itself making contributions.

1 *between its accounts, including allocating one hundred percent of these expenses from its*
2 *independent expenditure account?*

3 ***Legal Analysis and Conclusions***

4 1. *May NDPAC, a nonconnected committee that makes both contributions and*
5 *independent expenditures, accept unlimited contributions from individuals, other political*
6 *committees, corporations, and labor organizations to make independent expenditures*
7 *only, provided such receipts are held in separate bank accounts by intended use and*
8 *separately accounted for in reporting to the Commission?*

9 No, a nonconnected committee, such as NDPAC, may not accept unlimited
10 contributions from individuals, corporations, labor organizations, or other political
11 committees if it makes both contributions to candidates and independent expenditures.

12 Both the Act and Commission regulations prohibit a political committee from
13 accepting the types of contributions contemplated by NDPAC's request. *See* 2 U.S.C.
14 441a(a)(1)(C) and 441a(f) (limiting individual contributions to \$5,000); 2 U.S.C. 441b(a)
15 (prohibiting corporate and labor organization contributions). Section 441a specifically
16 limits contributions to a political committee from individuals and other political
17 committees to \$5,000, while section 441b prohibits the receipt of corporate and labor
18 organization contributions in any amount. Similarly, Commission regulations prohibit
19 unlimited contributions by individuals or political committees, *see* 11 CFR 110.1(d) and
20 110.2(d), as well as contributions by corporations and labor organizations. *See* 11 CFR
21 114.2(b)(1). Consequently, the Act's contribution limits and prohibitions prevent
22 NDPAC from accepting the proposed contributions.

1 Further, the Act's amount limits and source prohibitions for contributions to
2 political committees making both contributions and independent expenditures remain
3 fully in effect. Applying the relevant provisions of the Act and Commission regulations
4 to the request at hand, the Commission concludes that NDPAC may not accept unlimited
5 contributions from individuals, other political committees, corporations, and labor
6 organizations to make independent expenditures.

7 2. *May NDPAC, a nonconnected committee that makes both contributions and*
8 *independent expenditures, allocate any or all of its administrative or operating expenses*
9 *between its accounts, including allocating one hundred percent of these expenses from its*
10 *independent expenditure account?*

11 No, a nonconnected committee such as NDPAC may not allocate its
12 administrative or operating expenses, including fundraising costs, between separate bank
13 accounts as it sees fit because, as explained in the answer to question one, NDPAC may
14 not use a separate bank account containing impermissible contributions to make
15 independent expenditures if it also makes contributions to candidates. Moreover,
16 NDPAC's request to support all of its activity, including the making of contributions to
17 candidates using unlimited contributions from individuals, other political committees,
18 corporations, and labor organizations would result in the subsidization of its contributions
19 to candidates and political parties and is therefore directly at odds with the Act's goal of
20 preventing the circumvention of valid contribution limits.³

³ In *CalMed*, the Supreme Court concluded that the Act properly prevented such circumvention of contribution limits:

1 The Commission notes that this advisory opinion implicates issues that may be
2 the subject of a forthcoming rulemaking in response to the *Citizens United*, *SpeechNow*,
3 and *EMILY's List* decisions. This guidance provided in this advisory opinion is therefore
4 subject to change or invalidation pending the conclusion of that rulemaking.

5
6
7
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9
10
11

On behalf of the Commission,

Matthew S. Petersen
Chairman

EXHIBIT C

FEC Advisory Opinion 2010-20, Draft “B”

AGENDA DOCUMENT NO. 10-60-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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SECRETARIAT

2010 SEP 21 P 4:02

AGENDA ITEM

September 21, 2010

For Meeting of 9-23-10

MEMORANDUM

SUBMITTED LATE

TO: The Commission

FROM: Christopher Hughey *pch*
Acting General Counsel

Rosemary C. Smith *RCS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

William A. Powers *WAP*
Attorney

Subject: Draft AO 2010-20 (NDPAC) – Draft B

Attached is a proposed draft of the subject advisory opinion. We have been asked to place this draft on the agenda for September 23, 2010.

Attachment

1 ADVISORY OPINION 2010-20

2
3 Dan Backer, Esq.
4 DB Capitol Strategies
5 P.O. Box 75021
6 Washington, D.C. 20013

DRAFT B

7
8 Dear Mr. Backer:

9 We are responding to your advisory opinion request on behalf of National
10 Defense PAC (“NDPAC”), concerning the application of the Federal Election Campaign
11 Act of 1971, as amended (the “Act”), and Commission regulations to a proposed plan to
12 accept unlimited contributions from individuals, other political committees, corporations,
13 and labor organizations to fund independent expenditures from a separate bank account,
14 and to allocate the cost of all of the Committee’s administrative and operating expenses
15 between accounts as it sees fit, including paying all expenses from its independent
16 spending account. The Commission concludes that NDPAC may accept unlimited
17 contributions to its separate bank account to fund independent expenditures. Consistent
18 with the Court of Appeals for the D.C. Circuit’s decision in *EMILY’s List v. FEC*,
19 NDPAC should allocate its administrative and operating expenses between its accounts in
20 a manner that “‘closely’ corresponds” to the proportion of its activities funded by each
21 account.

22 ***Background***

23 The facts presented in this advisory opinion are based on your letter received on
24 August 11, 2010 and email received on August 17, 2010.

25 NDPAC is a nonconnected committee that is incorporated in Virginia and that
26 maintains a post office box in Washington, D.C. At this time, NDPAC has no physical

1 office. It filed a statement of organization on July 20, 2000, and has filed regular reports
2 with the Commission since that time. NDPAC qualified as a multicandidate committee
3 on May 17, 2004.

4 NDPAC intends to make both contributions to candidates and independent
5 expenditures. NDPAC will incur administrative and operating expenses, as well as
6 fundraising costs. NDPAC will accept unlimited contributions from individuals, other
7 political committees, corporations, and labor organizations for the purpose of making
8 independent expenditures, or paying for administrative and operating expenses, but
9 NDPAC will not accept contributions from foreign nationals or Federal contractors,
10 national banks, or corporations organized by act of Congress. NDPAC will maintain two
11 separate bank accounts. It will deposit in one account all contributions it receives that
12 will be used for making independent expenditures. The second account will contain all
13 contributions it receives to make contributions to candidates. The contributions deposited
14 in the second account will comply with the Act's amount limitations and source
15 prohibitions.

16 NDPAC will maintain records for each account, and fully disclose all receipts and
17 disbursements on the reports it files with the Commission as required by the Act and
18 Commission regulations.

19 ***Questions Presented***

- 20 1. *May NDPAC, a nonconnected committee that makes both contributions and*
21 *independent expenditures, accept unlimited contributions from individuals,*
22 *other political committees, corporations, and labor organizations to make*
23 *independent expenditures only, provided such receipts are held in separate*
24 *bank accounts by intended use and separately accounted for in reporting to*
25 *the Commission?*
26

- 1 2. *May NDPAC, a nonconnected committee that makes both contributions and*
2 *independent expenditures, allocate any or all of its administrative or*
3 *operating expenses between its accounts, including paying all expenses from*
4 *its independent expenditure account?*
5

6 ***Legal Analysis and Conclusions***

- 7 1. *May NDPAC, a nonconnected committee that makes both contributions and*
8 *independent expenditures, accept unlimited contributions from individuals,*
9 *other political committees, corporations, and labor organizations to make*
10 *independent expenditures only, provided such receipts are held in separate*
11 *bank accounts by intended use and separately accounted for in reporting to*
12 *the Commission?*
13

14 Yes, as a nonconnected committee that makes both contributions and independent
15 expenditures, NDPAC may accept unlimited contributions from individuals, other
16 political committees, corporations, and labor organizations so long as it deposits those
17 funds into a separate bank account, and does not use such funds to make contributions to
18 Federal candidates, national party committees, or political party committees' Federal
19 accounts.

20 The Act and Commission regulations prohibit any individual from making
21 contributions that, in the aggregate exceed \$5,000 per year to a political committee that is
22 not an authorized committee of a candidate or a political party committee. 2 U.S.C.
23 441a(a)(1)(C); 11 CFR 110.1(d). In addition, the Act and Commission regulations
24 prohibit any individual from making contributions to political committees that are not
25 national party committees which, in the aggregate, exceed \$69,900 per biennial period.
26 2 U.S.C. 441a(a)(3)(B); 11 CFR 110.5.¹ The Act and Commission regulations also limit
27 contributions made by multicandidate political committees that are not national party
28 committees to \$5,000 per year. 441a(a)(2)(C); 11 CFR 110.2(d). Further, the Act and

¹ Similarly, the Act prohibits political committees from knowingly accepting contributions in excess of these limitations. 2 U.S.C. 441a(f).

1 Commission regulations prohibit corporations and labor organizations from making
2 contributions. 2 U.S.C. 441b(a); 11 CFR 114.2(b)(1). Finally, political committees must
3 organize, register, and report pursuant to the Act and Commission regulations.
4 See 2 U.S.C. 432, 433, and 434; see also 11 CFR 102.1, 102.2, 102.7, and Part 104.

5 Recently, the U.S. Court of Appeals for the District of Columbia Circuit held that
6 “the contribution limits of 2 U.S.C. 441a(a)(1)(C) and 441a(a)(3) are unconstitutional as
7 applied to individuals’ contributions to SpeechNow,” an independent expenditure-only
8 group. See *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (“*SpeechNow*”).²
9 The D.C. Circuit also held that “non-profit entities are entitled to make their expenditures
10 – such as advertisements, get-out-the-vote efforts, and voter registration drives – out of a
11 soft-money or general treasury account that is not subject to source and amount limits.”
12 *EMILY’s List v. FEC*, 581 F. 3d 1, 12 (D.C. Cir. 2009); see also *id.* at 10 (“... individual
13 citizens may spend money without limit (apart from the limit on their own contributions
14 to candidates or parties) in support of the election of particular candidates”).

15 Moreover, the United States Supreme Court held in *Citizens United* that
16 corporations may make unlimited independent expenditures using corporate treasury
17 funds. See *Citizens United v. FEC*, 130 S. Ct. 876, 913 (2010). The Court of Appeals in
18 *SpeechNow* relied extensively on the Supreme Court’s decision in *Citizens United*. See
19 *SpeechNow*, 599 F.3d at 692-96. Following *Citizens United* and *SpeechNow*,

² The court held, however, that the “reporting requirements of 2 U.S.C. 432, 433, and 434(a) and the organizational requirements of 2 U.S.C. 431(4) and 431(8) can constitutionally be applied to SpeechNow.” See *id.*

1 corporations, labor organizations,³ and political committees may make unlimited
2 independent expenditures from their own funds, and individuals may pool unlimited
3 funds in an independent expenditure-only political committee.

4 The Commission recently concluded in Advisory Opinions 2010-09 (Club for
5 Growth) and 2010-11 (Commonsense Ten), based upon these recent cases, that
6 corporations, labor organizations and political committees also may make unlimited
7 contributions to a nonconnected independent expenditure-only committee like
8 Commonsense Ten or an independent expenditure-only committee established by a
9 corporation like Club for Growth. Given the holdings in *Citizens United* and *SpeechNow*,
10 that “independent expenditures do not lead to, or create the appearance of, *quid pro quo*
11 corruption,” *Citizens United*, 130 S.Ct. at 910, the Commission concluded that there was
12 no basis to limit the amount of contributions to an independent expenditure-only
13 committee from individuals, political committees, corporations, and labor organizations.
14 See Advisory Opinions 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten).

15 NDPAC differs from *SpeechNow*, Commonsense Ten, and the political
16 committee to be established by Club for Growth in that the latter three political
17 committees sought to make only independent expenditures, while NDPAC makes both
18 independent expenditures and contributions to candidates. However, this difference does
19 not affect NDPAC’s ability to accept unlimited contributions from individuals,
20 corporations, other political committees, and labor organizations in order to fund

³ Although *Citizens United* did not directly address whether labor organizations also have a First Amendment right to use their general treasury funds for independent expenditures and electioneering communications, the Act and Commission regulations generally treat labor organizations in the same way as corporations. The Court’s decision suggests no basis for treating labor organization communications differently than corporate communications under the First Amendment.

1 independent expenditures. *See EMILY's List*. It merely has to establish a separate
2 account to do so.

3 According to the court:

4 The constitutional principles that govern such a hybrid non-profit entity
5 follow ineluctably from the well-established principles governing the other
6 two categories of non-profits. To prevent circumvention of contribution
7 limits by individual donors, non-profit entities may be required to make
8 their own contributions to federal candidates and parties out of a hard-
9 money account-that is, an account subject to source and amount
10 limitations (\$5000 annually per contributor). Similarly, non-profits also
11 may be compelled to use their hard-money accounts to pay an
12 appropriately tailored share of administrative expenses associated with
13 their contributions. *See Cal-Med*, 453 U.S. at 198-99 n. 19, 101 S.Ct.
14 2712 (opinion of Marshall, J.). But non-profit entities are entitled to make
15 their expenditures-such as advertisements, get-out-the-vote efforts, and
16 voter registration drives-out of a soft-money or general treasury account
17 that is not subject to source and amount limits. Stated another way: A
18 non-profit that makes expenditures to support federal candidates does not
19 suddenly forfeit its First Amendment rights when it decides also to make
20 direct contributions to parties or candidates. Rather, it simply must
21 ensure, to avoid circumvention of individual noncontribution limits by its
22 donors, that its contributions to parties or candidates come from a hard-
23 money account.

24
25 *EMILY's List*, 581 F.3d at 12. The court further noted that, “[i]f *Austin* were overruled,
26 then non-profits would be able to make unlimited express-advocacy expenditures from
27 their soft-money accounts even if they accepted donations from for-profit corporations or
28 units to those accounts.” *Id.* at 12 n.11.

29 NDPAC, like EMILY's List, is a “hybrid” entity that focuses on both direct
30 contributions to Federal candidates as well as independent expenditures. *Id.* at 12.
31 Although 2 U.S.C. 441a(a)(1)(C) would still appear, on its face, to continue to apply even
32 to these types of hybrid non-profit entities, under *Citizens United*, *EMILY's List*, and

1 *SpeechNow*, the rationale for limiting contributions to a political committee's
2 independent-spending account is no longer supportable. See AOs 2010-09 and 2010-11.

3 Accordingly, the Commission concludes that a political committee that makes
4 both contributions and independent expenditures, such as NDPAC, may make its
5 independent expenditures using an independent spending account that is wholly separate
6 from the account it uses to make contributions to candidates and political parties.⁴

7 Therefore, the Commission concludes that NDPAC may accept unlimited contributions
8 from individuals, other political committees, corporations, and labor organizations so
9 long as it uses these contributions only for independent spending (as opposed to
10 contributions to Federal candidates) and the administrative expenses discussed below,
11 and so long as it uses a separate bank account to do so.

12 2. *May NDPAC, a nonconnected committee that makes both contributions and*
13 *independent expenditures, allocate any or all of its administrative or*
14 *operating expenses between its accounts, including paying all expenses from*
15 *its independent expenditure account?*
16

17 NDPAC may allocate its administrative and operating expenses between its
18 accounts in a manner that “‘closely’ corresponds” to the proportion of its activities
19 funded by each account, such as the amount of federal contributions as compared to its
20 spending on independent electoral activity.

⁴ The Commission notes that, in the alternative, those persons who created and operate NDPAC may establish a separate political committee to make independent expenditures using contributions not subject to the amount limitations and source prohibitions of the Act. See Advisory Opinions 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten). Through the establishment of an independent expenditure-only political committee, these persons may engage in the same type of independent speech as they seek to do through the acceptance of unlimited contributions into a separate account. Moreover, a separate political committee that engages only in independent spending would not be subject to the Act's contributions limits otherwise applicable to NDPAC under the Commission's traditional affiliation analysis at 11 CFR 110.3(a)(1), since contributions to such committees cannot constitutionally be limited under *Citizens United*, *SpeechNow*, and *EMILY's List*.

1 Neither the Act nor Commission regulations currently prescribe an allocation
2 regime for a nonconnected committee that makes both independent expenditures and
3 contributions to candidates. The Commission repealed 11 CFR 106.6(c), which
4 prescribed the allocation ratio for administrative expenses, because this rule was vacated
5 by the court in *EMILY's List*. See Final Rules, Funds Received in Response to
6 Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected
7 Committees, 75 FR 13223 (Mar. 19, 2010). Without regulations prescribing the
8 allocation of administrative expenses, nonconnected committees should allocate their
9 administrative expenses in a manner that “‘closely’ corresponds to the percentage of
10 activities relating to its contributions as compared to its advertisements, get-out-the-vote
11 efforts, and voter registration activities.” See *EMILY's List*, 581 F.3d at 12 (citing *Davis*
12 *v. FEC*, 128 S. Ct. 2759, 2770 (2008); *CalMed*, 453 U.S. at 198-99 n.19). One
13 acceptable method is to allocate according to the percentage of NDPAC’s Federal
14 contributions as compared to the percentage of its disbursements for all other independent
15 spending. In doing so, the NDPAC may determine the allocation ratio either on an
16 estimated funds spent method (a forward looking estimate of spending over the election
17 cycle) or an actual funds spent method (reflecting actual spending during the reporting
18 period). This is not necessarily the only acceptable allocation method under *EMILY's*
19 *List*.

20 NDPAC must report all contributions to, and expenditures from, its proposed
21 independent expenditure account pursuant to the Act and Commission regulations.
22 See 2 U.S.C. 434; 11 CFR Part 104. Though these contributions would normally be
23 disclosed on Line 11(a) of Form 3X, there is not, at present, a clear way to distinguish on

1 Line 11(a) between contributions deposited into the general account and contributions
2 deposited into the independent expenditure account. Accordingly, at present
3 contributions deposited into the independent expenditure account should be reported on
4 Line 17 of Form 3X titled "Other Federal Receipts" accompanied by a memo text to state
5 when a receipt that is itemized on Schedule A has been deposited into the independent
6 expenditure account.

7 For similar reasons, disbursements for administrative/operating expenses made
8 from NDPAC's independent expenditure account should be disclosed on Line 29 of Form
9 3X titled "Other Disbursements" (as opposed to Line 21(b) of Form 3X) and should
10 include a memo text to state when a disbursement that is itemized on Schedule B was
11 made from the independent expenditure account.⁵

12 This response constitutes an advisory opinion concerning the application of the
13 Act and Commission regulations to the specific transaction or activity set forth in your
14 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
15 of the facts or assumptions presented, and such facts or assumptions are material to a
16 conclusion presented in this advisory opinion, then the requestor may not rely on that
17 conclusion as support for its proposed activity. Any person involved in any specific
18 transaction or activity which is indistinguishable in all its material aspects from the
19 transaction or activity with respect to which this advisory opinion is rendered may rely on
20 this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note the analysis or
21 conclusions in this advisory opinion may be affected by subsequent developments in the

⁵ Independent Expenditures should be disclosed on Schedule E for Line 24 of Form 3X and a memo text included to state when a disbursement that is itemized on Schedule E was made from the independent expenditure account.

1 law including, but not limited to, statutes, regulations, advisory opinions, and case law.
2 The cited advisory opinions are available on the Commission's Web site at
3 <http://saos.nictusa.com/saos/searchao>.

4 The Commission notes that this advisory opinion implicates issues that may be
5 the subject of a forthcoming rulemaking in response to the *Citizens United*, *SpeechNow*,
6 and *EMILY's List* decisions. This guidance provided in this advisory opinion is,
7 therefore, subject to change or invalidation pending the conclusion of that rulemaking.

8

9
10
11
12
13
14

On behalf of the Commission,

Matthew S. Petersen
Chairman

EXHIBIT D

FEC Certification of failure to approve either
draft Advisory Opinion

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
National Defense PAC) AO 2010-20
) Agenda Documents No. 10-60, No. 10-60-A and No. 10-60-B

CERTIFICATION

I, Shawn Woodhead Werth, recording secretary of the Federal Election Commission open meeting on September 23, 2010 do hereby certify that the Commission took the following actions in the above-captioned matter:

1. Failed by a vote of 2-3 to pass a motion to:

Adopt Agenda Document No. 10-60-B, revised Draft A in Advisory Opinion 2010-20, National Defense PAC.

Commissioners Bauerly and Weintraub affirmatively voted for the motion. Commissioners Hunter, McGahn II and Petersen dissented. Commissioner Walther did not vote.

2. Failed by a vote of 3-2 to pass a motion to:

Adopt Agenda Document No. 10-60-A, Draft B of Advisory Opinion 2010-20.

Commissioners Hunter, McGahn II and Petersen affirmatively voted for the motion. Commissioners Bauerly and Weintraub dissented. Commissioner Walther did not vote.

Attest:

September 28, 2010
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission

EXHIBIT E

2010 Endorsements by National Defense PAC

National Defense PAC
2010 Endorsements

Results	First	Last	State	Race
lost General	Stephen	Bailey	Colorado	2
lost General	Sean	Bielat	Massachusetts	4
Won General	Scott	Brown	Massachusetts	Senate
lost Primary	David	Castillo	Washington	3
lost Primary	William	Clegg	Rhode Island	2
Won General	Rick	Crawford	Arkansas	1
lost Primary	Paul	Crespo	Florida	25
lost General	Vince	Danet	Virgin Islands	Delegate
lost General	Charles	Djou	Hawaii	1
lost Primary	Dave	Evans	Tennessee	6
Won General	Chris	Gibson	New York	20
Won General	Tim	Griffin	Arkansas	2
lost Primary	Bill	Hardiman	Michigan	3
Won General	Andy	Harris	Maryland	1
lost Primary	Doug	Hoffman	New York	23
lost General	Harold	Johnson	North Carolina	8
Won General	Bill	Johnson	Ohio	6
Won General	Adam	Kinzinger	Illinois	11
Won General	Mark	Kirk	Illinois	Senate
lost General	York	Kleinhandler	New York	17
lost General	Savas	Kyriakidis	Tennessee	3
lost Primary	Stephen	Labate	New York	2
lost General	John	Loughlin	Rhode Island	1
lost Primary	Bob	McConnell	Colorado	3
lost Primary	Bert	Mizusawa	Virginia	2
lost General	Patrick	Murray	Virginia	8
lost General	Ilario	Pantano	North Carolina	7
Won General	Steve	Pearce	New Mexico	2
Won General	Michael	Pompeo	Kansas	4
lost General	Rocky	Rackowski	Michigan	9
lost Primary	Brian	Rooney	Michigan	7
lost Primary	Roger	Roth	Wisconsin	8
lost Primary	Frank	Ryan	Pennsylvania	17
Won General	John	Shimkus	Illinois	19
lost Primary	Lang	Sias	Colorado	7
lost Primary	Rob	Simmons	Connecticut	Senate
lost General	Charles	Thompson	Oklahoma	2
lost General	Tom	Watson	California	23
Won General	Allen	West	Florida	22
Won General	Joe	Wilson	South Carolina	2

EXHIBIT F

Proposed online banner advertisement and script
of 'click through page' in opposition to
Congressman Anthony Weiner

IT'S TIME TO
DEFEAT

ANTHONY
WEINER

CLICK HERE



NATIONAL DEFENSE PAC



Why the National Defense PAC urges you to vote Anthony Weiner out of office.

A message from our Chairman

I've never met the man, but I heard him several times in the past 3 weeks on various TV shows debating and defending the Democratic position with regard to the Death Tax.

The distinct impression I got from watching him several times is that this is a leftist socialist-leaning individual who is so blinded by his political philosophy that he will not be satisfied until he has bled the last American citizen out of every last penny he can shake from their pockets, even after they are dead.

And his premise seems to be so HE, who did nothing to earn it, and not ME who did earn it, can share it with others that he feels he'd like to have more money even though they have done zero to earn it. His policies as he stated are so disgustingly communist oriented - to take away from those who worked for it to give to those who have done zero to earn it, every penny that he possibly can.

This is not the purpose of my government or the Congress or it's elected officials. We should be particularly disgusted with the arrogant manner and demeanor displayed by this nanny-state social-welfare advocate as he talks down his nose to those of us who get up every morning and go to work. We have already been taxed by the federal government and the state government on our earnings, and now have this righteous know-it-all overbearing abrasive *Communist* lecturing on why it is his right to take our earnings away from us and give them to whomever he chooses.

His policies will ruin our free enterprise nation and will result in all the wondrous advantages of living in Cuba or North Korea.

In my opinion, Congressman Weiner does not have the right to address me nor the rest of the citizenry in the manner in which he does, and I resent him doing so. If he wants to preach that for the taxpayers in his Congressional District, that is his right, but his advocacy for him wanting to put such programs in place for the rest of us, over whom he has zero jurisdiction, is insulting and disgusting and outrageous

If you share our views, if you are as determined as we are to end the Socialist nanny-state and all its failed policies, join us in defeating Anthony Weiner.

EXHIBIT G

Letter of Intent from Contributor (Kelly Eustis)

FROM THE DESK OF
KELLY S. EUSTIS

January 25, 2011

Rear Admiral James J Carey [Ret.]
Chairman & Treasurer, National Defense PAC
6022 Knights Ridge Way
Alexandria, VA 22310

Re: Letter of intent to contribute \$6300 to National Defense PAC in support of
Independent Expenditure activities if permitted by law.

Dear Admiral Carey,

Please accept this letter as a firm statement of my intent to support the Independent Expenditure advocacy of the National Defense PAC. I share your views as to the importance of defeating Congressman Anthony Weiner of New York in the next election, and want to join you in advocating for his defeat.

I am only willing to contribute if my contribution will be able to have an actual impact, and if it is legal to do so under federal election law. As such, I will contribute \$6300, which is the cost you have shared with me to mount an online campaign in opposition to Congressman Weiner. Further, I await clarification from your counsel that my contribution exclusively to your independent expenditure activities is lawful, as determined by either the Federal Election Commission or the courts.

Sincerely,



Kelly S. Eustis
1431 Q Street
Apt. 130
Sacramento, California 95811

EXHIBIT H

Bylaws of National Defense PAC

BYLAWS

of the

NATIONAL DEFENSE POLITICAL ACTION COMMITTEE

ARTICLE I

Name

The Name of this Organization shall be the National Defense Political Action Committee, hereinafter “NDPAC”.

ARTICLE II

Purposes

The purpose for which NDPAC is to operate is as a Political Action Committee for the raising and disbursing of funds for political purposes in local, state, and federal elections in compliance with all applicable law.

ARTICLE III

Form of Organization

The form of organization of NDPAC shall be a registered non-connected Political Action Committee pursuant to the rules and regulations of the Federal Election Commission (FEC).

ARTICLE IV

Officers

NDPAC shall have the following officers.

Section 1. Treasurer

The Treasurer shall fulfill all the duties and responsibilities of the Treasurer of a Political Action Committee pursuant to the regulations of the FEC, and shall have ultimate executive authority for the operations of NDPAC.

Section 2. Assistant Treasurer

The Assistant Treasurer shall fulfill all the duties and responsibilities of the Assistant Treasurer of a Political Action Committee pursuant to the regulations of the FEC, and as may be delegated by the Treasurer. In the absence, unavailability, or incapacity of the Treasurer, the Assistant Treasurer shall assume his duties until such time as the Board of Directors shall appoint a new Treasurer.

Section 3. Executive Director

The Executive Director shall be the primary officer of NDPAC and shall exercise the customary duties of said officer in the management and operations of NDPAC.

Section 4. Secretary & Custodian of Records

The Secretary & Custodian of Records shall fulfill all the duties and responsibilities of the Custodian of Records of a Political Action Committee pursuant to the regulations of the FEC.

Section 5. Dual role.

Any officer of NDPAC may also serve as a member of the Board of Directors and/or a member of any other board or committee of NDPAC unless otherwise provided herein, and may hold additional office within NDPAC, except that the Treasurer and Assistant Treasurer shall always be two separate persons.

ARTICLE V
Board of Directors

The Board of Directors of NDPAC shall govern its business affairs.

Section 1. Membership, term, removal, size

Membership upon the Board of Directors shall be by appointment of the Board of Directors by majority vote, unless otherwise provided. The term of membership shall be for so long as the Director wishes to remain a member of the Board, subject to removal by a three-fourths (3/4) vote of all other Directors. The Board of Directors shall not be limited as to size, but shall at all times have at least one (1) member.

Section 2. Role

The Board of Directors role shall exercise the customary duties and responsibilities of a Board of Directors of an unincorporated association in Virginia, and of a Political Action Committee as governed by the rules and regulations of the Federal Elections Commission. The Board of Directors shall appoint or remove by majority vote all officers of NDPAC.

Section 3. Candidate Contribution Decisions

The Board of Directors shall approve by a majority vote any proposed contribution to a political candidate by its own motion, or as brought before it by the Executive Director, or by any committee established for the purpose of making such recommendations whether or not such committee has any Directors serving on it.

Section 4. Independent Expenditure Decisions

The Board of Directors shall approve by a majority vote any proposed Independent Expenditure or Electioneering Communication as those terms are used by the FEC by its own motion, or as brought before it by the Executive Director, or by any committee established for the purpose of making such recommendations whether or not such committee has any Directors serving on it.

In the making of any Independent Expenditure, NDPAC shall engage in no form of coordination as that term is defined by the FEC with any political party, candidate, candidates committee, their staff, or other agents. Any Director whose participation in a vote of approval may cause or indicate instances of improper coordination shall recuse him or herself.

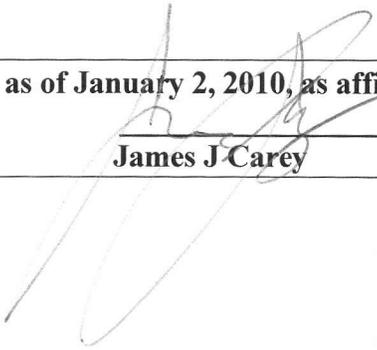
Section 4. Dual Role

Individual members of the Board of Directors may also serve as officers, members of any Board or committee, employees, or agents of NDPAC in addition to serving as members of the Board of Directors.

**ARTICLE VIII
Amendments**

The bylaws may be amended by a majority vote of the Board of Directors.

Effective as of January 2, 2010, as affirmed by this signature of the Treasurer & Chairman:


James J Carey

25 JAN 2011
(date)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)
)
Rear Adm. James J Carey [Ret])
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Kelly S. Eustis)
1431 Q Street)
Apt. 130)
Sacramento, California 95811)
)
National Defense Political)
Action Committee)
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Plaintiffs,)
)
v.) Civil Case No. _____
)
FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
)
Defendant.)

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs move for a preliminary injunction pursuant to Fed. R. Civ. P. 65. Plaintiffs file their Verified Complaint for Declaratory and Injunctive Relief and Memorandum in Support of Preliminary Injunction Memo concurrently.

As described in the Verified Complaint and Memorandum, Plaintiffs complain against the unconstitutionality of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) as applied to contributions given to National Defense PAC and as applied to independent expenditures created by National Defense PAC, including those described in EXHIBIT F to the Verified Complaint.

Plaintiffs have established probable success on the merits, demonstrating that they will be irreparably harmed, that an injunction will not substantially harm the Defendant, the Federal Election Commission, that an injunction serves the public interest, and there is no adequate remedy at law. Because a preliminary injunction sets forth no monetary risk to the FEC, Plaintiffs request that any bond requirement should be waived.

In accord with Local Rule of Civil Procedure 65.1(c), Plaintiffs have filed a Verified Complaint contemporaneously with this request for injunctive relief. Verified Complaints are the legal equivalent of an affidavit. *See Neal v. Kelly*, 963 F.2d 453 (D.C. Cir. 1992); *Mallick v. Int'l Broth. of Elec. Workers*, 814 F.2d 674, 680 (D.C. Cir. 1987). In addition, pursuant to Local Rule 7(m), Plaintiffs have conferred with legal counsel for the FEC concerning whether these provisions should be subject to preliminary injunctive relief. The response of the FEC is included in Plaintiffs' Notice of Consultation on Motions.

As detailed in the accompanying Memorandum, Plaintiffs request that this court grant its preliminary injunction motion and preliminarily enjoin the FEC from enforcing 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) as applied to contributions to National Defense PAC and as applied to independent expenditures created by National Defense PAC, until a final hearing on the merits of this matter.

Respectfully submitted,



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*Motions for *Pro Hac Vice* to be filed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REAR ADM. JAMES J. CAREY (Ret.),)
NATIONAL DEFENSE PAC, and)
KELLY S. EUSTIS,)
Plaintiffs,)
v.) Civil Case No. _____)
FEDERAL ELECTION COMMISSION,)
Defendant.)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

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*Motions for *Pro Hac Vice* to be filed.

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INTRODUCTION

This case is a constitutional challenge to laws that, as interpreted by the Federal Election Commission (“FEC” or “Commission”), prevent plaintiffs from joining together to exercise their First Amendment rights to speech and association. Plaintiff National Defense PAC is a non-connected political action committee that plans to make contributions to candidates for federal office and independent expenditures in support of, or in opposition to, candidates for federal office. Specifically, it plans to distribute banner advertisements over various websites during the 2012 election cycle in the districts of congressional candidates that hyperlink to pages containing material expressly advocating the election or defeat of these candidates. National Defense PAC and its Chairman, Retired Rear Admiral James J. Carey, have prepared scripts for such ads and are prepared to raise funds to support their distribution. Plaintiff Kelly S. Eustis is willing and able to contribute \$6300 this year to the independent expenditure advertising campaign. Contribution limits at 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3), however, and more specifically their incorrect interpretation by the FEC, prevent National Defense PAC from accepting the individual Plaintiffs’ contributions and thus prevent it and its supporters from exercising their rights to speech and association. Plaintiffs are entitled to a preliminary injunction that prevents the FEC from enforcing those laws against the Plaintiffs.

STATEMENT OF FACTS

Plaintiff Rear Adm. James J. Carey (Ret.) is a registered voter residing in Alexandria, Virginia, and the founder and treasurer of National Defense PAC. Verified Complaint at ¶ 8 [hereinafter “VC”]. He has served in that capacity since 2000. *Id.*

Plaintiff National Defense PAC is a non-partisan, non-connected political action committee registered with the Federal Election Commission with its principal mailing address in Washington, DC. *Id.* at ¶ 10. Plaintiff Kelly Eustis is a registered voter who resides in Sacramento, California, *id.* at ¶9, and wishes to associate and speak with National Defense PAC.

A group of military veterans established National Defense PAC with the desire to promote shared patriotic values in government. National Defense PAC advocates in favor of limited government, upholding a national commitment to this nation's veterans, and publicly defends the rights of American soldiers. In this role, National Defense PAC raises and expends funds in support of candidates for federal office who are military veterans and agree with its values. Such funds are raised subject to the amount and source limits detailed at 2 U.S.C. § 441a(a)(1)(C). VC at ¶ 12. National Defense PAC makes contributions to candidates for federal office up to the applicable limit and would like to make independent expenditures in support or opposition of candidates.

In the wake of what most legal experts have deemed a sea change in election law through *Citizens United v. FEC*, 130 S.Ct. 876 (2010), *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010), and *EMILY's List v. Federal Election Commission*, 581 F.3d 1 (D.C. Cir. 2009), plaintiffs hoped to secure and use to the fullest extent of their recently recognized, but always existing, First Amendment rights in two separate ways. First, National Defense PAC sought to engage in independent expenditure campaigns, that is, campaigns advocating the election or defeat of clearly identified candidates for federal office. Part and parcel of National Defense PAC's ability to engage in this speech is its ability to raise funds to make such

independent expenditures, including the cost of production and distribution through radio, television, the Internet, and print media. Thus, National Defense PAC sought, as recognized in *EMILY's List* and elsewhere, to be free of contribution limits for donations given for its independent expenditure campaigns. VC at ¶ 13. At the same time, Kelly S. Eustis desired to associate and speak with National Defense PAC by giving more than \$5,000 per calendar year to fund such independent expenditure campaigns. National Defense PAC sought to maintain a separate bank account from which to solicit and accept contributions for candidates subject to source and amount limits.

While the *SpeechNow*, *EMILY's List*, and *Citizens United* courts could not have been clearer in protecting these rights, the FEC caused and continues to cause injury to the speakers before this court.

I. The Advisory Opinion Request

On August 11, 2010, National Defense PAC submitted an advisory opinion request (“AOR”), attached as EXHIBIT A, to the FEC pursuant to 2 U.S.C. § 437f. This request asked whether its actions would be lawful if it:

- a. Accepted unlimited contributions from individuals, other political committees, corporations, and unions for the express purpose of making independent expenditures, including paying any or all of its own administrative and operating expenses, and
- b. Accepted contributions from individuals and other political committees only, subject to the limits at 2 U.S.C. §§ 441a(a)(1)(C) and (2)(C), to expend as campaign contributions to candidates, pursuant to 2 U.S.C. § 441a(a)(2), and
- c. Recorded and segregated all such contributions by type and maintained separate bank accounts for each type, applying for the purpose of campaign contributions only those contributions expressly made for that purpose as indicated by the contributor at the time of the contribution and subject to the limits at 2 U.S.C. §§ 441a(a)(1)(C) and (2)(C).

See VC at ¶ 15.

Pursuant to 11 C.F.R. § 112.1, the FEC accepted the AOR for review, assigned it AOR number 2010-20, and posted it on the FEC's website for public commentary on August 11, 2010. VC at ¶ 16.

On September 17, 2010, the FEC's general counsel issued a draft advisory opinion in response to National Defense PAC's AOR. The draft advisory opinion, Draft A, concluded that contributions to National Defense PAC made to finance its independent expenditures would be subject to the contribution limits of 2 U.S.C. § 441a(a)(1)(C) and related FEC regulations. VC at ¶ 17. This "Draft A" advisory opinion is attached to the Verified Complaint as EXHIBIT B.

An alternate draft, Draft B, was issued on September 21 and concluded that contributions to National Defense PAC made and used exclusively to finance its independent expenditures would not be subject to the contribution limits of 2 U.S.C. § 441a(a)(1)(C) and related FEC regulations. VC at ¶ 18. The alternative "Draft B" advisory opinion is attached to the Verified Complaint as EXHIBIT C.

On September 23, 2010, at an open meeting of the FEC, the Commission failed by a vote of 2-3 to approve Draft A. The Commission also failed by a vote of 3-2 to approve Draft B. VC at ¶ 19.

Pursuant to 11 C.F.R. § 112.4(a), the FEC certified on September 28, 2010 that it was unable to approve National Defense PAC's AOR because it lacked the necessary four votes to approve the AOR. VC at ¶ 20. This certification is attached to the Verified Complaint as EXHIBIT D. The FEC's failure to affirmatively provide a four-vote, binding advisory opinion in response to National Defense PAC's request carries the

equivalent legal effect that its proposed actions would be invalid under the FECA and subject the organization to civil or criminal penalties under 2 U.S.C. § 437g for speaking out about candidates and otherwise engaging in political association.

The Commission's inability to issue an advisory opinion deprives plaintiffs that requested it of a legal reliance defense that they could otherwise receive under 2 U.S.C. § 437f(c). The advisory opinion process in this matter is complete and deprived plaintiffs of a legal right – to engage freely in constitutionally protected speech and association. *See Unity 08 v. Federal Election Commission*, 596 F.3d 861 (D.C. Cir. 2010) (“parties are commonly not required to violate an agency's legal position and risk an enforcement proceeding before they may seek judicial review”); *see also Democratic Senatorial Campaign Committee v. Federal Election Commission*, 918 F. Supp. 1 (D.D.C. 1994).

II. Ensuing Harm to Plaintiffs

At the time of filing the advisory opinion request, several primary elections were less than 60 days away. VC at ¶ 22. National Defense PAC filed its request as promptly as possible to ensure that its planned speech and association would be deemed lawful under the FECA and related regulations. Because the elections were so close upon it, National Defense PAC asked for an expedited advisory opinion request pursuant to 11 C.F.R. § 112.4(b) and 72 Fed. Reg. 32,160 (July 7, 2009). More than 40 days later, the Commission decided not to issue an advisory opinion. VC at ¶ 22. Given that the FEC could not issue a definitive statement concerning the legality of National Defense PAC's planned actions, it was forced to mute itself and curtail its activities during the 2010 election cycle. *Id.*

During the 2010 electoral cycle, National Defense PAC planned to deploy independent expenditure communications in support of endorsed candidates nationwide, and in opposition to their opponents. While National Defense PAC was free to endorse its preferred candidates, it was not legally permitted to solicit more than \$5,000 per person per calendar year to fund independent expenditure campaigns for them. These proposed campaigns included focusing on candidates in the Eighth Congressional District of Michigan, the First Congressional District of Rhode Island, the Eighth Congressional District of Massachusetts, the Ninth Congressional District of New York, and the First Congressional District of Hawaii. *See* VC at ¶ 23. A copy of National Defense PAC's endorsements in these campaigns is attached to the Verified Complaint as EXHIBIT E. Because the FEC did not permit it to accept unlimited contributions to fund its independent expenditures, National Defense PAC was unable to gather the resources necessary to run independent expenditure campaigns and to be heard during the 2010 electoral cycle. *Id.*

III. Ongoing Harm to Plaintiffs

As soon as possible, and certainly before the 2012 primary and general elections, National Defense PAC would like to make independent expenditures from its general fund, in various amounts, expressly advocating for or against clearly identified candidates of its choice. VC at ¶ 24. A specific example of this is included as EXHIBIT F, which includes a proposed advertisement for Newsmax – a popular Internet destination – expressly advocating against the retention of Anthony Weiner in New York's Ninth Congressional District. This advertisement, with a guaranteed 50,000 views per week, would cost \$6,300.00 to run in the months leading up to the November 2012 elections.

The advertisements in question would include a picture of Anthony Weiner along with the call to “defeat Anthony Weiner” – asking users to click on the advertisement to learn more. *See* VC ¶ 24, EXHIBIT F.

National Defense PAC would like to make additional independent expenditures in the months leading up to the 2012 primary and general elections based on issues and candidates that present themselves. VC at ¶ 25. Without the ability to solicit unlimited contributions to fund such communications, it will not be able to speak during the 2012 electoral season. Without an immediate ruling from this court, National Defense PAC will not have the necessary time to fundraise and generate support for its message from likeminded individuals.

Before the 2012 primary and general elections, National Defense PAC would like to solicit donations for its independent expenditures in amounts greater than \$5,000.00 per calendar year. VC at ¶ 26. National Defense PAC has contacted donors willing to give more than \$5,000.00 in single donations to fund independent expenditures, but has not solicited or accepted such amounts due to the effect of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). VC at ¶ 26. A specific example of this is included as EXHIBIT G, a letter of intent from Kelly S. Eustis, who wishes to donate \$6,300.00 to help fund independent expenditure communication campaigns against Anthony Weiner but cannot due to the current operation and interpretation of the law by the FEC. *Id.*

As soon as possible, Kelly S. Eustis would like to make a \$6,300.00 contribution to National Defense PAC to help fund independent expenditure communications against Anthony Weiner in the Ninth Congressional District of New York. VC at ¶ 27. But for

the operation and FEC interpretation of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3), Mr. Eustis would make such a contribution. VC at ¶ 28.

As soon as possible, and certainly before the 2012 primary and general elections, National Defense PAC would like to make contributions to candidates for federal office subject to source and amount limits found at 2 U.S.C. §§ 441a(a)(1)(C) and (2)(C). Because it plans to make unlimited independent expenditures while receiving unlimited donations for them, current interpretation of the law by the FEC prohibits National Defense PAC from making source and amount limited contributions out of a separate bank account. VC at ¶ 28.

National Defense PAC would like to receive contributions to fund candidate contributions, subject to source and amount limits found at 2 U.S.C. §§ 441a(a)(1)(C). Because it plans to make unlimited independent expenditures while receiving unlimited donations for them, current operation and interpretation of the law by the FEC prohibits it from concurrently soliciting and receiving limited contributions to make contributions to candidates. Were it permissible, National Defense PAC would actively fundraise and accept contributions for making candidate contributions. VC at ¶ 29.

IV. National Defense PAC's Structure and Operations

National Defense PAC is an unincorporated association registered as a non-connected political action committee with the FEC. VC at ¶ 30. The PAC operates independently of political candidates, committees, and political parties. *Id.* National Defense PAC does not coordinate any of its activities with candidates or national, state, district or local political party committees or their agents as defined in 2 U.S.C. §§

441a(a)(7)(B) and (C) and 11 C.F.R. § 109. VC at ¶ 30. In addition, National Defense PAC does not and will not coordinate its activities with other political committees. *Id.*

National Defense PAC's expenditures for advertisements will be "independent expenditures" under 2 U.S.C. § 431(17) because they will be expenditures by a person "expressly advocating the election or defeat of a clearly identified candidate" that are "not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized [campaign] committee, or their agents, or a political party committee or its agents." VC at ¶ 31. An example of a proposed future independent expenditure is attached to the Verified Complaint as EXHIBIT F.

National Defense PAC has not yet solicited or accepted any contributions in excess of the \$5000 limit imposed by 2 U.S.C. § 441a(a)(1)(C), because doing so would subject it to civil and criminal penalties. VC at ¶ 32.

The contribution limits contained in 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3) prevent National Defense PAC from accepting the contributions from Kelly S. Eustis, VC at ¶ 33, and prevent National Defense PAC from soliciting additional contributions above those limits. VC at ¶ 34. Even if National Defense PAC could somehow raise enough money in increments of \$5000 or less per donor per calendar year to pay for its advertisements, the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) would, by making it harder to gather funds, limit the type and number of times it could run advertisements. VC at ¶ 35. The limits would also diminish National Defense PAC's ability to run additional advertisements concerning other federal candidates in other races. This is precisely the muting effect the law had on National

Defense PAC's operations during the 2010 electoral cycle as described above. This constitutes a direct impediment on National Defense PAC's association and speech.

National Defense PAC will face a credible threat of prosecution if it solicits or accepts contributions in excess of the limits contained in 2 U.S.C. §§441a(a)(1)(C) and 441a(a)(3) to fund its advertisements as described herein. VC at ¶ 36.

V. Rear Admiral Carey and Kelly S. Eustis's Activities

The contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) prevent plaintiff Kelly S. Eustis from making the contributions he wants to make as described above, and thus prevents him from associating with National Defense PAC and with other like minded individuals, as well as speaking, for the purpose of producing and distributing the advertisements described herein. VC at ¶ 37.

Similarly, the contribution limits found in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) prevent Rear Admiral Carey, as an agent of National Defense PAC, from soliciting or accepting contributions as described above. VC at ¶ 38.

Plaintiff Kelly S. Eustis will face a credible threat of prosecution if he makes donations to National Defense PAC in excess of the limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to fund National Defense PAC's advertisements as described herein. VC at ¶ 39. Mr. Eustis should not have his contributions to National Defense PAC count against the amount of money he may contribute to federal candidates under 2 U.S.C. § 441a(a)(3).

Plaintiff Rear Admiral Carey will face a credible threat of prosecution if he solicits or accepts donations to National Defense PAC in his role as treasurer in excess of

the limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) to fund National Defense PAC's advertisements as described herein. VC at ¶ 40.

ARGUMENT

Just fifteen months ago, the United States Court of Appeals for the District of Columbia Circuit held that non-connected political action committees that receive dollar-limited and source-restricted contributions to in turn make contributions to candidates also have the *First Amendment* right to receive unlimited funds for independent expenditures. *EMILY's List v. Federal Election Commission*, 581 F.3d 1, 12 (D.C. Cir. 2009). A non-connected committee that “makes independent expenditures to support federal candidates does not suddenly forfeit its *First Amendment* rights when it decides also to make direct contributions to parties or candidates.” *Id.* National Defense PAC is a similarly-situated non-connected political action committee whose identical rights under the First Amendment have not been recognized by the Federal Election Commission.

Despite *EMILY's List's* holding, the Federal Election Commission failed four months ago to find four votes to guide the National Defense PAC in its advisory opinion request. *See* Certification of FEC Recording Secretary Shawn Woodhead Werth, AO 2010-20 (September 28, 2010) (hereinafter “Certification”) VC, EXHIBIT D. Three of the Commission's six members rightly understood that they were bound by the reasoning of *EMILY's List*. *See* FEC Agenda Document No. 10-60-B (adopting reasoning of opinion), VC at EXHIBIT C. Two commissioners voted otherwise, and the sixth left the proceedings prior to the vote. *See* Certification, VC EXHIBIT D. The Commission's failure to follow *EMILY's List*, and the Supreme Court precedents that comprise it, leaves

plaintiffs with the unmistakable conclusion that they will be liable if they accept funds for independent expenditures in excess of the \$5000 contribution limit of 2 U.S.C. § 441a(a)(1)(C). *See* 2 U.S.C. § 437f. Plaintiffs seek to preliminarily enjoin contribution limits that, if applied exclusively to National Defense PAC’s independent expenditure activities, will prevent plaintiffs from exercising their rights to speech and association during the time those rights are most effective—the election season.

To warrant preliminary injunctive relief, the moving party must show (1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). As demonstrated below, each of these factors weighs in plaintiffs’ favor.

I. Plaintiffs Are Substantially Likely Succeed on the Merits

The burden of proof at the preliminary injunction stage tracks the burden of proof at trial. Therefore, where First Amendment rights are at stake, the FEC must demonstrate the likelihood that the law will be upheld. *See Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006); *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). In this context, the FEC must demonstrate that the contribution limits further either a compelling or substantial governmental interest as applied to plaintiffs. Whether the standard of review for limits on contributions to National Defense PAC’s independent expenditures is tested under the strict scrutiny applicable to restrictions on expenditures, *see FEC v. Nat’l Conservative Political Action Committee*, 470 U.S. 480 (1985) (“NCPAC”), the exacting scrutiny discussed in *Citizens Against Rent Control v.*

Berkeley, 454 U.S. 290 (1981), or the “less rigorous review” applicable to limits on contributions to candidates, *see Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), the FEC cannot meet its burden.

A. The Very Structure of the Federal Election Campaign Act Illustrates That Contribution Limits Applied Against Non-Connected Committees’ Independent Expenditures Cannot Be Upheld

The FEC cannot meet its burden here for the primary reason that independent expenditures made from a separate account do not present any threat of corruption or its appearance that would justify limiting the contributions National Defense PAC solicits and accepts for independent expenditures. *EMILY’s List*, 581 F.3d at 7 (Supreme Court “has consistently dismissed the notion that expenditures implicate the anti-corruption interest.”). National Defense PAC has stated it will establish a separate account to make its independent expenditures and will ensure that the costs of administering the funds from which it makes candidate contributions are paid from that candidate contribution account. VC at ¶¶ 1, 13, 15, 49.

National Defense PAC is a non-connected committee. *Id.* at ¶¶ 2, 10. It claims a major purpose of campaign activity. *Id.* Yet, its major purpose cannot be the basis for prohibiting it from establishing a separate account to make independent expenditures from unlimited funds. In *SpeechNow.org v. FEC*, the organization claimed a major purpose of campaign activity and the *SpeechNow.org* opinion permits it to make independent expenditures from unlimited funds. *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010). The FEC’s reasoning then—to the extent a split decision admits of reasoning—must be based upon a need to combat some potential corruption. That potential for corruption would have to be based upon National Defense PAC’s connection

to candidates in some way. *See Buckley v. Valeo*, 424 U.S. 1 (1976). The lack of any corruption here is illustrated by reviewing the rights of other political organizations.

Organizations that are comprised of or controlled by candidates can pose a threat of corruption, as in the case of national party committees. *See McConnell v. FEC*, 540 U.S. 93 (2003). It is worth noting that, despite the unique form of corruption posed by the party committee, the *McConnell* Court did not uphold a provision of the Bipartisan Campaign Reform Act of 2002, Pub. Law., 107-155 (March 27, 2002), that required parties to choose between making independent expenditures on behalf of candidates and making in-kind contributions to candidates. *See McConnell v. FEC*, 540 U.S. 93, 213-18 (2003).

But National Defense PAC is not a party committee, and the *EMILY's List* opinion makes plain that non-profits do not pose the threat of corruption posed by party committees. *See EMILY's List v. FEC*, 581 F.3d 1, 13 (2009) (“[M]cConnell does not support such regulation of non-profits”). In that sense, because National Defense PAC is not a party committee, any bootstrapping of *McConnell's* reasoning here would be invalid.

Even after the landmark opinion in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010), it remains a crime for corporations and labor unions to make contributions to candidates from treasury funds. *See* 2 U.S.C. 441b. At the same time, corporations and labor unions are permitted by statute to use treasury funds (soft money) to pay the expenses of administering a separate segregated fund (“SSF”) used to make contributions to candidates from hard money. 2 U.S.C. § 441b. It is the prophylactic effect of separate accounts that allows the SSF to make contributions to

candidates with hard money while paying the SSF's administrative expenses with soft money. Similarly, the prophylactic required of non-connected political committees like National Defense PAC should be tied to the anti-corruption interest without curtailing independent speech. This is achieved with separate accounts: funds contributed to National Defense PAC for independent expenditures should not fund contributions to candidates.

Corporations and labor unions may make unlimited independent expenditures from treasury funds while using SSFs to make contributions to candidates. *Citizens United*, 130 S. Ct. 876 (2010). Indeed, the Citizens United organization operated an SSF for a decade and made candidate contributions. This did not prevent the Court from overruling *Austin v. Michigan Chamber of Commerce* on its behalf and recognizing its right to make unrestricted independent expenditures. *Citizens United*, 130 S. Ct. at 913. Justice Stevens noted the fact of Citizens United's PAC in his dissenting opinion.

In the case at hand, all Citizens United needed to do to broadcast *Hillary* right before the primary was to abjure business contributions or use the funds in its PAC, which by its own account is "one of the most active conservative PACs in America," Citizens United Political Victory Fund, <http://www.cupvf.org/>.⁴⁰

40. Citizens United has administered this PAC for over a decade. [citation omitted]. Citizens United also operates multiple "527" organizations that engage in partisan political activity. See Defendant FEC's Statement of Material Facts as to Which There Is No Genuine Dispute in No. 07-2240 (DC), PP 22-24.

Citizens United, 130 S. Ct. 876, 944 n.40 (2010), (Stevens, J., dissenting).

The Supreme Court recognized Citizens United's right to make independent expenditures with unrestricted funds while fully aware that the organization maintained a

separate segregated fund for making contributions to candidates. *Id.* A non-connected political committee also must be permitted to make independent expenditures with unlimited funds. Maintaining separate accounts cures any potential corruption of candidates.

The FEC may rely upon two more arguments to deny National Defense PAC and all other non-connected committees save EMILY's List, *see EMILY's List*, 581 F.3d at 12, their right to make independent expenditures with unlimited funds. It may argue that the *Citizens United* opinion is not instructive because the Citizens United organization and the Citizens United Voter Fund are separate legal entities. It may also attempt to rely on the *California Medical Association* opinion to conclude that non-connected committees cannot make independent expenditures with unlimited funds because doing so will corrupt candidates. Both arguments fail.

- 1. *CalMed* Does Not Support The Conclusion That A Non-Connected Committee's Independent Expenditures Corrupt Candidates**

While the Supreme Court has never directly addressed whether the government has a compelling interest in limiting contributions to a non-connected committee making independent expenditures, its decision in *California Medical Association v. FEC*, 453 U.S. 182 (1981) [hereinafter *CalMed*], provides guidance on the proper analysis of the issue in this case. *CalMed* involved a challenge by a multi-candidate committee—defined as a political committee that makes contributions to five or more federal candidates—to the \$5000 annual contribution limit under 2 U.S.C. § 441a(a)(1)(C). *Id.* at 194. Concluding that contributions to the multi-candidate committee amounted merely to “speech by proxy” of the PAC’s contributors—which was entitled to lesser protections

under the First Amendment—a plurality of the Court upheld the limit on the ground that it served the government’s interest in preventing circumvention of the limits on contributions made directly to candidates. *Id.* at 196-98. The multi-candidate committee made contributions directly to candidates. Thus, according to the plurality, contributors seeking to avoid the (at the time) \$1000 annual candidate contribution limits could make larger contributions to multi-candidate committees, which could then be funneled to candidates. *Id.* at 197-98.

Justice Blackmun separately concurred and concluded that the plurality’s anti-circumvention rationale applied only because the committee at issue was a multi-candidate committee that made direct contributions to candidates. *Id.* at 203. Justice Blackmun rejected the plurality’s conclusion that contributions to the multi-candidate committee were not entitled to full First Amendment protection, *id.* at 201-02, and concurred in the plurality’s judgment, however, because he recognized that, as applied to multi-candidate committees, the annual contribution limit was a narrow means of preventing circumvention of the limits that applied to direct contributions to candidates. *Id.* at 203.

Justice Blackmun made clear that the same analysis would not apply to limits on contributions to committees “established for the purpose of making independent expenditures.” *Id.* In sharp contrast to multi-candidate committees—which are “conduits for contributions to candidates” and thus raise concerns about corruption—“contributions to a committee that makes only independent expenditures pose no such threat.” *Id.* As Justice Blackmun explained,

[t]he Court repeatedly has recognized that effective advocacy of both public and private points of view, particularly controversial ones, is

undeniably enhanced by group association.... By pooling their resources, adherents of an association amplify their voices...; the association is but the medium through which its individual members seek to make more effective the expression of their own views.

Id. (internal quotation marks and citations omitted). Because Justice Blackmun's decision is the narrower one, his is the controlling decision in the case. *See Marks v. United States*, 430 U.S. 188, 193 (1977) (stating that when the Court issues a fragmented decision, the position of the narrowest concurrence controls).

Two principles emerge from *CalMed*. First and foremost, under Justice Blackmun's controlling opinion, the government may limit contributions to groups only where they implicate the interest in preventing corruption or its appearance. 453 U.S. at 203. While contributions to multi-candidate committees that in turn fund contributions to candidates can raise such concerns, contributions for independent expenditures cannot. *Id.* at 203-04; *see also Citizens United v. FEC*, 130 S. Ct 876, 909 (2010) (independent expenditures do not create the appearance of, or actual, quid pro quo corruption).

Second, even the plurality's conclusions apply only to multi-candidate committees that make contributions directly to candidates. *See EMILY's List*, 581 F.3d 1, 9 n.8 (discussing *CalMed*); 12 n.10 ("The *CalMed* Court never stated that non-profits could be required to use hard money for advertisements."). This point is not only implicit in the plurality's analysis; it is also stated expressly in the opinion. In a footnote, the plurality noted that the ACLU in an *amicus* brief claimed that the contribution limit at issue "would violate the First Amendment if construed to limit the amount individuals could jointly expend to express their political views." *Id.* at 197 n.17. This concern was not at issue in the case, however, because it involved only a multi-candidate committee that made contributions directly to candidates. *Id.* As the plurality explained,

“[c]ontributions to such committees are therefore distinguishable from expenditures made jointly by groups of individuals in order to express common political views.” *Id.* See also *Cal. Med. Ass’n. v. FEC*, 641 F.2d 619, 625 (9th Cir. 1980) (Kennedy, J.) (multi-candidate committee is “natural conduit for candidate contributions... and the essential purpose of the provision here in question is to limit those contributions, *not* to limit expenditures for any other type of political advocacy) (emphasis added). In short, the National Defense PAC’s case is distinguishable from the fact pattern in *CalMed*—National Defense PAC asks to make independent expenditures, the California Medical Association did not—and falls squarely within the reason of Justice Blackmun’s controlling concurrence.

2. A Connected Organization And Its SSF May Be Separate Legal Entities, But That Does Not Mean Separate Accounts Do Not Stem Corruption In Non-connected Committees.

The FEC may attempt to distinguish the rights of non-connected committees from the rights of connected committees. It may point out that a corporation or labor union (the “connected organization”) and its separate segregated fund are legally separate entities. See *CalMed*, 453 U.S. at _; *Citizens United*, 130 S. Ct. at _. It is this separation, the FEC might argue, that permits a non-profit like California Medical Association to accept unlimited contributions for independent expenditures but prevents a non-connected committee that makes candidate contributions, like CALPAC, from doing the same. The FEC may argue that the *Citizens United* opinion really means the Citizens United organization is permitted to use unrestricted funds for its independent expenditures, but the Citizens United Political Voter Fund, a separate legal entity, may not. Any argument of this kind would have to be based on the belief that separating the accounts for soft-money independent expenditures and hard-money candidate

contributions is an insufficient prophylactic against any potential corruption to candidates.

But this argument is undermined and invalidated by the FEC's longstanding policy of recognizing the right of non-connected committees to maintain one hard-money account to make contributions to federal candidates while maintaining a soft money account to make non-federal disbursements and donations. *See* 11 CFR 102.5. For years, the FEC's regulations have required each organization "that finances political activity in connection with *both* Federal and non-Federal elections and that qualifies as a political committee under 11 CFR 100.5," which includes non-connected committees, to either pay for all non-federal activity with federal dollars or establish two accounts: one federal, the other non-federal (or soft money). 11 CFR 102.5

The federal account "shall be treated as a separate Federal political committee that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act [a.k.a. "hard money" or "Federal funds"] shall be deposited in such separate Federal account." *Id.* What safeguard ensures that federal candidates are not corrupted by non-federal funds housed inside the non-connected committee? The same requirement that the National Defense PAC would follow in financing its proposed independent expenditures with unrestricted funds: the restrictions of 11 CFR 102.5. "No transfers may be made to such Federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-Federal elections." *Id.*

If separate accounts are the trusted method of ensuring that a non-connected committee's non-federal funds for non-federal activity do not corrupt federal candidates, then separate accounts must serve the same anti-corruption interests here. That is, separate accounts and a prohibition on transfers between accounts—transfers from the non-federal account to the federal account—will ensure that non-federal funds for independent expenditures will not corrupt federal candidates. And separate accounts have the virtue of being a narrowly drawn remedy to further any interest in protecting against quid pro quo corruption while recognizing Plaintiffs' rights to speak effectively. After all, that is exactly what the *EMILY's List* court decided as a matter of binding precedent nearly fifteen months ago.

B. As a Matter of *Stare Decisis*, National Defense PAC's Rights Have Already Been Upheld

Finally, this question has already been squarely decided by the D.C. Circuit Court of Appeals in *EMILY's List v. FEC*, 581 F.3d 1 (2009).

What about a non-profit entity that falls into both categories -- in other words, a non-profit that makes expenditures *and* makes contributions to candidates or parties? EMILY's List is a good example of such a hybrid non-profit: It makes expenditures for advertisements, get-out-the-vote efforts, and voter registration drives; it also makes direct contributions to candidates and parties.

The constitutional principles that govern such a hybrid non-profit entity follow ineluctably from the well-established principles governing the other two categories of non-profits. To prevent circumvention of contribution limits by individual donors, non-profit entities may be required to make their own contributions to federal candidates and parties out of a hard-money account -- that is, an account subject to source and amount limitations (\$ 5000 annually per contributor). Similarly, non-profits also may be compelled to use their hard-money accounts to pay an appropriately tailored share of administrative expenses associated with their contributions. *See Cal. Med*, 453 U.S. at 198-99 n.19 (opinion of Marshall, J.). But non-profit entities are entitled to make their

expenditures -- such as advertisements, get-out-the-vote efforts, and voter registration drives -- out of a soft-money or general treasury account that is not subject to source and amount limits. Stated another way: A non-profit that makes expenditures to support federal candidates does not suddenly forfeit its *First Amendment* rights when it decides also to make direct contributions to parties or candidates. Rather, it simply must ensure, to avoid circumvention of individual contribution limits by its donors, that its contributions to parties or candidates come from a hard-money account.

EMILY's List, 581 F.3d at 12.

The *EMILY's List* opinion is no outlier. It is firmly grounded in the Supreme Court's campaign finance jurisprudence. The Supreme Court has held that independent expenditures, whether by individuals, committees, corporations or labor unions, cannot constitutionally be limited, because they are, by definition, unconnected to candidates and thus cannot raise any concerns about corruption. *See Citizens United v. FEC*, 130 S. Ct. 876 (2010); *FEC v. Nat'l Conservative Political Action Committee*, 470 U.S. 480, 496-97 (1985) [hereinafter *NCPAC*]; *Buckley v. Valeo*, 424 U.S. 1 (1976). The Court has also held that limits on contributions to groups that make independent expenditures are necessarily restrictions on their expenditures. *See Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 299-300 (1981); *EMILY's List v. FEC*, 581 F.3d 1 (D.C. Cir. 2009). Combined, these principles make clear that the contribution limits that apply to the funding of candidate contributions cannot constitutionally be applied to the independent expenditures of National Defense PAC.

C. The FEC Cannot Demonstrate a Compelling, Substantial or Legitimate Interest in Limiting Contributions to National Defense PAC.

As the Supreme Court has repeatedly stated, a fundamental purpose of the First Amendment was to protect the discussion of governmental affairs, and, in particular, of

candidates, in order to “ensure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people.” *Buckley*, 424 U.S. at 14. Thus, the First Amendment protects vigorous advocacy intended to influence the outcome of elections no less than the discussion of ideas. *See First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978). It also protects the right of individuals to associate with one another because “effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.” *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). By associating with others, “individuals can make their views known, when, individually, their voices would be faint or lost.” *Citizens Against Rent Control*, 454 U.S. at 294. *See also Buckley*, 424 U.S. at 22 (stating that the purpose of the right of association is to allow individuals to amplify their voices by associating with others). All this rests at the very heart of what National Defense PAC hopes to accomplish.

The Supreme Court has held that “[i]ndependent expenditures constitute expression ‘at the core of our electoral process and of the First Amendment freedoms.’” *MCFL*, 479 U.S. at 254 (quoting *Buckley*, 424 U.S. at 39). *See also, NCPAC*, 470 U.S. at 493 (stating that independent expenditures “produce speech at the core of the First Amendment”). As a result, limits on what committees can spend independently of candidates and party committees are subject to the highest constitutional protection. As the Court stated in *NCPAC*, “[a] restriction on the amount of money a person or group can spend on political communications during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. This is because virtually every means

of communicating ideas in today's mass society requires the expenditure of money." *Id.* at 493-94 (quoting *Buckley*, 424 U.S. at 19).

While the limit at issue in *NCPAC* operated directly on expenditures by the group, rather than contributions to it, limits on contributions for independent expenditures automatically operate to limit the group's expenditures. *See also EMILY's List*, 581 F.3d at 14, n.13 ("Limits on donations to non-profit entities are analytically akin to limits on expenditures by the donors."). The conclusion necessarily follows from the Supreme Court's decision in *Citizens Against Rent Control*. That case involved a \$250 limit on contributions to support or oppose a ballot measure. 454 U.S. at 292. Concluding that the limit prevented individuals from pooling their funds in order to finance their collective advocacy, the Court applied exacting scrutiny and struck it down. *See id.* at 294-95, 300. In arriving at that conclusion, the Court recognized that the limit on contributions necessarily limited the funds that the group could spend on its own speech. *See id.* at 299. As the Court explained, while an individual may make unlimited expenditures under the law, she may not "contribute beyond the \$250 limit when joining with others to advocate common views. The contribution limit thus automatically affects expenditures, and limits on expenditures operate as a direct restraint on freedom of expression...." *Id.* *See also id.* ("Placing limits on contributions which in turn limit expenditures plainly impairs freedom of expression.").

The same is true here. To produce and distribute just the initial ads for which National Defense PAC now has scripts will cost upwards of \$6300.00. *See* VC at ¶ 24, EXHIBIT F. Without the contributions from Plaintiff Kelly Eustis, the National Defense PAC would be unable to produce and distribute these ads. VC at ¶¶ 25-26, EXHIBIT G.

Even assuming that National Defense PAC could raise sufficient funds in increments of less than \$5000 to pay for these ads, the contribution limits would still significantly limit the number of times it could run those ads, and would limit its ability to run additional ads concerning other federal candidates in other races. *Id.* at ¶ 35. In short, it is undeniable that the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) directly restrain National Defense PAC’s expenditures and reduce the quantity of its expression by restricting the number of political candidates it can discuss, the number of times it can distribute its ads, and the size of the audience it can reach.

Thus, as in *NCPAC*, *Citizens Against Rent Control*, and *EMILY’s List*, the contribution limits that apply to National Defense PAC restrict plaintiffs’ rights to pool their funds in order to amplify their voices beyond what any of them would be able to achieve on their own. *See NCPAC*, 470 U.S. at 495; *Citizens Against Rent Control*, 454 U.S. at 296; *EMILY’s List*, 581 F.3d at 12. The contribution limits thus restrict the rights to free speech and association of both National Defense PAC and its supporters. *See Citizens Against Rent Control*, 454 U.S. at 299-300 (stating that the rights of speech and association “blend and overlap” and are both implicated by contribution limits imposed on groups that support or oppose ballot issues). In other words, the contribution limits restrict not only National Defense PAC’s right to free speech by limiting the funds it has available to spend on its advertisements. The limits also directly restrict its supporters’ rights to free speech by preventing them from pooling their funds and speaking collectively through National Defense PAC. *See NCPAC*, 470 U.S. at 495.

As applied to National Defense PAC’s independent expenditures, the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) operate very differently

from the contribution limits in the circumstances in which the Supreme Court upheld them in *Buckley*. There, the Court addressed limits that applied to contributions made directly to candidates or their committees. 424 U.S. at 23-38. Finding that contributions to candidates served as only a “general expression of support for the candidate and his views but does not communicate the underlying basis for the support” and that the contributors’ expression “rests solely on the undifferentiated symbolic act of giving,” the Court concluded that the speech element in contributions to candidates was minimal. *See id.* at 21. By contrast, National Defense PAC will use plaintiffs’ contribution to make independent expenditures—direct funding of speech, not contributions to candidates.

Support for National Defense PAC’s independent expenditures thus conveys much more than the “undifferentiated, symbolic act of giving.” *Buckley*, 424 U.S. at 21. It conveys agreement with National Defense PAC’s message. As the Court stated in rejecting the “speech by proxy” argument in *NCPAC*, “the contributors obviously like the message they are hearing from these organizations and want to add their voices to that message; otherwise, they would not part with their money.” 470 U.S. at 95.

The Supreme Court, barely one year ago in *Citizens United*, again identified the sole interest sufficiently compelling to limit contributions to political organizations: that of preventing the actual or apparent quid pro quo corruption of candidates. 130 S. Ct. at 908-909. As the Court has stated, “preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.” *NCPAC*, 470 U.S. at 496-97. *See also Randall v. Sorrell*, 548 U.S. 230, 246-248 (2006) (recognizing corruption as the only interest that can support contribution limits and striking down limits as broader than necessary to achieve

that interest); *Citizens Against Rent Control*, 434 U.S. at 437-38 (“*Buckley* identified only a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a *candidate*.”) (emphasis in original).

D. As Applied to National Defense PAC and its Supporters, the Contribution Limits Are Not Narrowly Tailored

“Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation.” *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 265 (1986) (“*MCFL*”). The “problem” for which Congress passed FECA’s contribution limits was the appearance of or actual corruption of candidates. *See Buckley*, 424 U.S. at 23-38. Thus, regulating “only to the degree necessary” to address that problem would mean applying contribution limits only to those groups that raise concerns about corruption. Here, the FEC wields far too blunt an instrument to cure any form of recognized quid pro quo corruption. As demonstrated above, National Defense PAC’s independent expenditure account cannot raise such concerns and cannot be used to circumvent the limits on contributions to candidates. As a result, applying contribution limits to National Defense PAC and its supporters is not narrowly tailored. *See, e.g., NCPAC*, 470 U.S. at 498; *CalMed*, 453 U.S. at 203-04 (Blackmun, J. concurring).

It is no answer to say that National Defense PAC could speak adequately with less money. As the Supreme Court made clear in *WRTL*, cheaper alternatives are not reasonable alternatives in terms of “impact and effectiveness.” 551 U.S. 449, 477 n.9.

Even under “less rigorous review,” limits are permissible only if they are “closely drawn” to serve a “sufficiently important governmental interest.” *Randall*, 548 U.S. at 247 (quoting *Buckley*, 424 U.S. at 25). This is not a cursory review, and, to date, the Supreme Court has identified only the interest in combating corruption of candidates as important enough to justify contribution limits. *See, e.g., NCPAC*, 470 U.S. at 496-97; *Buckley*, 424 U.S. at 25, 28. As discussed above, National Defense PAC’s independent expenditure account cannot raise any concerns about corruption or its appearance and cannot be used to circumvent the limits on contributions to candidates. Thus, even if this court concludes that strict scrutiny does not apply here, Plaintiffs have still demonstrated a substantial likelihood of success on the merits to justify a preliminary injunction. *See, e.g., N.C. Right to Life, Inc. v. Leake*, 482 F. Supp. 2d 686, 698-99 (W.D. N.C. 2007) (holding contribution limit unconstitutional as applied to independent expenditure committee even under the lesser scrutiny that applies to limits on contributions to candidates).

National Defense PAC’s independent expenditures pose no threat of corruption. Its willingness to maintain a separate account for its candidate contributions and willingness to administer that account with hard money ensures that it will pose no threat of corruption to candidates. The government’s interest is furthered by the narrowly tailored requirement that National Defense PAC not make transfers between accounts. The FEC’s failure to respond to National Defense PAC’s request, to recognize the relation between the government’s interest and the remedy of separate accounts, and its failure to provide Plaintiffs with a defense to prosecution, place Plaintiffs in harm that can only be cured with an injunction.

II. Plaintiffs Will Suffer Irreparable Harm Without an Injunction

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable harm.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Under the contribution limits of 2 U.S.C. § 441a(a)(1)(C), National Defense PAC cannot distribute the ads for which it currently has scripts. Plaintiff Eustis is ready, willing, and able to contribute the necessary funds, and National Defense PAC will distribute those ads if it is legally permitted to accept those funds. VC at ¶¶ 24-25. The only thing standing between National Defense PAC and its ability to speak through its ads are the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). Thus, Plaintiffs’ rights are in fact being impaired right now; there is nothing speculative about their claims. *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 301 (D.C. Cir. 2006) (stating that “[w]here a plaintiff alleges injury from a rule or regulation that directly limits speech, the irreparable nature of the harm may be presumed”).

While Plaintiffs are irreparably harmed right now, that harm is ongoing and increases as time passes. Any money that National Defense PAC cannot collect now deletes the amount of speech it can plan on making in the 2012 primary elections. VC, ¶¶ 24-29.

III. An Injunction Will Not Substantially Injure Others

In a recent campaign finance decision, the Supreme Court made clear that in any conflict between First Amendment rights and regulation, courts “must give the benefit of any doubt to protecting rather stifling speech,” and that “the tie goes to the speaker, not the censor.” *WRTL*, 551 U.S. at 469, 474. Thus, while the FEC can be said to have an interest in enforcing the campaign finance laws, under the Supreme Court’s approach to

First Amendment rights in *WRTL*, the FEC's interest simply cannot trump the First Amendment rights of Plaintiffs. An injunction will not harm the FEC.

IV. An Injunction Will Further the Public Interest

The Supreme Court “has long viewed the First Amendment as protecting a marketplace for the clash of different views and conflicting ideas. That concept has been stated and restated almost since the Constitution was drafted.” *Citizens Against Rent Control*, 454 U.S. at 295. Plaintiffs wish to participate in the marketplace of ideas by attempting to convince citizens to support candidates who have demonstrated a commitment to the Nation through their military service and who support the principle of limited, constitutional government.

“[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs ... includ[ing] discussion of candidates.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Thus “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964). Plaintiffs wish to participate in the process of self-government by urging voters to support candidates who are veterans and who support limited constitutional government and oppose those who do not.

The First Amendment reflects our “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” *N.Y. Times v. Sullivan*, 376 U.S. 254, 270 (1964). In short, Plaintiffs' activities are at the core of the First Amendment. National Defense PAC, and all other non-connected committees, must be permitted to make independent expenditures out of unlimited

corporate, union or individual funds, even though it maintains a separate bank account that contributes to candidates from amount and source restricted funds. *Citizens United v. FEC*, 130 S. Ct. 876, 909 (2010) (“[W]e now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”). Unlike unions and corporations, however, who enjoy a statutory dispensation, the FEC can require the National Defense PAC to pay a portion of administrative expenses from a hard money account. This will accord the Court’s decision in *CalMed*. 453 U.S. at 198-99 n.19 (opinion of Marshall, J.). And such recognition by this court will remedy the injury to plaintiffs’ First Amendment interests.

V. Plaintiffs Have Standing to Seek the Injunction

To establish standing, plaintiffs must demonstrate three elements: an injury in fact, a causal connection between the injury and the defendant's conduct, and a likelihood that the injury will be redressed by a decision favorable to the plaintiff. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). An injury in fact is satisfied when plaintiffs make a showing of an “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 560. (internal quotation marks and citations omitted). Plaintiffs have established an injury in fact capable of relief issued by this court. Moreover, there exists a causal connection between the FEC’s failure to issue an affirmative advisory opinion and the Plaintiffs’ injuries, and a decision issued by this court will redress those injuries.

Within the context of the First Amendment, the Supreme Court has announced relaxed standing requirements for pre-enforcement challenges. *See, e.g., Dombrowski v. Pfister*, 380 U.S. 479 (1965) (detailing expanded standing principles for pre-enforcement

First Amendment challenges); *Virginia v. American Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988) (self-censorship is a harm that can be alleged without actual prosecution); *Chamber of Commerce v. FEC*, 69 F.3d 600, 603-04 (“A party has standing to challenge, pre-enforcement, even the constitutionality of a statute if First Amendment rights are arguably chilled, so long as there is a credible threat of prosecution”). Would-be speakers bringing pre-enforcement challenges must allege “an intention to engage in a course of conduct arguably affected with a constitutional interest,” and illustrate that there exists a “credible threat of prosecution” under the law in question. *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). In this special arena, where a statute on its face “restricts a party from engaging in expressive activity, there is a presumption of a credible threat of prosecution.” *Virginia Soc’y for Human Life, Inc. v. FEC*, 263 F.3d 379, 388 (4th Cir. 2001).

Here, National Defense PAC has alleged an “intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed” by law. *Babbitt*, 442 U.S. at 298. Specifically, National Defense PAC prepared independent expenditure advertisements for the upcoming 2012 electoral cycle, but cannot accept contributions to fund them due to the reach of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). *See* VC, ¶¶ 24-26 & Exhibits F & G. National Defense PAC would like to fundraise and accept contributions for additional independent expenditure campaigns in the 2012 electoral cycle, but its actions are prohibited just the same. *See* VC, ¶¶ 25-26. Kelly S. Eustis would like to make a donation of \$6,300.00 to National Defense PAC, but cannot due to the operation of the law. *See* VC, ¶¶ 26-27.

National Defense PAC suffers injuries against its First Amendment protected interests that are imminent as well – the organization must be able to plan for its communications and operations, as well as fundraise to support them. *See* VC, ¶ 26. By operation of the law, National Defense PAC must hinder its speech and association until a definitive ruling is issued by this court protecting National Defense PAC’s constitutional rights and that of its donors. Because federal elections occur every two years, its injuries are ongoing. *See Virginia Soc’y*, 263 F.3d at 389 (First Amendment injury is ongoing where it relates to proscribed speech concerning federal elections).

National Defense PAC has established concrete plans to engage in constitutionally protected conduct that is subject to the reach of the challenged laws. Its speech and association are chilled due to fear of prosecution by the Federal Election Commission. Most recently, the Commission failed to provide an advisory opinion in response to Plaintiffs’ request that their planned activities would be permissible under the FECA. The FEC’s refusal to issue an advisory opinion deprives National Defense PAC of a legal reliance defense which it could otherwise receive under 2 U.S.C. § 437f(c). *See FEC v. Nat’l Rifle Ass’n of Am.*, 254 F.3d 173, 185 (D.C. Cir. 2001) (noting that “advisory opinions have binding legal effect on the Commission”). Because of this, and as recognized by the D.C. Circuit Court of Appeals in *Unity ’08 v. FEC*, this failure to issue an advisory opinion “denies a right with consequences sufficient to warrant review.” 596 F.3d 861, 865 (D.C. Cir. 2010) (internal quotations omitted). National Defense PAC’s only other course of action is to risk enforcement penalties—a jeopardy never permitted by the First Amendment.

VI. The Court Should Waive the Bond Requirement Under F.R.C.P. 65(c).

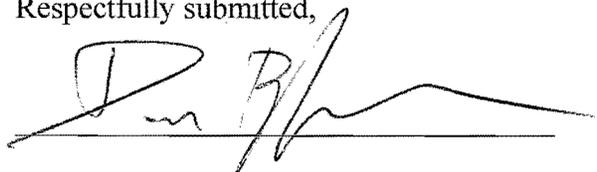
Federal Rule of Civil Procedure 65(c) provides that no preliminary injunction shall issue without the giving of security by the applicant in an amount determined by the court. However, “[i]t is within the Court’s discretion to waive Rule 65(c)’s security requirement where it finds such a waiver to be appropriate in the circumstances.” *Cobell v. Norton*, 225 F.R.D. 41, 50 n.4 (D.D.C. 2004). In non-commercial cases, courts often waive the bond requirement where the likelihood of harm to the non-moving party is slight and the bond requirements would impose a significant burden on the moving party. See, e.g., *Temple Univ. v. White*, 941 F.2d 201, 219 (3d Cir. 1991); *Comm. on Jobs Candidate Advocacy Fund v. Herrera*, 2007 U.S. Dist. LEXIS 73736, at *17-*18. Cases raising constitutional issues are particularly appropriate for a waiver of the bond requirement. See *Odgen v. Marendt*, 264 F. Supp. 2d 785, 795 (S.D. Ind. 2003); *Smith v. Bd. of Election Comm’rs*, 591 F. Supp. 70, 71 (N.D. Ill. 1984). Accordingly, Plaintiffs respectfully request that the court waive the bond requirement in the event that it grants Plaintiffs’ motion for preliminary injunction.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs’ motion for preliminary injunction and enjoin the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) and applicable regulatory requirements as they apply to Plaintiffs. The Court should also waive the bond requirement under the Federal Rules of Civil Procedure 65(c).

Dated: January 28, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan B. [unclear]", is written over a horizontal line. The signature is stylized and cursive.

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*Motions for *Pro Hac Vice* to be filed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Rear Adm. James J Carey [Ret])
6022 Knights Ridge Way)
Alexandria, VA 22310)
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Kelly S. Eustis)
1431 Q Street)
Apt. 130)
Sacramento, California 95811)
)
National Defense Political)
Action Committee)
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Plaintiffs,)
)
v.) Civil Case No. _____
)
FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
)
Defendant.)
)

NOTICE OF CONSULTATION ON MOTIONS WITH OPPOSING COUNSEL

In accord with Local Rule of Civil Procedure 7(m), Plaintiffs have conferred by telephone with legal counsel for the Federal Election Commission regarding the following non-dispositive motions. This notice provides and consolidates opposing counsel's positions on all motions filed contemporaneously with the Verified Complaint.

1. Motion for Benjamin T. Barr to be admitted *pro hac vice*. Date of telephone conference: January 27, 2011. Opposing counsel's position: Consent.
2. Motion for Stephen M. Hoersting to be admitted *pro hac vice*. Date of telephone conference: January 27, 2011. Opposing counsel's position: Consent.
3. Motion for Preliminary Injunction. Date of telephone conference: January 27, 2011. Opposing counsel's position: Oppose.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Backer", written over a horizontal line.

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Attorneys for Plaintiffs

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Defendant.)

MOTION TO BE ADMITTED PRO HAC VICE

Dan Backer, a licensed, practicing attorney in the District of Columbia and member of the bar in good standing of the United States District Court for the District of Columbia moves this Court, pursuant to Local Rule 83.2(d), for permission for Benjamin T. Barr to appear and participate in the above-captioned case *pro hac vice* on behalf of plaintiffs. In support of this motion, Movant submits that Benjamin Barr at 10737

Hunting Lane, Rockville, Maryland 20850, 240.863.8280, is a member of good standing of the bar of the Supreme Court of Illinois and of several federal bars, including the United States Supreme Court. Movant has attached the declaration of Mr. Barr in further support of this motion.

WHEREFORE, Movant prays that Benjamin Barr be permitted to appear and participate in the above-captioned cause, *pro hac vice*, on behalf of plaintiffs. In accord with Local Rule of Civil Procedure 7(m), plaintiffs have conferred with legal counsel at the Federal Election Commission concerning this motion. The response of the FEC has been separately submitted to this court in one Notice of Consultation on Motions with Opposing Counsel.

Dated: January 28, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Backer", with a long horizontal flourish extending to the right.

Dan Backer (DC Bar No. 996641)
PO Box 75021
Washington, DC 20013
.202. 210.5431
dbacker@dbcapitolstrategies.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)
)
)
Rear. Adm James J Carey [Ret])
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Kelly S. Eustis)
1431 Q Street)
Apt. 130)
Sacramento, California 95811)
)
National Defense Political)
Action Committee)
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Plaintiffs,)
)
v.) Civil Case No. _____
)
FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
)
Defendant.)
_____)

DECLARATION OF BENJAMIN BARR

I, Benjamin Barr, make the following declaration pursuant to 28 U.S.C. § 1746:

1. My full name is Benjamin Thomas Barr.
2. My office address is: Government Watch, 10737 Hunting Lane, Rockville, Maryland 20850. My telephone number is 240.863.8280.
3. I was admitted to bar of the Supreme Court of Illinois in 2001 and am a licensed, practicing attorney in the State of Illinois in good standing. I am not under suspension or disbarment, nor has any bar disciplined me.
4. I am a member in good standing of the bars of the following courts:
United States Supreme Court

United States Court of Appeals for the Second Circuit
United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Seventh Circuit
United States District Court for the Northern District of Illinois

5. I have not been admitted *pro hac vice* in this court in the past two years.

I affirm under penalty of perjury that the foregoing is correct and true. Executed on
January 26, 2011.

A handwritten signature in black ink, appearing to read "Benjamin T. Barr", is written over a horizontal line. The signature is fluid and cursive.

Benjamin T. Barr
10737 Hunting Lane
Rockville, Maryland 20850
240.863.8280
Benjamin.barr@gmail.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Rear Adm. James J Carey [Ret])
6022 Knights Ridge Way)
Alexandria, VA 22310)
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Kelly S. Eustis)
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Sacramento, California 95811)
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)
Plaintiffs,)
)
v.) Civil Case No. _____
)
FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
)
Defendant.)

MOTION TO BE ADMITTED PRO HAC VICE

Dan Backer, a licensed, practicing attorney in the District of Columbia and member of the bar in good standing of the United States District Court for the District of Columbia moves this Court, pursuant to Local Rule 83.2(d), for permission for Stephen M. Hoersting to appear and participate in the above-captioned case *pro hac vice* on behalf of plaintiffs. In support of this motion, Movant submits that Stephen M. Hoersting at 700

E Schantz Ave, Dayton, Ohio 45419, 937.623.6120, is a member of good standing of the bar of the Supreme Court of Ohio and of several federal bars, including the United States Supreme Court. Movant has attached the declaration of Mr. Hoersting in further support of this motion.

WHEREFORE, Movant prays that Stephen M. Hoersting be permitted to appear and participate in the above-captioned cause, *pro hac vice*, on behalf of plaintiffs. In accord with Local Rule of Civil Procedure 7(m), plaintiffs have conferred with legal counsel at the Federal Election Commission concerning this motion. The response of the FEC has been separately submitted to this court in one Notice of Consultation on Motions with Opposing Counsel.

Dated: January 28, 2011

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Backer", written over a horizontal line.

Dan Backer (DC Bar No. 996641)
PO Box 75021
Washington, DC 20013
202. 210.5431
dbacker@dbcapitolstrategies.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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)
Rear. Adm James J Carey [Ret])
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Alexandria, VA 22310)
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v.) Civil Case No. _____
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FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
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Defendant.)
)

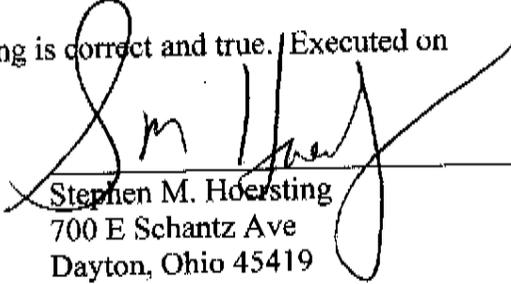
DECLARATION OF STEPHEN M. HOERSTING

I, Stephen M. Hoersting, make the following declaration pursuant to 28 U.S.C. § 1746:

1. My full name is Stephen Michael Hoersting.
2. My office address is: 700 E Schantz Ave, Dayton, Ohio 45419. My telephone number is 937.623.6102.
3. I was admitted to bar of the Supreme Court of Ohio in 1996. I am a licensed, practicing attorney in the State of Ohio in good standing (Ohio Bar No. 0066915). I am not under suspension or disbarment, nor has any bar disciplined me.

4. I am a member in good standing of the bars of the following courts:
- United States Supreme Court
 - United States Court of Appeals for the District of Columbia Circuit
 - United States Court of Appeals for the Sixth Circuit
 - United States Court of Appeals for the Ninth Circuit
 - United States Court of Appeals for the Tenth Circuit
 - United States District Court for the Southern District of Ohio
5. I have been admitted *pro hac vice* in this court in one case in the past two years: *SpeechNow.org v. Federal Election Commission*.

I affirm under penalty of perjury that the foregoing is correct and true. Executed on
January 27, 2011.



Stephen M. Hoersting
700 E Schantz Ave
Dayton, Ohio 45419
937.623.6102
Hoersting@gmail.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Rear. Adm James J Carey [Ret]
6022 Knights Ridge Way
Alexandria, VA 22310

Kelly S. Eustis
1431 Q Street
Apt. 130
Sacramento, California 95811

National Defense Political
Action Committee
PO BOX 75021
Washington, DC 20013

Plaintiffs,

v.

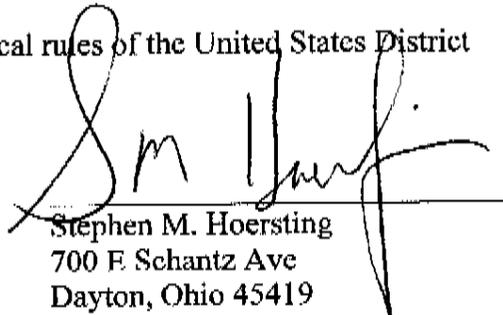
FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463,

Defendant.

Civil Case No. _____

LOCAL RULE 83.2(j) CERTIFICATION

I certify that I am personally familiar with the local rules of the United States District Court for the District of Columbia.



Stephen M. Hoersting
700 E Schantz Ave
Dayton, Ohio 45419
937.623.6102
Hoersting@gmail.com

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)
)
Rear. Adm James J Carey [Ret])
6022 Knights Ridge Way)
Alexandria, VA 22310)
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Kelly S. Eustis)
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)
Plaintiffs,)
)
v.) Civil Case No. _____
)
FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
)
Defendant.)
)

ORDER

Upon consideration of the Motion of Dan Backer for the admission of Benjamin Barr to appear before this court *pro hac vice*, and the attached declaration of Benjamin Barr in support thereof,

IT IS HEREBY ORDERED that the motion of Dan Backer for the admission of Benjamin Barr to appear before this court *pro hac vice* is granted; and it is

FURTHER ORDERED, that Benjamin Barr be and is hereby permitted to appear in the above-captioned cause *pro hac vice* on behalf of plaintiffs.

DATED:

United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)
)
Rear. Adm James J Carey [Ret])
6022 Knights Ridge Way)
Alexandria, VA 22310)
)
Kelly S. Eustis)
1431 Q Street)
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FEDERAL ELECTION COMMISSION)
999 E Street, NW)
Washington, DC 20463,)
)
Defendant.)
)

ORDER

Upon consideration of the Motion of Dan Backer for the admission of Stephen M. Hoersting to appear before this court *pro hac vice*, and the attached declaration of Stephen M. Hoersting in support thereof,

IT IS HEREBY ORDERED that the motion of Dan Backer for the admission of Stephen M. Hoersting to appear before this court *pro hac vice* is granted; and it is

FURTHER ORDERED, that Stephen M. Hoersting be and is hereby permitted to appear in the above-captioned cause *pro hac vice* on behalf of plaintiffs.

DATED:

United States District Judge

CIVIL COVER SHEET

JS-44
(Rev.1/05 DC)

I (a) PLAINTIFFS (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)	ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)	III CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY!																												
<table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">1 U.S. Government Plaintiff</td> <td style="width: 50%;">3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td>2 U.S. Government Defendant</td> <td>4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	1 U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)	2 U.S. Government Defendant	4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width: 100%; border: none;"> <thead> <tr> <th style="width: 40%;"></th> <th style="width: 10%;">PTF</th> <th style="width: 10%;">DFT</th> <th style="width: 30%;"></th> <th style="width: 10%;">PTF</th> <th style="width: 10%;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;">1</td> <td style="text-align: center;">1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;">4</td> <td style="text-align: center;">4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;">2</td> <td style="text-align: center;">2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;">5</td> <td style="text-align: center;">5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;">3</td> <td style="text-align: center;">3</td> <td>Foreign Nation</td> <td style="text-align: center;">6</td> <td style="text-align: center;">6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	1	1	Incorporated or Principal Place of Business in This State	4	4	Citizen of Another State	2	2	Incorporated and Principal Place of Business in Another State	5	5	Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6
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Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6																								

IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

A. Antitrust 410 Antitrust	B. Personal Injury/Malpractice 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Medical Malpractice 365 Product Liability 368 Asbestos Product Liability	C. Administrative Agency Review 151 Medicare Act <u>Social Security:</u> 861 HIA ((1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g) 864 SSID Title XVI 865 RSI (405(g) <u>Other Statutes</u> 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 890 Other Statutory Actions (If Administrative Agency is Involved)	D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
--	---	--	--

E. General Civil (Other)		OR	F. Pro Se General Civil	
<u>Real Property</u> 210 Land Condemnation 220 Foreclosure 230 Rent, Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property <u>Personal Property</u> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	<u>Bankruptcy</u> 422 Appeal 28 USC 158 423 Withdrawal 28 USC 157 <u>Prisoner Petitions</u> 535 Death Penalty 540 Mandamus & Other 550 Civil Rights 555 Prison Condition <u>Property Rights</u> 820 Copyrights 830 Patent 840 Trademark <u>Federal Tax Suits</u> 870 Taxes (US plaintiff or defendant 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> 610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 RR & Truck 650 Airline Regs 660 Occupational Safety/Health 690 Other <u>Other Statutes</u> 400 State Reapportionment 430 Banks & Banking 450 Commerce/ICC Rates/etc. 460 Deportation	470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 490 Cable/Satellite TV 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 900 Appeal of fee determination under equal access to Justice 950 Constitutionality of State Statutes 890 Other Statutory Actions (if not administrative agency review or Privacy Act	

G. Habeas Corpus/ 2255 530 Habeas Corpus-General 510 Motion/Vacate Sentence	H. Employment Discrimination 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	I. FOIA/PRIVACY ACT 895 Freedom of Information Act 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	J. Student Loan 152 Recovery of Defaulted Student Loans (excluding veterans)
K. Labor/ERISA (non-employment) 710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Labor Railway Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	L. Other Civil Rights (non-employment) 441 Voting (if not Voting Rights Act) 443 Housing/Accommodations 444 Welfare 440 Other Civil Rights 445 American w/Disabilities-Employment 446 Americans w/Disabilities-Other	M. Contract 110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholder's Suits 190 Other Contracts 195 Contract Product Liability 196 Franchise	N. Three-Judge Court 441 Civil Rights-Voting (if Voting Rights Act)

V. ORIGIN

- | | | | | | | |
|-----------------------|----------------------------|---------------------------------|--------------------------|---|-----------------------------|--|
| 1 Original Proceeding | 2 Removed from State Court | 3 Remanded from Appellate Court | 4 Reinstated or Reopened | 5 Transferred from another district (specify) | 6 Multi district Litigation | 7 Appeal to District Judge from Mag. Judge |
|-----------------------|----------------------------|---------------------------------|--------------------------|---|-----------------------------|--|

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** Check YES only if demanded in complaint
JURY DEMAND: **YES** **NO**

VIII. RELATED CASE(S) IF ANY (See instruction) **YES** **NO** If yes, please complete related case form.

DATE **SIGNATURE OF ATTORNEY OF RECORD**

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff is resident of Washington, D.C.; 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI.** CAUSE OF ACTION: Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASES, IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEDERAL ELECTION
COMMISSION'S MEMORANDUM
IN OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

FEDERAL ELECTION COMMISSION'S MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Christopher Hughey
Acting General Counsel

David Kolker (D.C. Bar No. 394558)
Associate General Counsel

Kevin Deeley
Assistant General Counsel

Greg Mueller (D.C. Bar No. 462840)
Erin Chlopak (D.C. Bar No. 496370)
Attorneys

Federal Election Commission
999 E Street, N.W.
Washington, DC 20463
(202) 694-1650

March 7, 2011

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INTRODUCTION

Contrary to plaintiffs' portrayal, the dispute between the parties is not about prohibiting plaintiffs' First Amendment activity. National Defense PAC and two individuals allege that the Federal Election Commission ("Commission") has prevented them from taking advantage of recent court decisions that allow certain organizations to accept unlimited funds to make independent expenditures to support or oppose federal candidates. As we explain below, however, plaintiffs can both accept such funds and make direct contributions to federal candidates as long as they establish two separate political committees and comply with the applicable recordkeeping and reporting requirements. This case, therefore, is not about banning plaintiffs' speech or fundraising, but about reasonable requirements that help prevent corruption and inform the public.

Plaintiffs satisfy none of the requirements for a preliminary injunction. They cannot meet their burden of demonstrating a substantial likelihood of success on the merits because they can collect and spend the money they seek as long as the unlimited contributions they receive are accepted by a political committee that makes only independent expenditures and gives no direct contributions to federal candidates. Plaintiffs also cannot demonstrate any irreparable harm that would arise in the absence of an injunction because they have alleged a potential loss of only \$1,300 in revenue during the pendency of this case, and because they face no imminent risk of enforcement proceedings against them. Finally, the government and the public have important interests in continued enforcement of the provisions challenged here, to minimize corruption or the appearance of corruption of the federal political system.

BACKGROUND

I. THE FEDERAL ELECTION COMMISSION

The Commission is the independent agency of the United States with exclusive jurisdiction over the administration, interpretation, and civil enforcement of the Federal Election Campaign Act (“Act” or “FECA”), 2 U.S.C. §§ 431-57, and other statutes. The Commission is empowered to “formulate policy” with respect to the Act, 2 U.S.C. § 437c(b)(1); “to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of [the] Act,” 2 U.S.C. §§ 437d(a)(8), 438(a)(8),(d); and to issue written advisory opinions concerning the application of the Act and Commission regulations to any specific proposed transaction or activity, 2 U.S.C. §§ 437d(a)(7), 437f.

II. STATUTORY AND REGULATORY BACKGROUND

A. Contributions and Expenditures

The Act defines “contribution” to include “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)(i). “Expenditure” is defined to include “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)(i).

B. Independent Expenditures

The Act defines “independent expenditure” as an expenditure by a person “expressly advocating the election or defeat of a clearly identified candidate; and . . . that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s

authorized political committee, or their agents, or a political party committee or its agents.”
2 U.S.C. § 431(17).

C. Political Committees

A “political committee” includes “any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 during a calendar year or which makes expenditures aggregating in excess of \$1,000 during a calendar year,” 2 U.S.C. § 431(4)(A), and is “under the control of a candidate” or has as its “major purpose” “the nomination or election of a candidate,” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976). A “nonconnected committee” is a political committee that is not a political party committee, an authorized committee of a candidate, or a separate segregated fund (“SSF”) established by a corporation or labor organization. *See* 11 C.F.R. §§ 100.5(a), 106.6(a). Corporations and labor organizations may underwrite the administrative and fundraising costs of their connected SSFs, but may solicit contributions only from a “restricted class” of individuals associated with the company or union. 2 U.S.C. § 441b(b)(2)(C), (b)(4)(A); 11 C.F.R. §§ 114.1(c), 114.5(g)(1). Nonconnected political committees, on the other hand, have no such restriction, and may solicit contributions from the general public. A “multicandidate political committee” is a political committee that has been registered for at least 6 months, has more than 50 contributors and has made contributions to at least 5 candidates for federal office. 2 U.S.C. § 441a(a)(4).

D. Organizational and Reporting Requirements

Any organization that qualifies as a political committee must observe certain organizational and reporting requirements. Every political committee is required to have a treasurer who, in turn, is required to keep an account and preserve the records, *inter alia*, of the committee’s receipts and disbursements. 2 U.S.C. § 432(a)-(d). Political committees are also

required to file a statement of organization with the Commission within 10 days of either their designation (authorized campaign committees), establishment (separate segregated funds), or becoming a political committee within the meaning of section 431(4) (all other political committees). 2 U.S.C. § 433. Political committees must file periodic reports for disclosure to the public of all receipts from and disbursements to a person in excess of \$200 in a calendar year (and in some instances, of any amount), as well as total operating expenses and cash on hand. 2 U.S.C. § 434.

E. Contribution Limits

The Act and Commission regulations prohibit any individual from making contributions that in the aggregate exceed \$5,000 per year to a political committee that is not an authorized committee of a candidate or a political party committee. 2 U.S.C. § 441a(a)(1)(C); 11 C.F.R. § 110.1(d). The Act and Commission regulations also prohibit any individual from making contributions to political committees (that are not national party committees) that in the aggregate exceed \$46,200 for the 2011-2012 biennial period. 2 U.S.C. § 441a(a)(3)(B); 11 C.F.R. § 110.5.¹ The Act correspondingly prohibits political committees from knowingly accepting contributions in excess of these limitations. 2 U.S.C. § 441a(f). In addition, the Act and Commission regulations prohibit corporations and labor organizations from making contributions to candidates. 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(b)(1).

The Supreme Court has upheld the limits on contributions to multicandidate political committees that make contributions to candidates as a legitimate means to prevent corruption or its appearance. *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 197-98 (1981) (“*CalMed*”) (“Congress enacted § 441a(a)(1)(C) in part to prevent circumvention of the very limitations on contributions

¹ See Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold, 76 Fed. Reg. 8368 (FEC Notice, Feb. 14, 2011).

that this Court upheld in *Buckley*.”); *see id.* at 203 (Blackmun, J., concurring) (“[C]ontributions to multicandidate political committees may be limited to \$5,000 per year as a means of preventing evasion of the limitations on contributions to a candidate or his or her authorized campaign committee upheld in *Buckley*.”).

Following the Supreme Court’s decision in *Citizens United v. FEC*, 130 S. Ct. 876, 909 (2010), in which the Court held that “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption,” the D.C. Circuit struck down the contribution limits at 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3) as applied to political committees that make only independent expenditures. *SpeechNow.org v. FEC*, 599 F.3d 686, 689, 694 (D.C. Cir. 2010) (en banc) (“*SpeechNow*”). At the same time, the D.C. Circuit upheld the reporting requirements for political committees in 2 U.S.C. §§ 432, 433, and 434(a), as well as the organizational requirements of 2 U.S.C. §§ 431(4) and 431(8). *Id.* at 696-98. To “be clear,” the D.C. Circuit noted, it decided questions of constitutionality only “as applied to contributions to *SpeechNow*, an independent expenditure-only group. [The] holding does not affect, for example, § 441a(a)(3)’s limits on direct contributions to candidates.” *Id.* at 696.

In two recent advisory opinions, the Commission interpreted *Citizens United* and *SpeechNow* and concluded that political committees that each sought to make only independent expenditures (and not any monetary or in-kind contributions or coordinated communications) may accept unlimited contributions from individuals, other political committees, corporations, labor organizations, and “the general public” to fund such independent expenditures. *See* FEC Advisory Op. 2010-11 (Commonsense Ten), 2010 WL 3184269, at *1-*2 (July 22, 2010) (“Commensense Ten AO”); FEC Advisory Op. 2010-09 (Club for Growth), 2010 WL 3184267,

at *2 (July 22, 2010) (“Club for Growth AO”). Consistent with both *Citizens United* and *SpeechNow*, the Commission explained that these independent expenditure-only political committees must comply with the Act’s registration and reporting requirements. Commonsense Ten AO, at *1, *2; Club for Growth AO, at *2, *4. *See Citizens United*, 130 S. Ct. at 909; *SpeechNow*, 599 F.3d at 696. The Commission approved Club for Growth’s plan to establish a new independent expenditure-only political committee even though the Club also administers a separate segregated fund, Club for Growth PAC, that makes contributions to candidates. The Club’s new independent expenditure-only committee, however, will not accept any contributions from Club for Growth PAC, nor will it transfer any funds to the PAC. Club for Growth AO, at *2.

III. PLAINTIFFS

Plaintiff Rear Admiral James J. Carey is retired from the United States Navy and resides in Alexandria, Virginia. (Ver. Compl. ¶ 8.) Carey is the founder and chairman of the National Defense Committee (“NDC”), a non-profit organization of war veterans headquartered in Northern Virginia. He formed NDC with several colleagues during the late 1990s with the stated goals of addressing certain military, defense, and veterans issues, including military voting, reemployment following service, and campus access for military recruiters. *See* NDC, *Who We Are* (Feb. 25, 2011) (FEC Exh. 1); The Pers. Website of Rear Adm. (Ret.) James J. Carey, *Links* (Feb. 27, 2011) (FEC Exh. 2).

In 2000, Carey registered plaintiff National Defense PAC (“NDPAC”) with the Commission as a nonconnected political committee, and he has served as its treasurer ever since. NDPAC, Stmt. of Org. (July 17, 2000) (FEC Exh. 3). Carey formed NDPAC to support the candidacy of military veterans who hold certain positions concerning the size of government and

national defense and military issues. NDPAC, (Feb. 25, 2011) (FEC Exh. 4 at 2-3); FEC Exh. 2 at 2-3; *see also* Ver. Compl. ¶¶ 10, 12. NDPAC is “headquartered in Northern Virginia.” Carey Website, *Links* (Feb. 27, 2011) (FEC Exh. 2 at 2). (*See also* Ver. Compl. (caption listing NDPAC’s Virginia address).) And it is incorporated in Virginia. (Ver. Compl. Exh. A, at ECF p. 7 (email from Dan Backer, NDPAC, to William Powers, FEC, Aug. 16, 2010) (confirming NDPAC is incorporated in Virginia).) It has continuously filed reports with the Commission since 2000 and obtained multicandidate political committee status in 2004. FEC, Reports Image Index for National Defense PAC (FEC Exh. 5 at 1-3). Carey filed NDPAC’s reports until 2009, when NDPAC’s Assistant Treasurer began filing its reports. *See id.*; NDPAC, Stmt. of Org., Dec. 29, 2009 (FEC Exh. 6 at 3).

In 2002, Carey registered another political committee, “National Defense Committee PAC,” listing NDC as a “connected” organization. NDC PAC, Stmt. of Organization, Nov. 18, 2002 (FEC Exh. 7 at 2). Carey continuously filed reports for National Defense Committee PAC from 2002 until 2009, when the Assistant Treasurer began to file its reports. FEC, Reports Image Index for National Defense PAC (FEC Exh. 8 at 1-2); National Defense Committee PAC, Stmt. of Organization, Dec. 29, 2009 (FEC Exh. 9). National Defense Committee PAC’s amended registration in 2009 no longer listed NDC as a connected organization. (FEC Exh. 9 at 2) NDPAC and National Defense Committee PAC indicated for the first time that they were affiliated with each other in their amended 2009 registrations. NDPAC, Stmt. of Organization, Dec. 29, 2009 (FEC Exh. 6 at 3); National Defense Committee PAC, Stmt. of Organization, Dec. 29, 2009 (FEC Exh. 9 at 3).

Plaintiff Kelly Eustis resides in Sacramento, California. (Ver. Compl. ¶ 9.) Eustis is the founder, president, and CEO of Eusatrix Corporation, which describes itself as “a strategic

public relations and political consulting firm specializing in campaigns and issue advocacy, public affairs, and online strategy.” Eusatrix Corp., *About Eusatrix* (Feb. 25, 2011) (FEC Exh. 10). “Eusatrix serves conservative political, non-profit, and corporate clients across the United States.” (*Id.*) Eustis has never been reported to have made a contribution to a federal candidate of \$200 or more. FEC, Transaction Query By Individual, (Feb. 25, 2011) (query “Kelly Eustis”) (FEC Exh. 11).

NDPAC alleges that it would like to pay to run an advertisement on the *Newsmax* website expressly advocating against the election of a candidate for New York’s ninth congressional district in the months leading up to the 2012 election. (Ver. Compl. ¶ 24.) Such an advertisement would cost \$6,300 and Eustis would like to contribute that amount to NDPAC. (*Id.*)

IV. ADVISORY OPINION REQUEST

On August 11, 2010, NDPAC submitted a letter to the Commission requesting an advisory opinion from the Commission. (Ver. Compl. Exh. A (FEC, AO Request 2010-20, Letter from Dan Backer, NDPAC, to Thomasenia Duncan (“AO Request”), Aug. 11, 2011).) NDPAC, a political committee that makes both contributions and independent expenditures, outlined its intention to accept unlimited contributions from individuals, other political committees, corporations, and labor organizations to fund independent expenditures from a separate bank account. (*Id.*) The Commission considered two draft responses to NDPAC’s AO Request on September 23, 2010. (Ver. Compl. Exh. D (FEC Certification, Sept. 23, 2010).)

Draft A concluded that a committee such as NDPAC could not accept unlimited contributions if it makes both contributions to candidates and independent expenditures. (Ver. Compl. Exh. B (FEC, Draft AO 2010-20 – Revised Draft A, Agenda Doc. 10-60-B (“Draft A”)),

Sept. 23, 2010).) That draft concluded that the Act and Commission regulations prohibit such a political committee from accepting the types of contributions contemplated by NDPAC's request, even if it uses a separate bank account. (*Id.* at 6-7 (citing 2 U.S.C. § 441a(a)(1)(C), (f) and 2 U.S.C. § 441b(a)).) Draft A relied on Supreme Court decisions upholding these amount limitations and source prohibitions as a valid means of preventing corruption as applied to political committees that make both contributions and expenditures. (*Id.* at 3, 7 n.3 (citing *CalMed*, 453 U.S. at 197-98, and *FEC v. Beaumont*, 539 U.S. 146, 154 (2003)).) The draft distinguished *SpeechNow* as well as the Commonsense Ten and Club for Growth Advisory Opinions by noting that each of the entities in those matters made only independent expenditures. (*Id.* at 4.)

Draft B concluded that NDPAC may accept unlimited contributions to its separate bank account to fund independent expenditures. (Ver. Compl. Exh. C (FEC, Draft AO 2010-20 – Draft B, Agenda Doc. 10-60-A (“Draft B”), Sept. 21, 2010).) The draft relied on the holdings in *Citizens United*, *SpeechNow*, and *EMILY's List v. FEC*, 581 F.3d 1, 12 (D.C. Cir. 2009), that independent expenditures do not corrupt or create the appearance of corruption. (Draft B, at 5-7.) The draft cited *EMILY's List* for the proposition that NDPAC merely had to set up separate accounts to accept unlimited contributions, and concluded that NDPAC's making of contributions did not meaningfully distinguish it from *SpeechNow*, Commonsense Ten, or the Club for Growth. (*Id.* at 5-6.) Draft B also noted, in the alternative, that the “persons who created and operate NDPAC may establish a separate political committee to make independent expenditures.” (*Id.* at 7 n.4.)²

² NDPAC also sought in its AO Request to allocate its administrative and operating expenses between its accounts however it wished. (Ver. Compl. Exh. A, at 5.) Draft A did not permit such allocation because, *inter alia*, the draft did not permit creation of the separate

Two commissioners supported issuance of Draft A, three supported issuance of Draft B, and one did not vote. (Ver. Compl. Exh. D.) Because the affirmative vote of four members of the Commission is required for the Commission to render an advisory opinion, 2 U.S.C. §§ 437c(c), 437d(a)(7); 11 C.F.R. § 112.4(a), the Commission was thus unable to render an opinion in this matter. As a result, the defense in this case is consistent with the position of the “controlling group” of Commissioners that declined to vote for Draft B, which would have provided NDPAC the relief it seeks in this lawsuit. *Cf. FEC v. National Republican Senatorial Comm.*, 966 F.3d 1471, 1476 (D.C. Cir. 1992) (explaining that when the Commission deadlocks and a case is then brought under 2 U.S.C. § 437g(a)(8), the decision of the controlling group of Commissioners becomes the subject of judicial review).

ARGUMENT

I. A PRELIMINARY INJUNCTION IS AN EXTRAORDINARY REMEDY THAT REQUIRES PLAINTIFFS TO MEET A HEAVY BURDEN

In seeking a preliminary injunction, plaintiffs bear a heavy burden. “A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.* 129 S. Ct. 365, 374 (2008). “A preliminary injunction is an extraordinary remedy that should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion.” *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)); *see also Winter*, 129 S. Ct.

accounts at all. (Ver. Compl. Exh. B, at 7.) Draft B indicated that NDPAC must allocate its administrative and operating expenses between its accounts in a manner that corresponds to the proportion of its activities funded by each account. (Ver. Compl. Exh. C, at 7-8.) Plaintiffs do not seek in this litigation the right to allocate administrative and operating costs in any manner they see fit. (See Ver. Compl. Prayer for Relief ¶¶ 1-4.)

375-76 (plaintiff must make “clear showing” that extraordinary remedy is necessary; “only a [] possibility of irreparable harm” is not sufficient) (internal quotation marks and citation omitted).

Plaintiffs shoulder a particularly heavy burden here because the requested relief “would alter, not preserve, the *status quo*.” *Veitch v. Danzig*, 135 F. Supp. 2d 32, 35 (D.D.C. 2001). “The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Plaintiffs, however, seek to *alter* the relative position of the parties while their request for permanent relief is pending by preventing the Commission from enforcing provisions of FECA that have been in effect for over thirty years. *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301 (1993) (Rehnquist, C.J., in chambers) (refusing to enjoin enforcement of congressional Act, despite First Amendment claim: “By seeking an injunction, applicants request that I issue an order *altering* the legal status quo.”) (emphasis in original). There is a “presumption of constitutionality which attaches to every Act of Congress.” *Walters v. Nat’l Ass’n of Radiation Survivors*, 468 U.S. 1323, 1324 (1984) (Rehnquist, J., in chambers). Plaintiffs fail to meet their burden of showing clearly that the longtime status quo should be altered and a federal statute preliminarily enjoined.

II. PLAINTIFFS CANNOT DEMONSTRATE A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS

Plaintiffs do not contest the facial constitutionality of the \$5,000 limit on contributions to political committees. Nor is it disputable that *CalMed* upheld that contribution limit as applied to political committees — like NDPAC — that make both contributions and independent expenditures with the money they receive. Plaintiffs nevertheless argue that under *Citizens United*, *SpeechNow*, and *EMILY’s List*, they must be permitted to do what *CalMed* prohibits because NDPAC will segregate its funds in separate bank accounts. As explained below, the

cases plaintiffs rely upon do not go that far. However, to take full advantage of the recent decisions they cite, plaintiffs need only follow the model of Club for Growth, *see* Club for Growth AO; *supra* pp. 5-6, and establish a separate political committee to accept unlimited contributions to spend on independent expenditures.

A. The Supreme Court Has Repeatedly Held That the Act’s Contribution Limits Are Valid Means of Preventing Corruption or Its Appearance

In *Buckley*, the Supreme Court upheld the Act’s limits on the amount individuals and multicandidate political committees can contribute to federal candidates and their campaign committees. 424 U.S. at 23-38; *see also CalMed*, 453 U.S. at 194 (discussing *Buckley*’s holdings). *Buckley* “drew a line between expenditures and contributions, treating expenditure restrictions as direct restraints on speech” while saying, “in effect, that limiting contributions left communications significantly unimpaired.” *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 386-87 (2000) (citing *Buckley*, 424 U.S. at 19-21). Contribution limits “permit[] the symbolic expression of support” without “in any way infring[ing] the contributor’s freedom to discuss candidates and issues.” *Buckley*, 424 U.S. at 21. These limits help prevent corruption and the appearance of corruption. “To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined.” *Id.* at 26-27. “Of almost equal concern . . . is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.” *Id.* at 27; *see also Citizens United*, 130 S. Ct. at 901 (“The *Buckley* Court recognized a ‘sufficiently important’ governmental interest in ‘the prevention of corruption and the appearance of corruption.’”) (quoting *Buckley*, 424 U.S. at 25).

In *CalMed*, the Court explained that section 441a(a)(1)(C)'s limits on contributions to multicandidate political committees "further the governmental interest in preventing the actual or apparent corruption of the political process" by "prevent[ing] circumvention of the very limitations on contributions that th[e] Court upheld in *Buckley*." *CalMed*, 453 U.S. 197-98 (plurality opinion); *id.* at 203 (Blackmun, J., concurring). The Court recognized that such committees are "essentially conduits for contributions to candidates," and thus "pose a perceived threat of actual or potential corruption" that is not posed by "a committee that makes *only* independent expenditures." *Id.* at 203 (Blackmun, J., concurring) (emphasis added). Four justices adopted the conclusion in the House Conference Report regarding the amendments that became section 441a(a)(1)(C) that multicandidate political committees "'appear to be separate entities pursuing their own ends, but are actually a means for advancing a candidate's campaign.'" *Id.* at 199 n.18 (plurality opinion) (quoting H.R. Conf. Rep. No. 94-1057, at 57-58 (1976)). Justice Blackmun did not disclaim the Conference Report's findings or the plurality's reliance on them, and concluded that "contributions to multicandidate political committees may be limited to \$5,000 per year as a means of preventing evasion of the limitations on contributions to a candidate or his authorized campaign committee upheld in *Buckley*." *Id.* at 203 (Blackmun, J., concurring) (citing *Buckley*, 424 U.S. at 38).

Plaintiffs mischaracterize *CalMed's* holding as merely the "plurality's" conclusion. (E.g., Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction ("PI Br.") at 17 ("a *plurality of the Court upheld* the limit on the ground that it served the government's interest in preventing circumvention of the limits on contributions made directly to candidates"); *id.* ("Thus, *according to the plurality*, contributors seeking to avoid the . . . candidate contribution limits could make larger contributions to multi-candidate committees,

which could then be funneled to candidates.”) (emphases added).) But as explained above, Justice Blackmun agreed with the plurality on the constitutionality of the contribution limits as applied to CALPAC, a political committee that made both contributions and expenditures. *CalMed*, 453 U.S. at 203 (Blackmun, J., concurring). Justice Blackmun’s reservation concerned “contributions to a committee that makes only independent expenditures.” *Id.*

CalMed also makes clear that the “*Buckley* standard of scrutiny” for contribution limits applies here, where NDPAC “plans to make contributions to candidates for federal office” (PI Br. at 1). *See CalMed*, 453 U.S. at 202 (Blackmun, J., concurring) (limits on contributions to multicandidate committees “can be upheld only ‘if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms’”) (quoting *Buckley*, 424 U.S. at 25). Although plaintiffs attempt to suggest that a different level scrutiny *may* apply here, they fail to offer any support for an alternative constitutional standard, or any basis for deviating from the Court’s approach in *CalMed*. (*See* PI Br. at 12-13, 27.) The question here is thus whether sections 441a(a)(1)(C) and 441a(a)(3) serve a “sufficiently important interest” and are “closely drawn to avoid unnecessary abridgment of [plaintiffs’] associational freedoms.” *CalMed*, 453 U.S. at 202-03 (Blackmun, J., concurring). As discussed below, the answer to both parts of that question is yes.

B. Sections 441a(a)(1)(C) and 441a(a)(3) Serve Important Governmental Interests as Applied to NDPAC

1. The Supreme Court Has Recognized that the Act’s Limits on Contributions to Multicandidate Political Committees Prevent Corruption or Its Appearance

As explained *supra* pp. 12-13, the Supreme Court has upheld the Act’s limits on contributions to multicandidate political committees to prevent circumvention of the Act’s limits on direct contributions to candidates. *CalMed*, 453 U.S. 199 (plurality opinion); *id.* at 203

(Blackmun, J., concurring). The fact that a multicandidate political committee may also make independent expenditures does not eliminate or even reduce its function as “‘a means for advancing a candidate’s campaign.’” *CalMed*, 453 U.S. at 199 n.18 (plurality opinion) (quoting H.R. Conf. Rep. No. 94-1057, at 57-58 (1976)).

Moreover, the plurality’s concern in *CalMed* — that donors who make unlimited contributions, even if ostensibly targeted to pay for administrative expenses, could “completely dominate the operations and contribution policies of independent political committees” — applies equally here. *Id.* at 199 n.19. Specifically, individuals and groups who seek to maximize their contributions to candidates for federal office could make large “independent expenditure” donations to NDPAC as a means to gain control over NDPAC’s contribution decisions. And corporations and unions, from which NDPAC intends to accept unlimited contributions (*see* Ver. Compl. ¶ 15.a.; PI Br. at 3), could seek to evade the ban on their direct contributions to candidates by obtaining influence over NDPAC’s contributions through large donations to NDPAC’s independent expenditure account. NDPAC’s contributors could leverage their unlimited contributions to control NDPAC’s direct contributions to federal candidates “to an extent . . . far greater than the individual or group [or corporation or union] that finances the committee’s [independent expenditures] would be able to do acting alone.” *CalMed*, 453 U.S. at 199 n.19. Permitting NDPAC to accept unlimited contributions, even if intended to be used for independent expenditures, could thus result in corruption or the appearance of corruption by facilitating the “circumvention of the very limitations on contributions that th[e] Court upheld in *Buckley*.” *CalMed*, 453 U.S. at 197-98.

To be sure, maintaining separate bank accounts may reduce the most blatant avenue for corruption: the *direct* circumvention of the contribution limits — *i.e.*, NDPAC’s conversion of

unrestricted independent expenditure donations into candidate contributions. But the creation of separate bank accounts does not eliminate the potential for individuals, groups, corporations, or unions to try to leverage unlimited donations as a means to pressure an organization to direct contributions to particular federal candidates. Nor do separate bank accounts end “the appearance of improper influence [which] ‘is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.’” *Buckley*, 424 U.S. at 27 (quoting *U.S. Civil Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548, 565 (1973)). While the public may be aware of the *activities* of political committees like NDPAC — *i.e.*, whether they make independent expenditures, contributions, or both — the public is less likely to be aware of committees’ internal financial controls or the nature and number of their various bank accounts. Separate bank accounts may thus “[l]eave the perception of impropriety unanswered.” *Shrink*, 528 U.S. at 390.

Requiring NDPAC to establish a separate, independent expenditure-only committee to solicit and accept unlimited contributions for its independent expenditures reduces the potential for both actual and apparent corruption created by individuals, corporations, and unions giving unrestricted contributions to a political committee that itself makes contributions directly to federal candidates. As discussed *infra* pp. 28-30, the burden imposed by such a requirement is not onerous, and it is closely drawn to meet this “sufficiently important” interest.

Plaintiffs incorrectly suggest (PI Br. at 16-18) that Justice Blackmun’s caveat regarding “contributions to a committee that makes only independent expenditures” undermines the applicability of *CalMed’s* analysis or holding here. *CalMed*, 453 U.S. at 203 (Blackmun, J., concurring). Although Justice Blackmun did observe that “contributions to a committee that makes *only independent expenditures* pose no such threat [of corruption],” *id.* (emphasis added),

NDPAC does not even purport to be such a committee. NDPAC instead seeks not only to solicit and accept donations for independent expenditures, but also to “[a]ccept[] contributions from individuals and other political committees . . . to expend as *campaign contributions to candidates.*” (PI Br. at 3 (emphasis added).)³ Finally, plaintiffs conspicuously omit Justice Blackmun’s important qualification when quoting his admonition that “a different result would follow if § 441a(a)(1)(C) were applied to contributions to a political committee *established for the purpose of making independent expenditures, rather than contributions to candidates.*” Compare *CalMed*, 453 U.S. at 203 (Blackmun, J., concurring) (emphases added), with PI Br. at 17 (quoting italicized portion of Blackmun concurrence but omitting underscored words). Since NDPAC was established for the purpose of making *both* independent expenditures *and* contributions to federal candidates, Justice Blackmun’s caveat is inapposite here.

2. Plaintiffs’ Reliance on *SpeechNow* and *EMILY’s List* Is Misplaced

SpeechNow does not support plaintiffs’ arguments because that case involved an organization that made only independent expenditures. The en banc D.C. Circuit could not have been more explicit when it stated, “We should be clear, however, that we only decide these questions as applied to contributions to *SpeechNow*, an independent expenditure-only group.” 599 F.3d at 696. The court thus carved out from the scope of its decision organizations like NDPAC, which make direct contributions to federal candidates.

³ Plaintiffs go even further by suggesting that “National Defense PAC’s case is distinguishable from the fact pattern in *CalMed* — National Defense PAC asks to make independent expenditures, the California Medical Association did not — and falls squarely within the reason [sic] of Justice Blackmun’s controlling concurrence.” (PI Br. at 19.) However, contrary to plaintiffs’ suggestion, “CALPAC ma[de] contributions to *and expenditures on behalf of candidates* in state and federal elections.” *FEC v. Cal. Med. Ass’n*, 502 F. Supp. 196, 198 (N.D. Cal. 1980) (emphasis added).

To be clear, plaintiffs have the right, consistent with the Commission’s recent Advisory Opinions, to establish a separate, independent expenditure-only political committee that, like the independent expenditure-only political committees created by *SpeechNow*, Club for Growth, and Commonsense Ten, could accept unlimited contributions for independent expenditures. *See* Commonsense Ten AO, at *1-*2; Club for Growth AO, at *2. In those opinions, the Commission concluded that a political committee that does “not make any monetary or in-kind contributions (including coordinated communications) to any other political committee or organization,” and makes only independent expenditures may “solicit[] and accept[] unlimited contributions from individuals, political committees, corporations, and labor organizations for the purpose of making independent expenditures.” Commonsense Ten AO, at *1-*2; Club for Growth AO, at *1. Plaintiffs thus remain free to follow the Club for Growth model approved in Advisory Opinion 2010-09 and establish two political committees, one for independent expenditures and one for contributions to federal candidates.⁴ The independent expenditure-only committee, like the committees at issue in *SpeechNow* and in the Commission’s recent Advisory Opinions, would be restricted to making independent expenditures and thus could not make any monetary or in-kind contributions to, or coordinate communications with, any candidate, other political committee or organization. (*Cf.* Draft A, at 4 (distinguishing NDPAC’s request to make both contributions and independent expenditures from the holdings in *Citizens United*, 130 S. Ct. at 909, and *SpeechNow*, 599 F.3d at 689, and the Commission’s conclusions in the Commonsense Ten and Club for Growth AOs).) But plaintiffs, like Club for Growth, would

⁴ In addition to its new, independent expenditure-only political committee, Club for Growth, an incorporated non-profit organization, also has a separate segregated fund that receives funds subject to the Act’s contribution limits and makes candidate contributions. *See* Club for Growth AO, at *2; Committees and Candidates Supported/Opposed for Club for Growth PAC, FEC Disclosure Database, (Feb. 25, 2011) (FEC Exh. 12).

remain free to make candidate contributions from NDPAC, as long as that separate committee observes the Act’s source and amount limits and other applicable requirements.

The decision in *EMILY’s List* does not require a different result. Contrary to plaintiffs’ argument (PI Br. at 21), *EMILY’s List* does not “squarely decide[]” the question here. (Plaintiffs’ AO Request did not even mention the case. (*See* Ver. Compl. Exh. A (FEC AO Request 2010-20), at 1-2).) Unlike this case, *EMILY’s List* involved a challenge to Commission regulations — not to any statutory provisions of FECA — governing how funds contributed for nonfederal election activities could be spent, how certain “mixed” federal and nonfederal activity could be financed, and whether funds solicited in certain ways are federal contributions. *See, e.g., EMILY’s List*, 581 F.3d at 20 (rejecting FEC regulations that “federalize[d] the funding and reporting of a large portion of [EMILY’s List’s] *nonfederal* receipts and disbursements, which are not made for the purpose of influencing federal elections”) (emphasis added); *id.* at 31 (Brown, J., concurring) (EMILY’s List “challenge[d] the regulations as the ‘functional equivalent of spending limits, prohibiting EMILY’s List from supporting *state and local* candidates in certain ways when its federal funds are exhausted’ and claim[ed] they [were] not properly tailored because they ‘restrict[ed] vast amounts of *nonfederal activity*’”) (quoting EMILY’s List Br. at 17) (emphasis added by Brown, J.).

The Commission had originally promulgated the allocation regulations to address, *inter alia*, the fact that committees like EMILY’s List are subject to both federal campaign finance laws and the distinct laws of each state in which they act. *See* Section 106.6: Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Committees, 55 Fed. Reg. 26,058, 26,066 (FEC Explanation and Justification, June 26, 1990) (“This section has been added to the rules to provide . . . detailed instructions as

to how [political committees] are to allocate their administrative expenses and costs for combined federal and non-federal activities.”). The allocation regulations “appl[ied] *only* to those committees that make disbursements in connection with federal and non-federal elections.” *Id.* (emphasis added). The regulations — including their revisions in 2007 — thus clarified when such committees could use “hard money” subject to federal campaign finance requirements, when they were permitted to use “soft money” that was not subject to such federal restrictions (but is subject to various state-law restrictions), and when they could use an allocated combination of both for certain mixed activity. *See* 11 C.F.R. §§ 100.57 (2009), 106.6(c), (f) (2009); *see also, e.g.*, Political Committee Status, 72 Fed. Reg. 5595, 5603 (FEC Supplemental Explanation and Justification, Feb. 7, 2007).

The *EMILY's List* decision ordered the district court to vacate the three challenged regulations, *EMILY's List*, 581 F.3d at 25, and the agency has implemented the courts' orders by deleting the regulations, *see* Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees, 75 Fed. Reg. 13,223, 13,223-24 (FEC Final Rule, Mar. 19, 2010); Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees, 74 Fed. Reg. 68,661, 68,661-62 (FEC Interim Final Rule, Dec. 29, 2009). But *EMILY's List* neither invalidated nor even considered the constitutionality of the contribution limits imposed by sections 441a(a)(1)(C) and 441a(a)(3), which were not challenged in that case and concern only contributions made to influence *federal* elections.⁵ While the Commission may consider

⁵ Indeed, at oral argument counsel for EMILY's list argued that *CalMed* ““didn't raise any of the issues in this case”” and that its analysis of limits on contributions ““made to [a] federal program”” has no ““bear[ing] at all on this invasion of our state and local programs through the promulgation of these excessive federal regulatory schemes.”” *EMILY's List*, 581 F.3d at 32 (Brown, J., concurring) (quoting Tr. of Oral Arg. at 32-33).

additional rulemaking to implement the decision, *see* Club for Growth AO, at *1 n.1, nothing in the opinion requires the Commission to stop enforcing sections 441a(a)(1)(C) and 441a(a)(3) or the regulations implementing those statutory provisions.

Although the majority opinion in *EMILY's List* grounded its decision on broad constitutional principles, it must be reconciled with both *CalMed* and *SpeechNow*. In particular, the panel majority reasoned that a “non-profit that makes expenditures to support federal candidates does not suddenly forfeit its First Amendment rights when it decides also to make direct contributions to parties or candidates.” 581 F.3d at 12. Through advisory opinions, the Commission has honored that reasoning consistent with other precedent by permitting groups to maintain one political committee to accept limited funds for contributions to federal candidates, and also establish a second political committee to accept unlimited contributions for independent expenditures. *E.g.* Club for Growth AO, at *2.

Plaintiffs nevertheless argue that notwithstanding *CalMed*, *EMILY's List* establishes a First Amendment right for NDPAC to accept both source- and amount-limited donations for contributions to federal candidates and unlimited contributions for independent expenditures, as long as the respective contributions are deposited into separate bank accounts. (PI Br. at 21-22.) But *EMILY's List* was decided in a different context and does not resolve the distinct issue presented here. *See, e.g., Lyng v. Int'l Union, United Auto., Aerospace and Agric. Implement Workers of Am.*, 485 U.S. 360, 369 n.7 (1988) (distinguishing prior case ““decided in [a] significantly different context””) (quoting *Maher v. Roe*, 432 U.S. 464, 475 n.8 (1977)); *Troy Corp. v. Browner*, 120 F.3d 277, 284 (D.C. Cir. 1997) (holding that out-of-circuit decision “under a different statute . . . on a different factual record would not compel a similar result on our part even if that case were a binding precedential decision from our own circuit”) (emphasis

added); *Haw. Gov't Emp. Ass'n v. Martoche*, 915 F.2d 718, 726 (D.C. Cir. 1990) (“We are satisfied that [the case relied upon by plaintiffs] is not controlling here. The facts of that case differ in critical respects.”); *Otsuka v. Polo Ralph Lauren Corp.*, No. C 07-02780, slip op., 2010 WL 366653, at *5 n.2 (N.D. Cal. Jan 25, 2010) (declining to rely on case that “dealt with . . . an entirely different context from that presented” in pending case).

Moreover, accepting plaintiffs’ view of *EMILY’s List* would require the Court to ignore or decline to follow the Supreme Court’s decision in *CalMed*, which addressed the precise statute and question presented here. And *SpeechNow*, the only precedent invalidating the contribution limits at issue here, expressly stated that it was addressing only political committees that make only independent expenditures. 599 F.3d at 696.

Alternatively, to the extent that *EMILY’s List’s* statements regarding “hard-money” and “soft-money” accounts can be interpreted to apply outside the context of mixed federal and non-federal spending to conduct like plaintiffs’ proposed expenditures that are *entirely* federal, that limited portion of the majority opinion should be treated as dicta. The suggestion that separate accounts are the constitutionally required solution for addressing possible corruption in the context of a non-profit’s *federal* independent expenditures was not necessary to the decision regarding whether to strike down Commission regulations for allocation of federal and non-federal spending. The distinct issue here regarding exclusively federal activity was simply not before the court in *EMILY’s List*. Cf. *TRT Telecomms. Corp. v. FCC*, 876 F.2d 134, 149 (D.C. Cir. 1989) (where agency “has never been asked, nor purported to speak to the question” presented, agency’s prior interpretations of statute, “were necessarily rendered in different contexts, and, accordingly, were dicta”). Indeed, because the independent spending NDPAC alleges it wants to make consists entirely of expenditures expressly advocating the election or

defeat of federal candidates (*see* Ver. Compl. ¶¶ 12, 24, 31, 35, 44-46), the account it seeks to create has as its “major purpose” the election of federal candidates and thus merits treatment as a political committee. *See Buckley*, 424 U.S. at 79.⁶ *EMILY’s List* did not address facts like these.⁷

CalMed, which the Supreme Court has “consistently cited . . . for the unqualified proposition that it is constitutional to limit contributions to multicandidate committees,” thus remains the controlling authority here. *EMILY’s List*, 581 F.3d at 37 (Brown, J., concurring) (citing *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 441-42 (2001); *FEC v. NRA Political Victory Fund*, 513 U.S. 88, 97 (1994); *Buckley*, 424 U.S. at 38). And none of the other cases on which plaintiff s rely (PI Br. at 23-28) undermine the Court’s conclusion in *CalMed* upholding limits on contributions to political committees like NDPAC that make direct contributions to federal candidates. *See FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007) (narrowing the constitutional application of limits on corporate independent spending on electioneering communications, but not addressing limits on contributions to political committees or other groups); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986)

⁶ *See also* 11 C.F.R. § 102.5(a)(i) (explaining when political committee’s federal account “shall be treated as a *separate Federal political committee* that must comply with the requirements of the Act including the registration and reporting requirements of 11 CFR parts 102 and 104”) (emphasis added).

⁷ Plaintiffs contend that the Commission “fail[ed] to follow *EMILY’s List*” when it did not issue their requested advisory opinion. (PI Br. at 11.) But at the time the Commission was considering the AO Request, it appeared that any potential enforcement action against NDPAC would be brought outside this Circuit, in the Northern District of Virginia, where NDPAC resides and is incorporated. *See supra* pp. 6-7; 2 U.S.C. § 437g(a)(6)(A) (providing for venue of Commission enforcement actions “in the district court of the United States for the district in which the person against whom such action is brought is found, resides, or transacts business”). Thus, *EMILY’s List* would have persuasive, but not binding, authority for such a hypothetical enforcement action, because the federal government is not bound to treat a decision of one circuit court of appeals as binding law in the other circuits. *United States v. Mendoza*, 464 U.S. 154, 160 (1984).

(exempting limited class of ideological non-profit corporations from FECA’s then-existing prohibition on corporate expenditures); *FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 494 (1985) (striking down limit on political committee’s independent spending but distinguishing contribution limit upheld in *CalMed*); *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 298 (1981) (striking down limits on contributions to committees that spent funds to influence ballot referenda, not to make contributions to candidates); *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 790 (1978) (“risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue”); *NAACP v. Ala.*, 357 U.S. 449, 460 (1958) (recognizing First Amendment protects political association); *N.C. Right to Life, Inc. v. Leake*, 482 F. Supp. 2d 686, 698-99 (W.D.N.C. 2007) (state contribution limit unconstitutional as applied to independent expenditure-only committees), *aff’d in part, rev’d in part*, 525 F.3d 274 (4th Cir. 2008). Although some of these cases may support the undisputed proposition that individuals may pool funds to finance unlimited independent expenditures, none of them support plaintiffs’ claim that NDPAC may accept unlimited contributions while simultaneously making direct contributions to federal candidates.

3. Plaintiffs’ Analogy to Corporations and Their Separate Segregated Funds Supports the Commission’s Interpretation of Sections 441a(a)(1)(C) and 441a(a)(3)

Plaintiffs invoke the analogy of corporations — which may use their general treasuries to make unlimited independent expenditures but not direct contributions to federal candidates, and their separate segregated funds (“SSFs”), which are permitted to make direct candidate contributions — to support their argument that separate bank accounts for unlimited independent expenditures and limited candidate contributions serve an adequate “prophylactic effect” to address the government’s anti-corruption interests here. (*See* PI Br. at 14-16.) But this analogy

actually weakens, not strengthens, plaintiffs’ position. As plaintiffs concede, SSFs are legally separate entities from the corporations or unions to which they are connected. (*Id.* at 19 (“The FEC . . . may point out that a corporation or labor union (‘connected organization’) and its separate segregated fund are legally separate entities.” (citations omitted).) As the Supreme Court stated in *Citizens United*, “[a] PAC is a separate association from the corporation” subject to its own administrative and regulatory obligations. 130 S. Ct. at 897. An SSF “is considered a ‘political committee’ under the Act.” *Mass. Citizens for Life*, 479 U.S. at 253 (citing 2 U.S.C. § 431(4)(B)). The corporation-PAC scenario is thus more analogous to the separate political committee approach upheld in *SpeechNow* and approved by the Commission in Advisory Opinions 2010-11 and 2010-09, not to plaintiffs’ proposal to allow a single legal entity to separate its activities only by creating two separate bank accounts.

4. The Hard/Soft Money Account System for Committees that Engage in Both Federal and Nonfederal Activity Is Insufficient to Address Corruption and the Appearance of Corruption Here

Plaintiffs further suggest that even though corporations and their SSFs are necessarily separate legal entities, the “prophylactic” of separate “hard-money” and “soft-money” accounts, which Commission regulations require for political committees engaged in both federal and nonfederal election activity, must be an adequate solution to address the distinct corruption concerns raised here. (PI Br. at 19-20.) Not so.

First, as discussed *supra* pp. 19-22, it is incorrect to conflate the “hard money”/“soft money” dichotomy, which relates to federal and nonfederal political activity, with *Buckley’s* expenditure/contribution dichotomy concerning exclusively federal activity. The “soft money” that political committees like EMILY’s List may solicit and accept for their nonfederal activities is not analogous to the unlimited funds that independent expenditure-only committees like

SpeechNow may accept for their federal independent expenditures. Because the individual states have their own campaign finance regimes with which political committees that engage in nonfederal political activity must comply, “soft money” is not synonymous with “unlimited” funds; instead, it describes money that, while not subject to *federal* campaign finance restrictions, remains subject to those restrictions imposed by the individual states. *See* Political Committee Status, 72 Fed. Reg. 5595, 5603 (FEC Supplemental Explanation and Justification, Feb. 7, 2007) (noting that Commission regulations permit registered political committees that participate in both federal and nonfederal elections to maintain both federal and nonfederal accounts containing funds that comply, respectively, with federal and state restrictions.).

Second, as explained *supra* pp. 14-16, separate bank accounts do not adequately respond to the actual and apparent corruption concerns presented here. As long as NDPAC solicits and accepts donations for making direct contributions to federal candidates, regardless of which bank account such donations are deposited in, it functions as “a means for advancing a candidate’s campaign.” *CalMed*, 453 U.S. at 199 n.18 (plurality opinion) (quoting H.R. Conf. Rep. No. 94-1057, at 57-58 (1976)). And it thus remains available to individuals, groups, corporations, and unions as a mechanism for circumventing the Act’s limits (or outright prohibition) on direct contributions to candidates, creating the potential for actual and apparent corruption of the political process. *See, e.g., Shrink*, 528 U.S. at 390; *CalMed*, 453 U.S. at 197-99 nn.18-19 & 203; *Buckley*, 424 U.S. at 27.

The formality of separate political committees, on the other hand, addresses both actual and apparent corruption. By removing unlimited independent expenditure contributions completely from a committee engaged in contributing money directly to federal candidates, opportunities for actual circumvention of the contribution limits, and the appearance of such

circumvention, are substantially diminished. As the D.C. Circuit has explained in the context of corporate formalities, “the formalities are themselves an excellent litmus of the extent to which the individuals involved actually view the corporation as a separate being.” *Labadie Coal Co. v. Black*, 672 F.2d 92, 96-97 (D.C. Cir. 1982). Here, too, where plaintiffs seek collectively to engage in two distinct forms of federal political activity, which are subject to different federal restrictions, adherence to the formality of separate political committees for plaintiffs’ unlimited independent expenditures and their limited contributions to federal candidates would further the separation of such activities, thus reducing actual and apparent corruption. *Cf.* Carolyn B. Lamm, *Assertion of Jurisdiction Over Non-U.S. Defendants*, 785 Prac. L. Inst./Com. 85, 116-17 (Feb. 1999) (“The observation of formalities is particularly important where the business affairs of two corporations are intertwined, or where the subsidiary and parent operate parts of a single line of business [A]dherence to corporate formalities helps to ensure that third parties are not misled into believing that they are dealing with the parent.”).

Third, requiring NDPAC to create a separate political committee to accept unlimited contributions to make independent expenditures will increase full and clear disclosure of NDPAC’s federal campaign activity. The Act’s disclosure requirements remain valid and enforceable as applied to independent campaign spending. *See, e.g., Citizens United*, 130 S. Ct. at 913-14 (upholding disclaimer and reporting requirements for electioneering communications as applied to *Citizens United*, citing government’s interest in provide electorate with information). And the D.C. Circuit has confirmed that the Act’s disclosure and organizational requirements for political committees are valid as applied to groups that make only independent expenditures. *SpeechNow*, 599 F.3d at 698 (citing public’s “interest in knowing who is speaking about a candidate and who is funding that speech” as well as “expos[ure of] violations of other

campaign finance restrictions, such as those barring contributions from foreign corporations or individuals”).

Disclosing plaintiffs’ independent expenditure activity by a separate legal entity will increase transparency to the public. If separate political committee reports are submitted to the Commission, voters will more easily be able to understand which of NDPAC’s contributors have given money to support its independent advocacy and which are supporting its direct contributions to candidates. Even if a contributor donates money “towards administrative expenses” to support NDPAC’s independent expenditures, the “public has an interest in knowing” who is helping to fund that speech. *SpeechNow*, 599 F.3d at 698. Similarly, if NDPAC’s independent expenditures are paid for by a separate political committee, that specific committee will be directly identified in the disclaimers that must appear in the communications themselves, *see* 2 U.S.C. § 441d, thus making it easier for the public or press to research the Commission’s databases and determine who is funding the political committee that sponsored the public communications. And because solicitations by political committees must also identify who has paid for the solicitation, *id.*, persons who receive NDPAC’s solicitations will be more clearly informed of the exact recipient and use of their funds if they are told which political committee under the National Defense umbrella is seeking their money.

In sum, replicating a system established for differentiating federal and nonfederal campaign activity is not constitutionally required here, given the dissimilar context of a political committee seeking to make direct contributions to federal candidates while simultaneously engaging in the solicitation and acceptance of unlimited — by federal or state law — contributions for independent expenditures. The differing schemes established to regulate these distinct contexts reflect the consideration that “these entities have differing structures and

purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.” *CalMed*, 453 U.S. at 201.

C. Sections 441a(a)(1)(C) and 441a(a)(3) as Applied Are Closely Drawn to Avoid Unnecessary Abridgement of Plaintiffs’ Associational Freedoms

As applied to plaintiffs, sections 441a(a)(1)(C) and 441a(a)(3) are closely drawn to avoid unnecessary abridgement of associational freedoms. *See CalMed*, 453 U.S. at 202-03 (Blackmun, J., concurring). Indeed, plaintiffs are not “prevent[ed] . . . from joining together to exercise their First Amendment rights to speech and association” (PI Br. at 1). On the contrary, as indicated *supra* pp. 17-18, plaintiffs remain free to join together both to solicit unlimited amounts for the exclusive purpose of making independent expenditures and to accept source- and amount-limited contributions to make contributions to candidates. Plaintiffs simply must establish a separate, independent expenditure-only committee to solicit and accept unlimited contributions for independent expenditures.

The Supreme Court has explained that “[d]isclaimer and disclosure requirements may burden the ability to speak, but they ‘impose no ceiling on campaign-related activities,’ and ‘do not prevent anyone from speaking,’” *Citizens United*, 130 S. Ct. at 914 (quoting *Buckley*, 424 U.S. at 64; *McConnell v. FEC*, 540 U.S. 93, 201 (2003)) (internal quotation marks and brackets omitted). And the D.C. Circuit has specifically held that the organizational and disclosure burdens of an independent expenditure-only political committee are “minimal.”

Because SpeechNow intends only to make independent expenditures, the additional reporting requirements that the FEC would impose on SpeechNow if it were a political committee are minimal. . . . Nor do the organizational requirements that SpeechNow protests, such as designating a treasurer and retaining records, impose much of an additional burden upon SpeechNow. . . .

SpeechNow, 599 F.3d at 697. Indeed, it would require “a specious interpretation of the facts” before the Court, *id.*, for a finding that establishing and maintaining a separate, independent

expenditure-only political committee is unduly burdensome. Carey has been operating *two* political committees under the National Defense umbrella of entities for over *eight* years: plaintiff National Defense PAC and non-party National Defense Committee PAC. *See supra* pp. 6-7.⁸ By establishing those two committees and continuously reporting their receipts and disbursements for almost a decade, Carey has shown himself quite capable of operating two separate political committees. Plaintiffs have thus already accepted the expense of administration and regulatory compliance, they have appointed a treasurer, and they already are filing the requisite disclosures. *See Citizens United*, 130 S. Ct. at 897 (detailing burdens associated with forming PAC in the first instance). Moreover, in accordance with the Commission’s decision in the Club for Growth AO, the same person who serves as NDPAC’s treasurer could also serve as treasurer for an ND independent expenditure-only PAC, provided that the independent expenditure-only PAC does not engage in coordinated activity and complies with the requirements of the Commission’s conduct standards related to coordination in 11 C.F.R. § 109.21(d).⁹ Club for Growth AO, at *3 & n.7.

Finally, while NDPAC claimed in its AO Request the desire to “expand the scope of its activities” “[i]n response to the rulings in *Citizens United v. FEC* and *SpeechNow v. FEC*, as well as AO 2010-09 and AO 2010-11” (AO Request, at 2), plaintiffs have never offered any indication of why they are unable to conduct such activities as the Club for Growth intends to do

⁸ From 2002 through 2009, National Defense Committee PAC was registered with the Commission as a “connected organization” of the National Defense Committee. *See supra* p. 7; FEC Exhs. 7-9. In 2009, National Defense Committee PAC indicated that Carey had incorrectly identified itself as having a “connected organization.” *See supra* p. 7; FEC Exh. 9. The two political committee entities, NDPAC and National Defense Committee PAC, have identified themselves as affiliated since 2009. *See supra* p. 7; FEC Exhs. 6, 9.

⁹ Plaintiffs have asserted that NDPAC “does not coordinate any of its activities with candidates or national, state, district or local political party committees or their agents as defined in 2 U.S.C. § 441a(a)(7)(B) and (C) and 11 C.F.R. § 109,” and that it “does not and will not coordinate its activities with other political committees.” (PI Br. at 8-9; Ver. Compl. ¶ 30.)

in accordance with the advisory opinion the Commission issued at its request. *See* Club for Growth AO, at *2.

III. PLAINTIFFS HAVE FAILED TO SHOW IRREPARABLE HARM

Plaintiffs also fail to meet their burden of demonstrating that they will suffer irreparable harm without the requested temporary relief, another showing plaintiffs must make clearly. Plaintiffs must “articulate a tangible injury that is either ‘certain and great’ or irreparable.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 298 (D.C. Cir. 2006). To obtain a preliminary injunction, “[a] litigant must do more than merely *allege* the violation of First Amendment rights” because “the finding of irreparable injury cannot meaningfully be rested on a mere contention of a litigant.” *Wagner v. Taylor*, 836 F.2d 566, 576 n.76 (D.C. Cir. 1987) (citation and internal quotation marks omitted); *see also NTEU v. United States*, 927 F.2d 1253, 1254-55 (D.C. Cir. 1991).

Instead, where a plaintiff alleges injury from a provision that may only potentially affect speech, “the plaintiff must establish a causal link between the injunction sought and the alleged injury,” *i.e.*, “that the injunction will prevent the feared deprivation of free speech rights.” *Chaplaincy*, 454 F.3d at 301; (quoting *Bronx Household of Faith v. Bd. of Educ.*, 331 F.3d 342, 349-50 (2d Cir. 2003)). This requirement sets a “high standard for irreparable injury.” *Id.* at 297. The “injury must be both certain and great,” and “actual and not theoretical.” *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Plaintiffs must also “show that [t]he injury complained of [is] of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Id.* (citation and internal quotation marks omitted). Further, the prospective injury must be “beyond remediation.” *Chaplaincy*, 454 F.3d at 297.

A. Plaintiffs' Alleged Injuries Are Neither Actual Nor Certain

Plaintiffs fail to establish that they will be irreparably injured if they comply with the requirement that independent expenditures and contributions be conducted by different legal entities while this case is pending. Indeed, plaintiffs have several options for financing the advertisement they wish to run without violating the Act's contribution limits.

Plaintiffs conclusorily allege that “[w]ithout the ability to solicit unlimited contributions to fund [independent expenditures], [NDPAC] will not be able to speak during the 2012 electoral season.” (Ver. Compl. ¶ 25; *see* PI Br. at 5-6.) However, plaintiffs could fully accomplish their plans while this case proceeds without accepting unlimited contributions into the NDPAC multicandidate political committee. Plaintiffs could fund the planned \$6,300 expenditure in at least four obvious ways:

- NDPAC could accept a \$5,000 contribution from Eustis and combine it with \$1,300 from the PAC's existing funds. In so doing, the committee would not violate the contribution limit in 2 U.S.C. § 441a(1)(C).
- NDPAC could accept \$5,000 from Eustis and combine it with \$1,300 from another single donor or combination of donors. *See Buckley*, 424 U.S. at 21-22 (The “overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons . . .”).
- Consistent with *SpeechNow* and the Club for Growth and Commonsense Ten advisory opinions, NDPAC could set up a separate entity that accepts contributions of unlimited amounts, including \$6,300 from Eustis. *See SpeechNow*, 599 F.3d at 696; Commonsense Ten AO, at *1-*2; Club for Growth AO, at *2.
- Eustis could spend the \$6,300 “on direct political expression” rather than “contribut[ing] amounts greater than the statutory limits.” *Buckley*, 424 U.S. at 22. That is to say, Eustis could simply pay *Newsmax* to run the ad himself.

Receiving only about 5/6th of Eustis's intended contribution does not irreparably harm NDPAC given these other available avenues. Nor does it irreparably harm Eustis, for he is still able to make the “undifferentiated, symbolic act of contributing,” *Buckley*, 424 U.S. at 21, or pay for the

ad himself. And plaintiffs could avoid any diminution in funds from Eustis by creating an independent expenditure-only committee, similar to the two National Defense political committees that Carey has demonstrably been able to oversee.

Plaintiffs make virtually no demonstration that they will be irreparably harmed without an injunction. (*See* PI Br. at 29.) Instead, they simply cite *Elrod v. Burns*, 427 U.S. 347 (1976) (plurality), but that case does not support their position. *Elrod* held that employee dismissal based on political party affiliation was an unconstitutional infringement on employees' First Amendment rights. *Id.* at 372. But that holding rested on the specific finding that government employees had already been “threatened with discharge or had agreed to provide support for the Democratic Party in order to avoid discharge,” and it was “clear therefore that First Amendment interests were threatened or in fact being impaired at the time relief was sought” — *i.e.*, an actual or imminent harm. *Id.* at 373. Here, however, plaintiffs have alleged no governmental action against them whatsoever. In fact, the only governmental action has been the Commission's vote failing to issue the advisory opinion that plaintiffs had sought. (*See* Ver. Compl. Exh. D.) But this Commission inaction bears no resemblance to the kind of actual or certain threats that were present in *Elrod*.

Plaintiffs' claimed need for preliminary relief is also belied by their past conduct. They have raised only a handful of contributions that were up to the contribution limits, and NDPAC has never before in its 11-year history run independent expenditure advertising that in the aggregate exceeded \$200 in a calendar year. FEC, Disclosure Reports (FEC Exhs. 13 at 1-4, 14 at 1-6). *See* 2 U.S.C. § 434(b)(4)(H)(iii), (6)(B)(iii) (requiring disclosure of such independent expenditures). NDPAC has received a \$5,000 contribution only a few times, and it has received none in the past five years. Likewise, plaintiff Kelly Eustis has never made a contribution in

excess of \$200 to a federal candidate or committee. FEC, Disclosure Database (FEC Exh. 11). Given NDPAC's long history without many contributions up to the limit and its complete lack of experience making independent expenditures, plaintiffs cannot demonstrate the certain, actual harm needed for the extraordinary relief they seek.

The D.C. Circuit and other courts have clearly explained that *Elrod* did not eliminate a First Amendment plaintiff's burden to show that its interests are actually threatened or in fact being impaired. *NTEU*, 927 F.2d at 1254-55; *Wagner*, 836 F.2d at 576-77 n.76; *see also Christian Knights of the Ku Klux Klan Invisible Empire, Inc. v. District of Columbia*, 919 F.2d 148, 149-150 (D.C. Cir. 1990) (rejecting preliminary injunction sought by Ku Klux Klan to require local government to issue parade permit for planned march longer than one for which it had received permit, finding *Elrod* not controlling on irreparable harm because shorter parade allowed in permit was not total denial of First Amendment rights); *Wis. Right to Life, Inc. v. FEC*, Civ. No. 04-1260, 2004 WL 3622736, at *4 (D.D.C. Aug. 17, 2004) (rejecting WRTL's reliance on *Elrod*); *Smith v. Frye*, 488 F.3d 263, 271 (4th Cir. 2007) (allegation does not "necessarily, by itself, state a First Amendment claim under *Elrod*"); *Hohe v. Casey*, 868 F.2d 69, 72-73 (3d Cir. 1989) ("[A]ssertion of First Amendment rights does not automatically require a finding of irreparable injury, thus entitling a plaintiff to a preliminary injunction if he shows a likelihood of success on the merits.").

"[T]he basis of injunctive relief in the federal courts has always been irreparable harm." *Sampson v. Murray*, 415 U.S. 61, 88 (1974) (citation omitted). Because plaintiffs have made "no showing of irreparable injury, 'that alone is sufficient' for a district court to refuse to grant preliminary injunctive relief." *Hicks v. Bush*, 397 F. Supp. 2d 36, 40 (D.D.C. 2005) (citing *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995)); *see also*

Wis. Gas, 758 F.2d at 674 (“[A]nalysis of [irreparable harm] disposes of these motions . . .”). Since plaintiffs are unable to establish any such constitutional burden that is actual and certain, they clearly fall short of meeting the “high standard” necessary for a preliminary injunction.

B. Plaintiffs Face No Imminent Injury

Plaintiffs also fail to establish that “[t]he injury complained of [is] of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Wis. Gas*, 758 F.2d at 674 (internal citation and quotation marks omitted). As explained *supra* p. 32, plaintiffs have numerous ways to avoid harm to their intended campaign activity, and any potential harm from governmental action is far off and speculative. NDPAC has plans to raise funds above the contribution limits and then run an independent expenditure advertisement “in the months leading up to the November 2012 elections” and perhaps others “in the months leading up to the 2012 primary and general elections.” (PI Br. at 6-7.) Neither this activity, nor any potential injury from a Commission enforcement proceeding, is imminent. There is thus no “clear and present need for equitable relief.” *Wis. Gas*, 758 F.2d at 674 (citation and internal quotation marks omitted).

Plaintiffs argue that they are “chilled due to fear of prosecution by the Federal Election Commission” (PI Br. at 33), but they make no showing that any action against them by the Commission is imminent.¹⁰ Congress carefully designed the Act’s enforcement procedures “to

¹⁰ The vote by three of the six sitting Commissioners to grant NDPAC’s advisory opinion request suggests that it is highly unlikely that the current Commission would reach a majority vote (of at least four Commissioners) to bring an enforcement action against plaintiffs in the event that an administrative complaint were filed against them in the future. *See generally* 2 U.S.C. §§ 437c(c), 437g(a)(6). The D.C. Circuit found that a party confronting such a split vote is “not faced with any present danger of an enforcement proceeding” but nevertheless possesses standing to challenge a Commission rule. *See Chamber of Commerce v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995). To be sure, a new Commissioner or a change of mind by a current Commissioner could lead to an enforcement action against NDPAC, and the Commission

ensure fairness . . . to respondents.” *See Perot v. FEC*, 97 F.3d 553, 559 (D.C. Cir. 1996).

As Congress presumably was aware, under the Act’s elaborate enforcement procedures — which include multiple opportunities for a respondent to file briefs and permit only a court to impose a remedy on a respondent unwilling to agree to one — “complaints filed shortly before elections . . . might not be investigated and prosecuted until after the event.” *Id.* at 559 (recounting statutory enforcement procedures). Accordingly, the likelihood that plaintiffs would suffer anything beyond an investigative proceeding during the life of a preliminary injunction is remote. *Wis. Right to Life, Inc. v. FEC*, No. 04-1260, 2006 WL 2666017, at *5 (D.D.C. Sept. 14, 2006) (“[A]n FEC administrative investigation . . . carries little threat of imminent or certain sanction.”). Even if an administrative proceeding during that time then concluded with the institution of an enforcement suit against plaintiffs, they would then have a full opportunity to present their constitutional arguments *de novo* to a federal court before they could be subject to any penalties for their conduct. *See generally* 2 U.S.C. § 437g(a)(4)-(6). That distant eventuality is manifestly not imminent. *Wis. Right to Life*, 2006 WL 2666017, at *5 (“It is clear that even if an administrative investigation is opened, the investigation likely would not conclude until long after the . . . ad has been broadcast.”).

C. None of Plaintiffs’ Alleged Harms Are Beyond Remediation

Finally, plaintiffs must demonstrate that their alleged injury is “beyond remediation,” *Chaplaincy*, 454 F.3d at 297, or “irreparable,” *Wis. Gas*, 758 F.2d at 674. As the D.C. Circuit has explained, “[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough. The possibility that adequate

therefore does not challenge plaintiffs’ standing to bring this action. *Id.* To obtain a preliminary injunction, however, a “present danger of an enforcement proceeding” is precisely the showing of imminent danger that plaintiffs must make, but cannot.

compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.” *Chaplaincy*, 454 F.3d at 297-98.

None of plaintiffs’ claimed harms are irreparable. For example, the incremental additional administrative burden of setting up a new political committee and complying with the requirements of the FECA would constitute “[m]ere injuries” of “money, time and energy.” *Id.* at 297. And having to respond to an administrative enforcement proceeding would not create irreparable harm. *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (“Mere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury.”) (internal quotation marks and citation omitted); *see also Sears Roebuck & Co. v. NLRB*, 473 F.2d 91, 93 (D.C. Cir. 1972). Thus, any burden associated with responding to a possible future FEC enforcement proceeding cannot constitute irreparable harm warranting preliminary injunctive relief.

IV. THE RELIEF REQUESTED BY PLAINTIFFS WOULD HARM THE GOVERNMENT AND UNDERCUT THE PUBLIC INTEREST

Permitting plaintiffs to fund independent expenditures through an existing political committee that also makes contributions to candidates would undermine the anti-corruption purpose and disclosure requirements in the Act. This would hinder the public interest and substantially injure the government. To prevail on their application for a preliminary injunction, plaintiffs must establish precisely the opposite. *CityFed. Fin. Corp.*, 58 F.3d at 746. Because of the strong public and Commission interest in enforcement of the federal campaign finance laws, plaintiffs’ proposed injunction would substantially injure other parties.

The statutory provisions challenged by plaintiffs have been on the books for more than thirty years. Indeed, the requirements for registration and reporting by political committees in 2 U.S.C. §§ 432, 433 and 434, and the definition of political committee in 2 U.S.C. § 431(4)

were enacted by Congress in 1971.¹¹ The individual contribution limits in 2 U.S.C. § 441a(a)(1)(C) and 441a(a)(3)(B) were enacted in 1974 and 1976.¹² The Act’s contribution limits and registration and reporting provisions were generally upheld by the Supreme Court in *Buckley* in 1976.

“The public has a strong interest in the enforcement of laws passed by Congress and signed by the President.” *Wis. Right to Life*, 2006 WL 2666017, at *5. There is a “presumption of constitutionality which attaches to every Act of Congress,” and that presumption is “an equity to be considered in favor of . . . [the government] in balancing hardships.” *Walters*, 468 U.S. at 1324. As Chief Justice Rehnquist stated in the similar context of a requested injunction pending appeal, “barring the enforcement of an Act of Congress would be an extraordinary remedy.” *Wis. Right to Life, Inc. v. FEC*, 542 U.S. 1305, 1305 (2004) (Rehnquist, C.J., in chambers) (citation omitted).

The limits on contributions to political committees and the registration and reporting requirements for political committees relate to the public interest in preventing corruption and its appearance. *See supra* pp. 14-17, 25-27. In addition, permitting NDPAC to fund both its contributions and independent expenditures through a single political committee would reduce transparency to the public of NDPAC’s financing and activities. *See supra* pp. 27-28. Thus, the relief sought by plaintiffs would interfere with the achievement of Congress’s goals of “‘shed[ding] the light of publicity’ on campaign financing,” *McConnell*, 540 U.S. at 231 (quoting *Buckley*, 424 U.S. at 81), and protecting the “‘First Amendment interests of individual

¹¹ Federal Election Campaign Act of 1971, Pub. L. No. 92-225, §§ 301-306, 86 Stat. 3, 11-16 (Feb. 7, 1972).

¹² Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101, 88 Stat. 1263 (Oct. 15, 1974); Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, Title I, § 112(2), 90 Stat. 475 (May 11, 1976).

citizens seeking to make informed choices in the political marketplace,” *id.* at 197 (quoting *McConnell*, 251 F. Supp. 2d 176, 237 (D.D.C. 2003)).

Granting plaintiffs’ motion for preliminary injunction would also “substantially injure” the government and the public. *CityFed Fin.*, 58 F.3d at 746. As Justice Rehnquist explained, “any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers . . . injury.” *New Motor Vehicle Bd. of Calif. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers). The government and the public are similarly harmed when a court proscribes enforcement of a federal statute. “[E]njoining the FEC from performing its statutory duty constitutes a substantial injury to the FEC.” *Wis. Right to Life*, 2006 WL 2666017, at *5; *see also Christian Civic League of Me., Inc. v. FEC*, 433 F. Supp. 2d 81, 90 (D.D.C. 2006).

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court deny plaintiffs’ motion for a preliminary injunction.

Respectfully submitted,

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March 7, 2011

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

**DEFENDANT FEDERAL ELECTION COMMISSION'S EXHIBITS
SUBMITTED IN SUPPORT OF ITS OPPOSITION TO PLAINTIFFS'
MOTION FOR A PRELIMINARY INJUNCTION**

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March 7, 2011

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3	National Defense PAC, Stmt. of Org., July 17, 2000, http://query.nictusa.com/cgi-bin/fecimg/?F20035872919 .
4	National Defense PAC, (Feb. 25, 2011) http://nationaldefensepac.org .
5	Federal Election Commission, Reports Image Index for National Defense PAC, http://query.nictusa.com/cgi-bin/fecimg/?C00359992 .
6	National Defense PAC, Stmt. of Org., Dec. 29, 2009, http://query.nictusa.com/pdf/690/29935609690/29935609690.pdf .
7	National Defense Committee PAC, Stmt. of Org., Nov. 18, 2002, http://query.nictusa.com/cgi-bin/fecimg/?F22037850716 .
8	Federal Election Commission, Reports Image Index for National Defense PAC, http://query.nictusa.com/cgi-bin/fecimg/?C00383182 .
9	National Defense Committee PAC, Stmt. of Org., Dec. 29, 2009, http://query.nictusa.com/pdf/677/29993513677/29993513677.pdf .
10	Eusatrix Corp., <i>About Eusatrix</i> (Feb. 25, 2011), http://www.eusatrix.com/about/ .
11	Federal Election Commission, Transaction Query By Individual, (Feb. 25, 2011) (query “Kelly Eustis”), http://www.fec.gov/finance/disclosure/norindsea.shtml .
12	Club for Growth PAC, Committees and Candidates Supported/Opposed, Federal Election Commission Disclosure Database, (Feb. 25, 2011), http://query.nictusa.com/cgi-bin/com_supopp/C00432260/ .

- 13 Federal Election Commission, Disclosure Report Search Results, Contributions to National Defense PAC, (March 3, 2011).
- 14 Federal Election Commission, Committee Summary Reports, National Defense PAC, 1999-2010 (March 3, 2011).
- 15 Declaration of Jayci A. Sadio, March 7, 2011.

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FEC Exhibits

FEC EXHIBIT 1



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Rear Admiral [Ret.] James J. Carey



Rear Admiral [Ret.] James J. Carey is Founder and Chairman of the National Defense Committee. The organization was formed during the 1990's to address military, defense, and veterans issues of significance which were not receiving sufficient attention from the established military and veterans organizations. The first programs to be identified and structured into National Defense Committee operations concern Military Absentee Voting, Veterans Re-employment Rights, and Military Recruiter Unobstructed Access to College Campuses. All three of these program areas are well-defined in the law, yet each continues to have all too many problems because either the law is not being followed or is being violated outright.

Admiral Carey began his military career in 1962, assigned to the Guided Missile Cruiser U. S. S. TOPEKA [CLG-8], where in addition to the thousand-and-one duties assigned all junior naval officers, he was also given the collateral duty of Military Voting Assistance Officer and saw firsthand the problems associated with military absentee voting, particularly related to ships at sea for long periods of time without regular mail delivery as they were in the South China Sea during the Vietnam War. Later during Operations DESERT SHIELF and DESERT STORM in Iraq, when he commanded READINESS COMMAND SIX during that war, he again saw some of the same military absentee voting problems that he had experienced some 30 years before in Vietnam and which remained unrepaired, but this time with the added issues of veterans re-employment rights and the associated problems as his troops returned from Iraq and could not get their old jobs back. The final area, Military Recruiter Unobstructed Access to College Campuses, has been on-going for years, with U. S. colleges and universities receiving tens and hundreds of millions of dollars in Department of Defense research grants and funding, yet many of them refusing to allow military recruiters to be present on campus to talk with students interested in a military career.

National Defense Committee progress in each of these areas has been on-going and steady. National Defense Committee has now become a recognized expert in each of these areas, thanks in large part to their strong corps of experts and professionals who serve in each of these core areas of focus. Admiral Carey has written numerous articles for Military.com on these and related issues and he and National Defense Committee Directors and Senior Fellows have appeared on numerous TV and radio talk shows to present NDC's views. The Admiral and his colleagues have also been asked to testify before the U. S. Congress on these matters and they are regularly consulted by Congressional Staff and other federal agencies concerned with the laws governing these matters and legislation being formulated to correct deficiencies in those laws.

Admiral Carey is not new to these issues nor to being involved on the national stage with regard to these and a broad range of other issues related to national public policy in America. He served in the Reagan and George Bush Sr. Administrations as Chairman of the Federal Maritime Commission. He has served on the Board of Directors and/or as elected Chairman or National President of no less than 14 national and international organizations. He is the current National Co-Chairman of THE FLAG & GENERAL OFFICERS' NETWORK, Chairman of The Future Leaders for America Foundation, Chairman of The Admiral James J. Carey Foundation, Chairman of The Good Samaritans of the Knights Templar Foundation, and Grand Master of the Knights Templar International. His work with these organizations has him regularly involved with all levels of the U. S. Government, the Congress, the United Nations [in Special Consultative Status], numerous foreign embassies, and with a broad range of defense, military, veterans, and homeland security organizations. Admiral Carey retired from the Navy in official ceremonies held at the historic Washington Navy Yard in 1994, with the Chief of Naval Operations personally serving as the Senior Ceremonial Official. His personal awards include four awards of the Legion of Merit.

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http://www.nationaldefensecommittee.org/?page_id=744

Military Voting Rights Legislative Activities

[Admiral Carey OP-ED RE: Military Voting Rights in Texas: Austin Statesman: Memorial Day 2010](#)
[Admiral Carey OP-ED re: Military Voting Rights: Veterans Day 09 in The Washington Times Newspaper](#)
[Admiral Carey Joins Pew Center on the States](#)
[Pew Ad Supporting Military Voting Legislation](#)
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FEC Exhibits

FEC EXHIBIT 2



The Honorable James J. Carey
Personal Arms

The Personal Website
of
Rear Admiral [Ret.] James J. Carey



Links

Recent Activities

[Admiral Carey OP-ED in Washington Times Newspaper,](#)
[Veterans Day 2009: RE: Military Voting Rights](#)

Links

The following list contains links to several organizations that Rear Admiral Carey has been a part of during his varied career----- click on any link below to learn more about his involvement.

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[IRAQ: Cardinal Bidawid](#)

[The Flag & General Officers' Network](#)

[Admiral James J. Carey Foundation](#)

[U. S. Federal Maritime Commission](#)

[Zeta Psi Fraternity](#)

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[Washington Scholars Fellowship Program](#)

[Future Leaders for America Foundation](#)

[Knights Templar-USA](#)

[Knights Templar-International](#)

NATIONAL DEFENSE COMMITTEE:

National Defense Committee was formed in the late 1990's by Admiral Carey and several colleagues to specifically address what they felt were "narrow focus issues" that were not being adequately addressed or supported by the other military and veterans associations. Key colleagues and associates have been CAPTAIN [Ret.] Sam Wright, JAGC, and Robert Harrison Carey Jr., Former Senate Staff Member to U. S. Senators Spencer Abraham of Michigan and George Allen of Virginia. Several key projects involve military absentee voting, military recruiter "equal access" to college campuses, and re-employment rights for military veterans who leave civilian employment for military service. Admiral Carey serves as Chairman of NATIONAL DEFENSE COMMITTEE, which is headquartered in Northern Virginia.

Links:

- [Website](#)
- [Photos/Documents](#)

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NATIONAL DEFENSE POLITICAL ACTION COMMITTEE [NATIONAL DEFENSE PAC]:

National Defense PAC was formed by Admiral Carey in the mid-1990's to support the candidacy of military veterans running for election to the U. S.

Congress. Most military personnel, particularly those who serve long active duty careers, have spent a lifetime being transferred all around the world from one military mission to another, and never have the time to establish the many links and relationships that are so very helpful when running for elected office. Upon retirement, when many military veterans for the first time in their lives have the ability and freedom to run for elected office, they find that they do not have a long-standing community relationship with the many citizens necessary to raise money to run for election. Thus, the purpose of NATIONAL DEFENSE PAC is to provide some initial funding to those candidates for elected office that NDP's Endorsement Selection Board votes to endorse and support. Admiral Carey serves as Chairman of NATIONAL DEFENSE PAC, which is headquartered in Northern Virginia.

Links:

- Website
- Photos/Documents

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GROWING UP IN BERLIN, WI:

The Early Years: Jim Carey was born on April 9th, 1939 [Easter Sunday] at Berlin Memorial Hospital, Green Lake County, WI. The family lived on a farm along the South Bank of the Fox River about 2 miles East of Berlin in the Township of Aurora, Waushara County, just across the Green Lake County/Waushara County Line to the North. Jim's Dad was a World War I Army Veteran and rural mail carrier for the U. S. Postal Service, his Mom was an Elementary School Teacher and Housewife, and along with an older Sister and Brother, the family farmed a dairy farm. Memories include fishing in the Fox River, hauling hay with horses, planting and picking strawberries, and the normal things that farm kids do in their very early years.

In December, 1941, this farm was sold and the family moved to a new and larger farm only about half a mile west along the South Bank of the Fox River. Moving day was December 7th and Jim can remember being a 2 ½ year old "just trying to stay out of the way" as the family loaded belongings onto the hay wagon for the numerous trips half mile down the road to the new farmhouse. He can remember his older brother Bob going into the house for a drink of water and coming out and saying that he heard on the radio "the Japanese are bombing Pearl Harbor". Jim recalls not knowing what they were talking about, but that he could understand something very serious had happened because the mood immediately changed and everyone seemed very concerned about what had happened. And of course, it was the beginning of World War II, and thus, a moving day that will never be forgotten.

The new farm was larger and thus there was more work for everyone. A new brother was born a year later, and then two girls were adopted into the family a year or two after that. Jim remembers his time spent with more fishing in the Fox River, hauling hay and combining oats and shucking corn, plus cleaning the barn and milking the cows and later transitioning away from dairy farming to beef cattle. A fond memory was a trip via Greyhound Bus with his Dad to South Saint Paul, MN to buy cattle for the herd from Wertheimer Company at the South Saint Paul Stockyards, and then seeing them arrive on the farm a week later in huge 18-wheeler cattle trucks. He also remembers being able to go with his Dad on his daily rural mail route once each year, and being so amazed at the fact that everyone knew his Dad and they were all so friendly and nice to him. Travel to school was by school bus that made a long pick-up route which meant getting up very early to catch the bus, and for the first 4 years of school, it was in a one-room school called County Normal, which had a teachers training institute attached to it and all 8 grades in one room. Jim still maintains that being in one room where all 8 grades were taught gave him a huge learning advantage and head start in life, since each day, he got to listen to all the other grades being taught and learned much from each.

Links:

- Photos

The Boy Scouts: At age 11, Jim was able to become a boy scout, and this

program turned out to be a great opportunity for him, as living on the farm offered limited chances to belong to any of these types of organizations. He truly enjoyed the camping and training and teamwork involved and advanced rapidly. He also was fascinated with the fun of the two weeks at summer camp at Twin Lakes, WI [near Waupaca] each summer. He eventually worked during the summers at the scout camp, first in the kitchen and later as a camp counselor for the entire summer. He went on to become an Eagle Scout with 72 merit badges, a Silver Award Explorer Scout, a Brotherhood Member of the Order of the Arrow, a Junior Assistant Scoutmaster, and he helped form the first-ever camp for blind children which was sponsored by the Wisconsin Lions Clubs in 1954 using the Twin Lakes Boy Scout Camp facilities after the scout camping summer season was finished. Jim later said that his early training in the boy scouts had a large influence on his future success as a naval officer in the U. S. Navy.

Links:

- [BSA National Website](#)
- Photos

Berlin High School:The family sold the farm on the Fox River when Jim was in 8th grade [although they saved some land on the river to later build a cottage there] and moved into Berlin, which made it easier for Jim to participate in athletics. He lettered in Varsity Football, Basketball, and Track, where he played right halfback on the football team, center on the basketball team, and ran the 120 yard high hurdles in track. He started as right halfback on offense in football his senior year, readily admits to being a marginal second-stringer in basketball having only made the team his senior year [where he was the shortest center in the conference], and having had reasonable success in the high hurdles where, his senior year, he placed 2nd in the Sectional Meet at Ripon, which qualified him to go to the State Track Meet in the State Capitol in Madison where, he readily admits, he “ate cinders” and placed 8th out of 8 in his first 120 yard high hurdle heat there and thus ended his high school hurdling career. All this was, however, quite a respectable performance, since Jim was a year or more younger than most of his classmates, having started school a year early in a country school, and thus all during his Senior Year in High School, he was only age 16 until the last 6 weeks of school, and thus throughout high school was competing against young men who were a year and two years older than he was at an age when one year made a lot of difference in one’s athletic ability and physical size and maturity.

Jim was also involved in class leadership in Berlin High School and was elected to the Prom Court his Junior Year and then elected as President of the Senior Class his Senior Year.

Links:

- [Berlin High School Website](#)
- Photos

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NORTHWESTERN UNIVERSITY:

Jim graduated from Berlin High School in 1956 and received scholarship offers from Beloit College in Beloit, WI [known as “The Amherst of the Midwest”] and Northwestern University in Evanston, IL. He accepted the offer from Northwestern because of its high academic standing among the nations colleges and universities, and began his Freshman Year there in the fall of 1956 as a candidate for a Bachelors Degree in Business Administration with a major in Marketing. He pledged Zeta Psi Fraternity, founded in 1847. He also performed for three years in the annual musical-comedy show called WAA-MU, which during his years included future actors Richard Benjamin, Paula Prentice, and Ann Margaret and TV Sportscaster Brent Musburger. Jim was selected as an Outstanding Student Leader during the 1959 May Week Festival at Northwestern, was elected President of his fraternity his Senior Year, and graduated with his Bachelor of Science Degree in 1960. He later went on to study for a Masters Degree in Business Administration at Northwestern University’s highly acclaimed Kellogg School of Management in Chicago.

Links:

- [Northwestern University Web Site](#)
- [Zeta Psi Fraternity](#)

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THE REAGAN ADMINISTRATION:

Jim gained an interest in national public policy and national leadership during his student years at Northwestern University and as a junior officer in the U. S. Navy. He met Governor Ronald Reagan at a Navy Military Association Convention in Buffalo, NY during the 1980 Presidential Campaign and was so impressed with Reagan's views on government and policy and international affairs that he volunteered to work in the election campaign in Veterans for Reagan. As Jim likes to say "to succeed in politics at the national level, first your candidate has to win"----- and Ronald Reagan won in 1980 and was inaugurated as the 40th President of the United States in January, 1981. By March, the new Reagan White House had contacted Jim about service in the Administration based on Jim's navy and maritime backgrounds and after the usual months of FBI background checks and vetting of his professional career and verification of his TOP SECRET Navy Security Clearance, he was asked to join the Administration as a Commissioner of the Federal Maritime Commission. Jim headed for Washington, DC in May 2981 where he spent three months getting briefed on the position and the issues confronting the agency. The President announced his appointment in September of 1981; the United States Senate held confirmation hearings in early October, and on October 8th, Jim was sworn into office by Congressman John Porter of Illinois, Jim's hometown Congressman from Illinois. In 1983, he was elected as the Commission Vice Chairman by unanimous vote of his fellow Commissioners, a position he would hold for the next six years. In 1985, upon the expiration of his fixed term of office, President Reagan appointed Jim to a 2nd term, and after another U. S. Senate Confirmation Hearing, Jim was sworn into a 2nd term of office as Commissioner and Vice Chairman of the agency. In 1989, newly elected President George Herbert Walker Bush appointed Vice Chairman Carey as the Chairman of the agency, a position he held until the expiration of his term of office in early 1991. Upon finishing his 9 years of service under two U. S. Presidents, Jim Carey was awarded the Federal Maritime Commission Gold Medal for Exceptional Service, the highest award bestowed by the agency. President Bush lauded Jim's military and federal service as exemplary, an example to all and a credit to his family.

During Jim's service in the Reagan Administration, Jim was approached by the Presidential Personnel Office in the White House about forming a group of the Presidential Appointees that would be self-administered and self-organized and that would regularly bring all the Senate-confirmed Presidential Appointees together for professional training and professional interaction with a view towards facilitating the various agencies working closer together. Jim was elected President of this group of over 600 Presidential Appointees and served in that position for the next six years. As the Reagan Administration finished its historic service in January 1989, the organization was transitioned into the Reagan Administration Alumni Association made up of all who served during the Reagan Presidency, an organization that continues on today with over 4,000 members worldwide, with Jim Carey on it's Board of Directors.

Links:

- [TWH Website](#)
- [FMC Website](#)
- Photos

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THE GEORGE H. W. BUSH ADMINISTRATION:

In 1989, newly elected President George Herbert Walker Bush appointed Vice Chairman Carey as the Chairman of the Federal Maritime Commission, a position he held until the expiration of his term of office in early 1991. Upon finishing his 9 years of service under two Presidents, Jim Carey was awarded the Federal Maritime Commission Gold Medal for Exceptional Service, the

highest award bestowed by the agency. President Bush lauded Jim's military and federal service as exemplary, an example for all, and a credit to his family.

Links:

- [TWH Website](#)
- [FMC Website](#)
- Photos

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KNIGHTS TEMPLAR - UNITED STATES OF AMERICA [SMOTJ]:

The Knights Templar is a military knighthood Christian Chivalric Order initially founded by nine knights of noble extraction in France almost 900 years ago. Their initial mission was to protect Christian Pilgrims traveling to the Holy Land and the Holy City of Jerusalem to worship. The Order was disestablished in 1307 by the King of France and then reconstituted by Emperor Napoleon in France in 1801. The formal name of the Order is The Sovereign Military Order of the Temple of Jerusalem, thus the initials SMOTJ. Admiral Carey was first invested into the Order in 1984 in Oslo, Norway through NATO when he was serving in the military rank of Commander in the U. S. Navy. He then became involved in the Order in the United States as a member of the Priory in Washington, DC, where he was Prior [President], and then later became Grand Prior [National President] of the United States of America. He holds the highest rank of the Order, that of Knight Grand Cross, and also has been awarded the National Order of Merit. The Knights Templar Order of the USA is a member of the International Knights Templar [OSMTH], where the Order works closely providing humanitarian aid all around the world and is recognized by the United Nations "in special consultative status". The Order is also involved in a worldwide program called SILENT KNIGHT, which performs individual anonymous charitable good works for the less fortunate.

Links:

- [Website](#)
- [SILENT KNIGHT](#)
- Photos/Documents

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KNIGHTS TEMPLAR WORLDWIDE [OSMTH]:

The Knights Templar Worldwide [or International] is the worldwide body linking together all the Knights Templar Grand Priorities [nations] of the World. It's formal name is Ordo Supremus Militaris Templi Hierosolymitani, thus it's identifying initials of OSMTH, with the words being the Latin language for The Sovereign Military Order of the Temple of Jerusalem, with the original Knights Templar having been founded in the year 1118 in France by nine knights of noble extraction. The Order was reconstituted in 1801 by the Emperor Napoleon in France, and today gathers twice annually in different world locations to formulate international policies and manage the humanitarian aid and charitable programs of the Order. OSMTH is recognized in special consultative status by the United Nations and as such, works closely with the U.N. on various humanitarian aid efforts throughout the world. Admiral Carey was elected the International Grand Commander of the Order [Chief Executive Officer in corporate terms] in 1998, and then re-elected to that position for a 2nd term of office in 2001. In 2004, he was elected to be the Grand Master [Chairman in corporate terms] of the Order, a position he will hold through 2012.

Links:

- [Website](#)
- Photos/Documents

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THE FLAG & GENERAL OFFICERS' NETWORK [TFGON]:

The Flag & General Officers' Network was founded in 1995 by two retired Navy Admirals, Rear Admirals Charles "Chuck" McGrail and James "Jim" Carey, for the purpose of providing a linkage between all military flag and general officers and to help them maintain the friendships and professional linkages established through decades of military service and their mutual achievement of flag or general officer rank. The group gathers at informal social "networking receptions" in the Greater Washington, DC area and members attend from all across the USA and from various parts of the world. The organization also provides a central communications source where members can circulate their resumes among the 1500+ membership when they are seeking to change employment, and where organizations, corporations, and associations seeking to locate flag or general officers for potential employment opportunities have a central source of contact. When Admiral McGrail unexpectedly passed away in 2001, Major General [Ret.] Alan Youngman was selected to replace him as National Co-Chairman. Admiral Carey continues to also serve as a Founder and National Co-Chairman. The organization is headquartered in Northern Virginia

Links:

- [Website](#)
- [Photos/Documents](#)

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U. S. FEDERAL MARITIME COMMISSION [FMC]:

In 1981, after President Reagan was elected and sworn into office as the 40th President of the United States, Admiral Carey [then Commander Carey] was contacted by Presidential Personnel asking him to serve as a Commissioner of the U. S. Federal Maritime Commission. Following the necessary interviews and background vetting, President Reagan nominated James J. Carey to be a Commissioner of the Federal Maritime Commission in September, 1981. The United States Senate held confirmation hearings on the appointment and then voted to confirm Mr. Carey in early October, 1981, whereupon he was sworn in during ceremonies held in Washington, DC on October 8, 1981. In 1983, Commissioner Carey was elected Vice Chairman of the Commission, and in 1985, he was reappointed by President Reagan and Senate-confirmed to a 2nd term of service on the Commission. In 1989, newly elected President George Herbert Walker Bush appointed Vice Chairman Carey to serve as Chairman of the Commission, a position he held until leaving the Commission for the corporate world in 1991. In recognition of his service, Chairman Carey was awarded the Federal Maritime Commission's Gold Medal Award for Exceptional Service, the highest award given by the agency, and President Bush recognized Chairman Carey's service as truly dedicated and patriotic.

Links:

- [Website](#)
- [Photos/Documents](#)

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THE WASHINGTON SCHOLARS FELLOWSHIP PROGRAM:

Admiral Carey founded this program in the mid-1980's during his service in the Reagan Administration. He saw a need to bring young dedicated college-age "best & brightest" men and women to the nation's capitol with a view towards them having an opportunity to experience and learn what a career in national service would be like and to show them firsthand that they CAN play a role in our national leadership and in the formulation and execution of national public policy. Early intern class sizes ranged from 3-12 and their placement was in various federal agencies, national public policy organizations, and Congressional staffs and offices. This continued after Admiral Carey left federal service, although with smaller class sizes depending upon the level of funding raised and the time available to manage

the program. The program experienced a major shift in direction in the late 1990's with the strong support of Mr. Stephen Hartwell, Chairman of the Board of the Washington Mutual Funds, and it was through Steve Hartwell's strong support, encouragement, and financial endowments that the program was significantly enlarged to accommodate classes of 25-30 interns each year. As these classes grew larger, the need for more focused oversight and administration also grew and in 2006, the Future Leaders for America Foundation was formed to provide this management oversight and mentoring. Admiral Carey serves as the Founder and Chairman of the Board of Future Leaders for America Foundation, as well as the Founder of the Washington Scholars Fellowship Program.

Links:

- [Website](#)
- [Future Leaders for America Foundation Website](#)
- [Photos/Documents](#)

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THE NATIONAL DEBUTANTE COTILLION OF WASHINGTON, DC:

Admiral Carey first became involved in this prestigious National Debutante organization in 1984 when his daughters Lynn Margaret Carey and Sarah Ann Carey were formally introduced to Washington, DC society through the National Debutante Cotillion. Each year, 40 young ladies in their early college years are selected from among applicants throughout the entire nation to be "official debutantes" at this annual event, founded in the nation's capitol in 1947. Over time, Admiral Carey and his wife Arlene have become more involved in supporting the organization and in 2005 were appointed by the Cotillion Chairman to serve as Regional Chairmen for Virginia, a position they continue to hold today. Also in 2005, based on his involvement in the Washington Scholars Internship Program and as Chairman of the Future Leaders for America Foundation, Admiral Carey, with the support and encouragement of Debutante Cotillion Chairman Dame Mary Stuart Montegue Price, formed the Washington Scholars Floor Committee Delegation, made up of young men who have graduated from the Washington Scholars Program. These young men thus become involved in all the activities and programs and social functions surrounding the National Debutante Cotillion events in Washington, DC throughout the year, where they assist the Cotillion Leadership in ensuring that each class of National Debutantes is welcomed and honored with dignity, respect, and recognition for their selection and participation as National Debutantes.

Links:

- [2009 Photo Album of the National Debutante Cotillion Ball](#)
- [2008 Photo Album of the Debutante Cotillion Ball](#)
- [Additional 2008 Debutante Cotillion Photos available for purchase from the Official Photographer](#)
- [One Minute Video of a Post Deb. Doing "The Texas Bow"](#)
- [National Debutante Cotillion Ball Photos: 2008](#)
- [One-Page Explanatory of The Debutante Cotillion Ball and "The Dub Ball"](#)
- [Debutante Cotillion Official Invitation - 2005 -- Admiral Carey is listed in the Official Sponsors](#)
- [Official Program Page - 2006](#)
- [Official Program Page - 2007](#)
- [Official Program Page - 2008](#)
- [Debutante Cotillion Official Invitation - 2008](#)
- [Photos of National Debutante Cotillion](#)
- [Washington Scholars Fellowship Program Website](#)

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ZETA PSI FRATERNITY OF NORTH AMERICA:

While a Freshman at Northwestern University, Evanston, IL in 1956, Jim Carey was invited to join the prestigious Zeta Psi Fraternity of North America.

While invited to join several fraternities, Jim chose Zeta Psi because they stressed a lifelong involvement in the fraternity and it's good works in support of humanity in it's two host nations of the USA and Canada. He held numerous offices at the Northwestern Chapter [the Omega Chapter] including Chapter President and then following his military service in Vietnam and settlement into a more structured stateside life in the USA, he asked to become more involved in the fraternity and it's activities throughout North America. What followed was 50 years of involvement, first as a Regional Director, then later on the International Board of Directors of either the fraternity or the educational foundation or both, this board service covering over 30+ years. Jim went on to hold all the senior elected offices of the fraternity and the foundation, including International President, and over the years has been selected to receive every national award that the fraternity has to give. In recent years, Zeta Psi has established The Admiral James J. Carey National Award for Leadership, the first recipient of that award being Admiral Carey himself.

Links:

- [Zeta Psi Fraternity](#)
- [Zeta Psi Fraternity - DC Elders](#)
- [Photos/Documents](#)

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FUTURE LEADERS FOR AMERICA FOUNDATION, Inc.:

In 2005, Admiral Carey observed the tremendous success and growth of the Washington Scholars Internship Program and determined that an IRS-recognized oversight and administration foundation was needed to provide for future growth and expansion, as well as the necessary fundraising structure to support the program if it was to continue to succeed and be able to accept a larger number of interns. Thus was formed the Future Leaders for America Foundation, Inc. of Washington, DC, to provide that oversight and management and to provide a corporate structure from which to manage the future growth of the program as well as to provide a venue for the location of other similar programs focused on providing opportunity for experience and qualifications and credentialing for more and more of America's best & brightest young men and women to participate in the national leadership of our nation. Admiral Carey continues to serve as the foundation Founder and Chairman of the organization, which is headquartered in Washington, DC.

Links:

- [Website](#)
- [Washington Scholars Fellowship Program Website](#)
- [Photos/Documents](#)

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THE ADMIRAL JAMES J. CAREY FOUNDATION:

After a lifetime of success and involvement in federal government service, the U. S. Navy, service in two Presidential Administrations, national public policy, numerous national and international organizations and associations, national leadership, military knighthood orders, fraternal organizations, and youth leadership groups, Admiral Carey made the decision that he did not want to stop his work in these efforts when he "departs the planet". His solution was to form a foundation that would use the assets he accumulated in his life of national service to support these same organizations after his death. To do this, he wanted agreement and "buy in" by his family, and approached his wife and daughters with his plan to ensure they are cared for during their lifetimes while the same assets that provided for their care could then be used to fund the Admiral James J. Carey Foundation after they are gone. Thus came into being The James J. Carey Trust for the purpose of providing for his family after his death, and a specific plan to donate the assets of that trust in phased fashion as it's beneficiaries passed on. Both this Trust AND the Admiral James J. Carey Foundation are now in place. Admiral Carey's daughters, Lynn and Sarah, are involved in the advisory management of both structures to

provide them with the necessary training over time to be able to carry out the documented written donor intent of the Admiral that was the primary stated purpose for both the establishment of both the Trust and the foundation. The Foundation is now in the process of applying for IRS 501.c.3 approval for the foundation and the preparation of donor intent agreements that are to govern any and all the endowments to be made by the Admiral James J. Carey Foundation.

Links:

- [Website](#)
- [Photos/Documents](#)

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UNITED STATES NAVY:

Following graduation from Northwestern University in 1960 with a Bachelor of Science Degree in Business Administration, Jim set about beginning his business career only to soon be approached by destiny in the form of the Draft Board and the Selective Service laws. Shortly after being called to the Chicago District Offices of the Draft Board for medical re-evaluation of a high school football injury, Jim found himself reclassified 1-A and a check with the local Draft Board told him he was going to be drafted in 30 days. The next day, he enlisted in the U. S. Navy [Oct. 1961] and within 6 months, he was marching through the snow at Navy Officers Candidate School in Newport, Rhode Island. After graduation and commissioning as an ENSIGN in 1962, he was assigned to the U. S. S. TOPEKA [CLG-8], a guided missile cruiser homeported in Long Beach, CA and this turning point in his life including two Western Pacific deployments to the South China Sea and duty in the Vietnam War. While the hours at sea were long, duty in the Navy was exciting and Navy operations were, as Jim puts it "where the action is", and thus began a 34 year Navy career that included duty on cruisers, destroyers, amphibious assault ships, and working with the U. S. Marine Corps, Navy Amphibious Seabees, and Navy Beachmasters in Assault Craft Units on both coasts and the Naval Beach Group in Little Creek. As happens with all naval officers, time marches on and the excitement of navy operations duty ultimately turns to staff duty on headquarters staffs and service as the Inspector General, along with several tours on Pentagon Staffs and selection to the rank of Rear Admiral. By the time his career was completed after 33 years, 11 months, and 22 days, Jim had held 7 different commands including Readiness Command Region SIX at the Washington Navy Yard commanding over 10,000 navy and marine corps personnel in a 4 state area during Operations DESERT SHIELD & DESERT STORM in Iraq. Among his personal decorations are four awards of the Legion of Merit. Jim's retirement ceremonies were held in Leutze Park at the Washington Navy Yard with his Navy OCS Classmate and lifelong friend, Admiral Mike Boorda, Chief of Naval Operations, as the Officiating Senior Officer. Never one to leave a job undone, Admiral Carey continues to serve in several national defense and homeland security organizations and Pentagon/DOD consulting positions, including as National Co-Chairman of THE FLAG & GENERAL OFFICERS' NETWORK.

Links:

- [U.S. Navy Website](#)
- [The Flag & General Officers' Network Website](#)
- [National Defense Committee Website](#)
- [Admiral James J. Carey Foundation Website](#)
- [Photos/Documents](#)

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OPERATION DESERT STORM:

When DESERT SHIELD/DESERT STORM took place in 1991, Jim was already a Rear Admiral and in command of over 10,000 officers, sailors, and marines in Readiness Command Region SIX at the Washington Navy Yard in Washington, DC. He volunteered to serve in Iraq and his 3-Star Boss told him "Jim, if you were a doctor or a nurse, I'd take you today, but we've got all the

Admirals we need over there right now". Bottom line is that REDCOM SIX had over 2500 officers, sailors, and marines sent to serve in Iraq, Bahrain, Saudi Arabia, and at the end of the war--- Kuwait. Jim finally got there at the end of the war on a trip to Kuwait, in time to fly into the airport at Kuwait City and see the huge clouds of black smoke from all the burning oil fires that Saddam Hussien's troops had lit as they retreated back to Baghdad. Jim said it looked like one of the scenes from the 70's movie "Apocolypse Now". So while his career took him from Vietnam as a Navy ENSIGN to Kuwait as a Rear Admiral, his involvement in DESERT STORM was limited to that trip and having 2500 of his troops serve in the Iraq theater of operations.

Links:

- [Photos](#)

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CARDINAL BIDAVID:

In 1996, after Jim had retired from the Navy, and during the time he was serving as the Knights Templar Grand Prior of the United States [i.e. their National President], he was contacted by the Catholic Cardinal of the Chaldean Catholic Church in Iraq requesting a meeting with the Templars. As Jim likes to say, when a lad who grew up in a small town in Wisconsin serving mass at St. Josephs Church hears from "A Prince of the Catholic Church", one does NOT SAY I'M BUSY. Jim contacted a friend in Chicago, Fellow Templar Dan Healy, asking for his help to raise some money to fund the trip. Dan raised the money and the two of them made two trips, one to Jordan to meet with some of the Church Officials to determine their bonifides, and then a 2nd trip later to Jordan and then overland to Baghdad for their audience with the Cardinal, Dr. Raphael Bidawid, who turned out to be an absolutely charming man and who sought help from the Templars to secure food, clothing, medicines, and school supplies for the Chaldean Christians in Iraq. Remember that Iraq was under international and United Nations sanctions at the time, so there were shortages of everything. Jim and Dan had several meetings with the Cardinal with a view towards being able to help these less fortunate innocent victims of the situation there. They also met with the local Bishops of the Latin Church, the Greek Orthodox Church, the Anglican Church, and with the Senior Islamic Imam for Baghdad [THAT was an interesting meeting all by itself]. Also the Red Crescent [the Islamic equivalent to the Red Cross]. Plus Cardinal Bidawid arranged meetings for them with Ambassador Hamdoon, the Iraqi Ambassador to the United Nations [the meeting was in a revolving restaurant in that big "space needle building" in downtown Baghdad], and with Tariq Aziz, the Prime Minister of Iraq, who was a member of the Chaldean Catholic Church. Of interest, the meeting with Prime Minister Aziz, which was to last 20 minutes, lasted an hour and 20 minutes as he was fascinated that the Knights Templar wanted to help his people and his church. Jim says he also looked him right in the eye when they first met said "Admiral, pray tell what are you doing here---- we know you were involved in DESERT STORM". Jim's answer, he says, is a very long story that you can ask him about one day, but needless to say it worked out well to have their 20 minute meeting last for well over an hour. All these meetings and the entire trip took 9 days in Iraq plus another 2 on each end of the trip in Jordan. Jim tells of their crossing the Iraq-Jordan border the morning they left Iraq, only to find out that U. S. War Planes attacked Iraqi in Basra at the very same time----- he has often wondered what might have happened if the Iraqi Government had decided to prevent him from leaving---- and has always presumed that he got across the border before anyone in the Government knew he was gone. In any event, it has always made for lots of "what if" thoughts.

When Jim and Dan returned through Jordan, Jim gave a speech at a dinner in Amman, Jordan for over 40 Jordanians---- half Islamic and half Christian---- about the Templars. He was pleasantly surprised to find them all very friendly and mostly supportive, once they learned that the modern day Templars are no longer "Crusader Knights" and are totally focused on humanitarian aid to the less fortunate. Upon return to Washington, DC, both Jim and Dan launched into a very aggressive effort to try to provide food, clothing, medicines, and school supplies to Cardinal Bidawid in Baghdad, only to encounter an absolutely impenetrable roadblock at both the U. S. State Department and the

United Nations to helping anyone in Iraq for any reason. The issue was NOT that people were starving and dying---- rather it was that the sanctions prevented anyone from providing any help. When Jim and Dan pointed out that movie stars and former Carter Administration Attorney Generals seemed to be able to travel to Iraq and bring food and medicine without impunity, it did no good. So sadly, after making these two trips to Iraq and after over 3 years of trying, Jim and Dan had to give up on the effort because the bureaucracies would not budge and neither Jim nor Dan intended to risk prison no matter how well meaning and life-saving their intentions were. Truly an incredible story and an incredible effort by these two Americans---- one a retired Navy Admiral and the other a Korean War Marine Corps combat veteran. As Jim likes to say "Pretty heady stuff for a small town Catholic farmboy from St. Joseph's Church in Berlin, WI".

Links:

- [Templar Website Cardinal Bidawid Photos](#)
- [International Templar Website](#)
- [Photos](#)

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HIGH IQ ORGANIZATION MEMBERSHIPS:

Unlike most of the other narratives on this website which have been written by the team that has put it all together, I decided to write this one myself because it's an interesting journey that only I am aware of. Something happened between my freshman year in high school, when my generation was first subjected to IQ tests, and in the ensuing years of training and education and life's experience through my graduation from Northwestern University, in which I went from just being smart to being a lot smarter. And as my high school classmates and Northwestern University fraternity brothers will certify, "I hid it well". In high school, I was too involved in year-round high school athletics and weekend boy scout training to have much time or, admittedly, interest in my classes. Although I found the math and science classes interesting---- I found athletics and scouting and activities involving operations much more interesting. The same was true in college, where I admittedly did just what I had to do to stay in school while being involved in a full calendar of intermural athletics, fraternity leadership, class leadership, social events, student leadership, musical comedy and drama involvement, and related "operational efforts" that I discovered I had a natural inclination for and which I enjoyed immensely more than sitting in some boring lecture hall listening to some tenured professor drone on and on using the same lesson plan he'd used for 30 years and with about as much interest and excitement in what he was teaching as one experiences from watching paint dry or grass grow. But some of it truly "rubbed off" and was assimilated, as I was to learn a few years later when the Selective Service System began to chase me with the military draft to ensure I had the opportunity to go to Vietnam and do my bit for freedom [I think that's how they put it].

I'd heard enough from my Dad, who served in France in World War I [YES, World War I---- everyone always says "you mean World War II" and I always have to clarify "NO, World War I---- Irish guys marry late in life, my dad was born Oct. 31, 1892, and he enlisted in the Army in 1917 at age 25 and fought with the 325th Remount Squadron in France, where being a horse trainer and racer by profession, he ended up with the mission of training and providing horses to tow cannon and artillery and wagons in support of the combat operations there---- so YES, it WAS World War I]. But I digress. To say my Dad was NOT enamored with the Army or war in France or combat operations with horses and artillery is an industrial strength understatement---- and he did not want his son Jim sleeping in a foxhole and freezing his butt off [he got his wish---- I was to learn that Vietnam and the Tonkin Gulf and the South China Sea does NOT freeze]. So, long story short, with the Draft Board breathing down my neck, I enlisted in the U. S. Naval Reserve where, as Seaman Recruit Carey, I had to take the Navy Battery of IQ Tests so they knew what career paths I had the brains to function within. And that's where I found that I'd really gotten smarter---- A LOT SMARTER---- due to my ensuing high school classes and Northwestern University expensive education. In fact, I knocked the ball out of the park with scores that literally allowed me to apply for any rating in the Navy that I wanted to.

Now the IQ story gets interrupted a bit here, since beginning an enlisted Navy career is not like it's portrayed in movies about the Navy. There were no airplane rides or ships at sea or 20,000 leagues under the sea----- instead it was boring classes and boring training and shining brass and swabbing decks, and after a few months of that, I requested an appointment with the Executive Officer to tell him I had my college degree from Northwestern and was willing to extend for the required amount of time to attend Officers Candidate School. It was early 1962 and the nation was already beginning a significant buildup for Vietnam and the X.O. told me he would look into it. He requested my personnel records from the Administrative Office and when he saw my IQ scores, he called me in and said "I'm approving your application for OCS" and that began my trek to becoming a Naval Officer and 34 years of service "from Seaman Recruit to Admiral". And to my surprise and delight, I truly loved the Navy. GREAT People, a GREAT sense of mission and teamwork and of service to the nation, and I also loved it because it was very VERY MUCH OPERATIONAL. I enjoyed ship operations at sea and found I had a special ability in being able to understand relative motion and spatial relations at sea and soon was the Officer of the Deck Underway with Fast Carrier Task Forces and being in that role on my first ship for General Quarters [Battle Stations] and Underway Replenishment and Special Sea and Anchor Detail which manned the bridge for leaving and entering port. Truly exciting stuff where in my opinion, my IQ paid high dividends and I was able to perform effectively and well. I also became aware that I had a special gift that even I find hard to explain, but it is there nevertheless. In complex problems and in the Navy, during at-sea operations, I discovered that I had a special ability to think 4 or 5 or 6 "moves ahead" of others, to the degree that I was prepared for situations and operations that others had not even thought of. Now whether this has anything to do with a high IQ, I don't have a clue, but it's an ability that I found I have in addition to a high IQ, and it has served me exceptionally well over time, whether it is with the Navy at sea, or in management, or in government relations, or in politics----- anything "operational" where I needed to think 6 moves ahead of the other guy, I found I was able to do it. But I repeat, whether that has anything to do with a high IQ, I'm not sure, but it has served me well in my various careers.

Which leads me back to the topic at hand ----- High IQ Organization Memberships. One day in the 1980's, I was on an airplane flight to who-knows-where and was reading the in-flight magazine and there was an article about Mensa, the High IQ Society [only one of several, I was to learn later], and when it cited the IQ level for membership, I recalled my Navy Test Battery and thought to myself "I think my scores were higher than that". So I jotted down the e-mail address and sent Mensa a message asking about membership qualifications, learning that not only did I qualify, but they would accept my Navy Test Battery Scores so long as they were transmitted to them from my Navy Admin Office, which I did. And thus began my involvement for the next quarter of a century with High IQ Societies. I learned that Mensa Membership was for those whose IQ was in the 98th percentile of the population. There was, of course, another higher level organization known as Intertel, which was for those in the 99th percentile, and they also would accept my Navy Scores, so now I belonged to two such organizations. That led me to two higher organizations that required an IQ in the 99.9th percentile, the Triple Nine Society and the International Society for Philosophical Enquiry [ISPE---- a.k.a. The Thousand]. I applied for ISPE first, and they would not accept my Navy scores, instead requiring me to take their own IQ test. Needless to say, since I had not been in formal classes for over 20 years, I wondered if my brain might have deteriorated, but forged ahead anyway and took their test and passed and was accepted into membership. I learned later that the Triple Nine Society would accept my ISPE membership as proof of my being in the 99.9th percentile and thus, after sending my dues, was now a member of 4 high IQ societies. And that is the story of how and when it all happened.

Membership in these organizations has been interesting. Each puts out a magazine or newsletter or journal, and the discourse in each is interesting. If there is a common theme I've picked up over the years, it's "if I'm so smart, how come I'm not rich". But I've also learned that, while there are some in these organizations who are on the outer edges of "brainy" and who dwell on esoteric and even weird tangents, most are pretty normal and easy to talk to and inquisitive and, in my experience, enjoyable. I've even met one gent that, as we talked, I learned he felt he also had a sixth sense to be able to think 5 and 6 moves ahead in operational matters. Now my Navy friends who've known me well for decades, when they learn I belong to these High IQ

organizations, are all quick to say "Gee Jim, you hide it well!", and that's just fine with me. I don't want to be a brainiac or viewed as weird or over the edge. And so long as I can continue to trudge along, NOT have to sit in classrooms any longer, and keep my focus on operations matters and leadership and the things that interest me, I can hopefully also bring this brainpower to these efforts and make them more effective as a result.

If these organizations are of interest to anyone reading this narrative, I've listed the URL's below should you wish to contact them direct to see if you qualify for membership----- like I've outlined above, I've found them interesting, the organizations don't cost a lot of money, and the members are unique and uniquely talented, :

98th Percentile	American Mensa	www.us.mensa.org
99th Percentile	Intertel	www.intertel-iq.org
99.9th Percentile	Triple Nine Society	www.triplenine.org
99.9th Percentile	ISPE	www.thethousand.com

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 3

RECEIVED
FEC MAIL ROOM
2000 JUL 20 P 1:31

STATEMENT OF ORGANIZATION

(See reverse side for instructions)

1. (a) NAME OF COMMITTEE IN FULL National Defense PAC	<input type="checkbox"/> (Check if name is changed)	2. DATE 7-17-2000
(b) Number and Street Address P.O. Box 10096	<input type="checkbox"/> (Check if address is changed)	3. FEC Identification Number
(c) City, State and ZIP Code Alexandria VA 22310-0096		4. Is This Report An Amendment? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

5. TYPE OF COMMITTEE (Check one)

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
 - (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)
- | | | | |
|-------------------|-----------------------------|---------------|----------------|
| Name of Candidate | Candidate Party Affiliation | Office Sought | State/District |
| | | | |
- (c) This committee supports/opposes only one candidate _____ and is NOT an authorized committee. (name of candidate)
 - (d) This committee is a _____ committee of the _____ Party. (National, State or subordinate) (Democratic, Republican, etc.)
 - (e) This committee is a separate segregated fund.
 - (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund or a party committee.

6. Name of Any Connected Organization or Affiliated Committee	Mailing Address and ZIP Code	Relationship
None		

Type of Connected Organization
 Corporation Corporation w/o Capital Stock Labor Organization Membership Organization Trade Association Cooperative

7. Custodian of Records: Identify by name, address (phone number - optional) and position of the person in possession of committee books and records.

Full Name James J. Carey	Mailing Address P.O. Box 10096	Title or Position Treasurer
	Alexandria, VA 22310-0096	703-971-3220

8. Treasurer: List the name and address (phone number - optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name Same as # 7 Above	Mailing Address # 7 Above	Title or Position Treasurer
---------------------------------------	-------------------------------------	---------------------------------------

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc. F&M Bank of Northern Virginia	Mailing Address and ZIP Code 1717 King St Alexandria VA 22314
--	---

I certify that I have prepared this Statement and to the best of my knowledge and belief it is true, correct and complete.

TYPE OR PRINT NAME OF TREASURER James J. CAREY	SIGNATURE OF TREASURER 	DATE 7-17-2000
--	----------------------------	--------------------------

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. 9437g. ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

For further information contact: Federal Election Commission Toll-free 800-424-9530 Local 202-694-1100	FEBSAN114PDF FEC FORM 1 (revised 4/87)	James J. CAREY P.O. Box 10096 Alexandria, VA 22310-0096 703-971-3220 Treasurer
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Federal Election Commission

**ENVELOPE REPLACEMENT PAGE
FOR INCOMING DOCUMENTS**

The Commission has added this page to the end of this filing to indicate how it was received.

<input type="checkbox"/>	Hand Delivered	Date of Receipt
<input checked="" type="checkbox"/>	First Class Mail	POSTMARKED 7-18-00
<input type="checkbox"/>	Registered/Certified Mail	POSTMARKED (R/C)
<input type="checkbox"/>	No Postmark	
<input type="checkbox"/>	Postmark Illegible	
<input type="checkbox"/>	Received from the House office of Records and Registration	Date of Receipt
<input type="checkbox"/>	Received from the Senate Office of Public Records	Date of Receipt
<input type="checkbox"/>	Other (Specify):	Postmarked and/or Date of Receipt
<input type="checkbox"/>	Electronic Filing	
<i>SL</i> PREPARER		7-20-00 DATE PREPARED

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FOR THE DISTRICT OF COLUMBIA**

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FEC Exhibits

FEC EXHIBIT 4

National Defense PAC

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- [News](#)
- [Our Values](#)
- [Our Candidates](#)
- [Contribute](#)
- [About Us](#)
- [Contact Us](#)
-

Switcher

Welcome to The National Defense Political Action Committee [NDPAC]

NATIONAL DEFENSE PAC: Our “Band of Brothers”

The American Public, for several years now, has consistently voted service in the U. S. Armed Forces as the most trusted and admired profession, literally magnitudes above the U. S. Congress, always significantly above the President of the United States, and also magnitudes above journalists, lawyers, politicians, the news media, car salesmen, union leaders, movie actors, and professional athletes. With the American Public’s declining lack of trust in Congress and growing feeling they are without honor and honesty, National Defense PAC wants to replace as many as possible in Congress with military veterans, who the American People say they trust and respect. That’s WHO we are and what we’re trying to make happen.

Leadership Starts Here

America is in serious trouble and our current national leadership has not demonstrated the

capability to deal with it or fix it. Their priorities are totally out of sync with reality and do not match our desperate need to address our major problems!

We're waging two wars...PLUS

We're fighting a global War on Terror with an enemy that has publicly stated their objective is to bankrupt us, and a government that is spending at such an outrageous rate that we are headed for this bankruptcy like some third-world banana republic ...

Our military is operating in an incredibly more complex world and our people and equipment are stretched to the limit...

We face new threats increasingly fueled with ever deadlier technologies and driven by a fanaticism that believes their religion gives them authority to kill all Americans— men, women, and children. No doubt, 9-11 proved Muslim extremists will do just that when opportunity and capability align. We must remember Muslim extremists killed over 3,000 of us in one day—more Americans than we lost at Pearl Harbor...

We have an exploding veterans population facing unprecedented challenges and a federal government in a death spiral of deficit spending that has our nation cascading towards bankruptcy——

- A G.I. Bill often dysfunctional and overwhelmed with bureaucratic paperwork and multi-layered oversight
- A Veterans Administration all-too-often focused in denying veterans benefits rather than taking care of them
- A lack of experienced leadership throughout government with 40% of the career federal workforce retiring in the next five years
- An Administration and Congress totally focused on raising taxes and engaging in out of control deficit spending by over \$1.3 Trillion Dollars EACH YEAR, rather than mandating fiscal responsibility, CUTTING SPENDING, and bringing our national budget expenditures back in line with federal income.
- An out-of-control Medicare system that admits to having \$120 Billion Dollars in annual waste and fraud, with zero focus on increasing investigation and prosecution to reclaim those dollars to the taxpayer and national benefit
- A defense budget cascading towards disaster as personnel costs threaten to overwhelm any funding for technology updates, equipment purchases, and an urgent need for more effective use of the Guard & Reserve to overcome this personnel cost deficit.

Mission Statement

The National Defense Political Action Committee is dedicated to electing Military Veterans to the U. S. Congress who share the traditional American values of a limited fiscally responsible government, ensuring a strong national defense, protecting the rights/interests of service members, and our historic commitment to

**Now more than ever, it is time
for Veterans to be heard, to
challenge, and to LEAD.**

Join the National Defense PAC – The only

our Veterans.

Political Action Committee dedicated to electing America's Military Veterans to public office!

Take a stand and help elect Veterans who know what it's like to put their life on the line for our nation's protection, understand the challenges we face, support a sound fiscal governance where expenditures do NOT exceed income, live up to America's commitment to our Veterans, and are committed to a strong national defense and homeland security.

Your contributions support our efforts nationwide to elect military veterans to Congress – bringing military-discipline-based loyalty, dedication, and commitment to produce these results to our national governance. Together, we MUST take a stand, MAKE a difference, and LEAD, and we need to do it NOW.

The 2010 Congressional election can change the face of our national governance for a generation – AND THEY MUST! Come, take a stand with us. Unless we prevail in the 2010 elections, we will end up with our children and grandchildren inheriting a bankrupt nation! Surely, that is not what we want to be the the history of our generation!

Click [HERE](#) to download our Vetting Questions.

Your contributions to the National Defense PAC allow us to aggressively support veterans for office who share, and LIVE, our values.

CONTRIBUTE NOW

NDPAC Officials

- [Rear Admiral \[Ret.\] James Carey](#), National Chairman & Treasurer
- [Mr. Dan Backer Esq.](#), FEC Compliance Officer & Assistant Treasurer
- [Prof. Jonathan Agresta M.Ed.](#), Webmaster & Web Graphics Director

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Stay informed – opt-in to our mailing list (or change your email settings) so we can continue keep you informed of where the candidates stand, veterans running nationwide, and which Veterans your National Defense PAC endorses & funds in 2010.

NDPAC Military / Veterans Links

- [Combat Veterans for Congress](#)
- [The Flag and General Officers Network](#)
- [National Defense Committee](#)

- [Members of Congress who are military veterans](#)
- [Candidates for Election \[including NonVeterans\]](#)
- [Military Voting Rights Alliance](#)
- [Election Candidate Polling Results](#)
- [DOD's Military Voting Assistance Program](#)

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Website Designed and Maintained by [Jonathan Agresta](#). NDPAC Logo Designed & Donated by [Kim Cianela](#)

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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FEC Exhibits

FEC EXHIBIT 5



FEDERAL ELECTION COMMISSION

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Reports Image Index for Committee ID: C00359992

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NATIONAL DEFENSE PAC

P.O. BOX 75021
 WASHINGTON, DC 20013

Treasurer Name: CAREY, JAMES ADM.
Committee Designation: U (UNAUTHORIZED)
Committee Type: Q (QUALIFIED NON-PARTY(SEE 2USC SECT.441(A)(4)))

Candidate listings may appear here as a result of draft committees or independent expenditure committees registering with the FEC. If no official documents of an authorized committee appear below, the individual identified here has taken no action to become a candidate.

Click here if you have a problem viewing the images. NOTE: Images are best viewed using the latest version of Adobe Reader.							
Year 2010							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
APRIL QUARTERLY		04/06/2010	01/01/2010	03/31/2010	5	10930472253	PDF
JULY QUARTERLY		07/08/2010	04/01/2010	06/30/2010	7	10990831069	PDF
OCTOBER QUARTERLY		10/11/2010	07/01/2010	09/30/2010	6	10931411640	PDF
PRE-GENERAL		10/20/2010	10/01/2010	10/13/2010	8	10991702542	PDF
POST-GENERAL		12/02/2010	10/14/2010	11/22/2010	7	10992324991	PDF
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STATEMENT OF ORGANIZATION	AMEND	12/29/2009			5	29935609690	PDF
MID-YEAR REPORT		06/22/2009	01/01/2009	06/30/2009	5	29934040302	PDF
MID-YEAR REPORT	AMEND	12/09/2009	01/01/2009	06/30/2009	6	29993417947	PDF
YEAR-END		01/14/2010	07/01/2009	12/31/2009	5	10930034772	PDF
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MISCELLANEOUS REPORT TO FEC		05/05/2008			5	28039720472	PDF
APRIL QUARTERLY		04/14/2008	01/01/2008	03/31/2008	5	28990805212	PDF
APRIL QUARTERLY	AMEND	12/09/2009	01/01/2008	03/31/2008	5	29993417927	PDF
JULY QUARTERLY		07/15/2008	04/01/2008	06/30/2008	5	28991475299	PDF
JULY QUARTERLY	AMEND	12/09/2009	04/01/2008	06/30/2008	5	29993417932	PDF
OCTOBER		10/13/2008	07/01/2008	09/30/2008	5	28992388151	PDF

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POST-GENERAL	AMEND	12/09/2009	10/16/2008	11/24/2008	5	29935547011	PDF
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YEAR-END	AMEND	12/09/2009	07/01/2007	12/31/2007	7	29935546982	PDF
REQUEST FOR ADDITIONAL INFORMATION		03/28/2008	07/01/2007	12/31/2007	3	28039663420	PDF
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JULY QUARTERLY		07/06/2006	04/01/2006	06/30/2006	5	26960182307	PDF
OCTOBER QUARTERLY		10/10/2006	07/01/2006	09/30/2006	5	26960446631	PDF
PRE-GENERAL		10/26/2006	10/01/2006	10/18/2006	5	26960644198	PDF
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MID-YEAR REPORT		07/20/2005	04/01/2005	06/30/2005	6	25970711354	PDF
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Year 2004							
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MISCELLANEOUS DOCUMENT		05/05/2004			2	24038402828	PDF
STATEMENT OF ORGANIZATION	AMEND	05/17/2004			1	24961318939	PDF
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Year 2003							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report

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MID-YEAR REPORT		06/27/2003	04/01/2003	06/30/2003	10	23991180081	PDF
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Year 2002							
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APRIL QUARTERLY	AMEND	06/18/2003	01/01/2002	03/31/2002	11	23038111886	PDF
REQUEST FOR ADDITIONAL INFORMATION		06/04/2003	01/01/2002	03/31/2002	1	23038100390	PDF
JULY QUARTERLY		07/19/2002	04/01/2002	06/30/2002	5	22037662619	PDF
JULY QUARTERLY	AMEND	06/18/2003	04/01/2002	06/30/2002	9	23038111897	PDF
REQUEST FOR ADDITIONAL INFORMATION		06/04/2003	04/01/2002	06/30/2002	1	23038100391	PDF
OCTOBER QUARTERLY		10/21/2002	07/01/2002	09/30/2002	3	22037801228	PDF
OCTOBER QUARTERLY	AMEND	06/18/2003	07/01/2002	09/30/2002	6	23038111906	PDF
REQUEST FOR ADDITIONAL INFORMATION		06/04/2003	07/01/2002	09/30/2002	1	23038100392	PDF
POST-GENERAL		12/09/2002	10/01/2002	11/25/2002	12	22037881075	PDF
POST-GENERAL	AMEND	06/18/2003	10/01/2002	11/25/2002	16	23038111912	PDF
REQUEST FOR ADDITIONAL INFORMATION		06/04/2003	10/01/2002	11/25/2002	1	23038100393	PDF
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REQUEST FOR ADDITIONAL INFORMATION		06/04/2003	11/26/2002	12/31/2002	2	23038100394	PDF
Year 2001							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
MID-YEAR REPORT		08/02/2001	01/01/2001	06/30/2001	3	21037250466	PDF
MID-YEAR REPORT	AMEND	06/18/2003	01/01/2001	06/30/2001	8	23038111872	PDF
REQUEST FOR ADDITIONAL INFORMATION		06/04/2003	01/01/2001	06/30/2001	1	23038100388	PDF
YEAR-END		02/25/2002	07/01/2001	12/31/2001	3	22037474015	PDF
YEAR-END	AMEND	06/18/2003	07/01/2001	12/31/2001	6	23038111880	PDF
REQUEST FOR ADDITIONAL INFORMATION		06/04/2003	07/01/2001	12/31/2001	1	23038100389	PDF
Year 2000							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
STATEMENT OF ORGANIZATION		07/20/2000			2	20035872919	PDF
OCTOBER QUARTERLY		10/17/2000	07/17/2000	09/30/2000	4	20036212231	PDF
PRE-GENERAL		10/24/2000	10/01/2000	10/18/2000	6	20036333513	PDF
POST-GENERAL		12/09/2000	10/19/2000	12/07/2000	4	20036604815	PDF
YEAR-END		02/02/2001	12/08/2000	12/31/2000	3	21036860943	PDF

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 6

12/29/2009 16 : 50

Image# 29935609690

FEC FORM 1

STATEMENT OF ORGANIZATION

(See instructions)

Office use only

1. NAME OF COMMITTEE (in full) (Check if name is changed) Example: If typing, type over the lines 12FE4M5

National Defense PAC

ADDRESS (number and street) P.O. Box 75021

X (Check if address is changed) Washington DC 20013

CITY STATE ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

X (Check if address is changed) danbacker@hotmail.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

(Check if address is changed)

2. DATE 12 / 24 / 2009

3. FEC IDENTIFICATION NUMBER C C00359992

4. IS THIS STATEMENT X NEW (N) OR AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete

Type or Print Name of Treasurer Dan Backer, Esq.

Signature of Treasurer Electronically Filed by Dan Backer, Esq. Date 12 / 29 / 2009

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS

Image# 29935609691

FEC Form 1 (Revised 02/2009)

Page 2

5. TYPE OF COMMITTEE (Check One)

Candidate Committee:

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate _____

Candidate Party Affiliation _____ Office Sought: House Senate President State _____ District _____

- (c) This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate _____

Party Committee:

- (d) This committee is a _____ (National, State or subordinate) committee of the _____ (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e) This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
 - Corporation
 - Corporation w/o Capital Stock
 - Labor Organization
 - Membership Organization
 - Trade Association
 - Cooperative

- (f) In addition, this committee is a Lobbyist/Registrant PAC.
- (f) This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)

In addition, this committee is a Lobbyist/Registrant PAC.

In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (g) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1.	_____	FEC ID number	<input checked="" type="checkbox"/>
2.	_____	FEC ID number	<input checked="" type="checkbox"/>
3.	_____	FEC ID number	<input checked="" type="checkbox"/>
4.	_____	FEC ID number	<input checked="" type="checkbox"/>

Image# 29935609692

FEC Form 1 (Revised 02/2009)

Page 3

Write or Type Committee Name

National Defense PAC

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

National Defense Committee PAC

Mailing Address

PO BOX 75021

Washington

DC

20013

CITY ▲

STATE ▲

ZIP CODE ▲

Relationship:

Connected Organization

Affiliated Committee

Joint Fundraising Representative

Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address, (phone number -- optional), and position of the person in possession of Committee books and records.

Full Name

Dan Backer, Esq.

Mailing Address

PO BOX 75021

Washington

DC

20013

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

Assistant Treasurer

Telephone number

202

210

5431

8. Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer

Adm. James Carey

Mailing Address

6022 Knights Ridge Way

Alexandria

VA

22310

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

Treasurer

Telephone number

703

971

3220

Image# 29935609693

FEC Form 1 (Revised 02/2009)

Page 4

Full Name of Designated Agent

Dan Backer, Esq.

Mailing Address

PO BOX 75021

Washington

DC

20013

Title or Position

CITY

STATE

ZIP CODE

Assistant Treasurer

Telephone number

202

210

5431

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

Burke & Herbert Bank and Trust

Mailing Address

5519 Franconia Road

Alexandria

VA

22310

CITY

STATE

ZIP CODE

Name of Bank, Depository, etc.

Mailing Address

CITY

STATE

ZIP CODE

A. Form/Schedule : **F1N**

Transaction ID :

This amended Form 1 indicates an affiliation between this PAC and the National Defense Committee PAC (C00383182), which is simultaneously amending it's Form 1 to indicate this affiliation. Both PAC's share the same Treasurer and some circumstances indicating affiliation such that we will treat both PAC's as affiliated pending an Advisory Opinion request & response to the contrary.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 7

22037850716

FEC FORM 1

STATEMENT OF ORGANIZATION

(See instructions)

RECEIVED
FEDERAL
OPERATIONS CENTER

NOV 22 A 9:25
Office Use Only

1. NAME OF COMMITTEE (in full) (Check if name is changed) Example: if typing, type over the lines. 12 PR4MS

National Defense Committee PAC

ADDRESS (number ork street)

P. O. Box 151473

(Check if address is changed)

Alexandria

VA 22310 1473

CITY ▲

STATE ▲

ZIP CODE ▲

COMMITTEE'S E-MAIL ADDRESS

NatlDefenseComm@aol.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

2. DATE 11 18 2002

3. FEC IDENTIFICATION NUMBER ▶ C

4. IS THIS STATEMENT NEW (N) OR AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

James J. Carey

Signature of Treasurer

Date 11 18 2002

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office Use Only

For further information contact:
Federal Election Commission
1st Floor 800-424-9530
Local 202-694-1100

FEC FORM 1
(Revised 10/01)

22037850717

FEC Form 4 (Revised 1/01)

Page 2

5. TYPE OF COMMITTEE (Check One)

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate _____

Candidate Party Affiliation	Office Sought	House	Senate	President	State District
-----------------------------	---------------	-------	--------	-----------	----------------

- (c) This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate _____

(d) This committee is a (National, State or subordinate) committee of the (Democratic, Republican, etc.) Party.

- (e) This committee is a separate segregated fund.

- (f) This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee.

6. Name of Any Connected Organization or Affiliated Committee

National Defense Committee

Mailing Address P. O. Box 151473

Alexandria VA 22315-1473

Relationship *connected*

Type of Connected Organization:

- | | | |
|---|---|---|
| <input type="checkbox"/> Corporation | <input type="checkbox"/> Corporation with Capital Stock | <input type="checkbox"/> Labor Organization |
| <input checked="" type="checkbox"/> Membership Organization | <input type="checkbox"/> Trade Association | <input type="checkbox"/> Cooperative |

FEC Form 4

2011 03 07 11:00:00 AM

22037850718

FEC Form 4 (Revised 1/01)

Page 3

Write or Type Committee Name

National Defense Committee PAC

7. Custodian of Records: (Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name

James J. Carey

Mailing Address

6022 Knights Ridge Way

Alexandria

VA

22310-1635

Title or Position

CITY

STATE

ZIP CODE

Treasurer

Telephone number

203-971-3220

8. Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (i.e., assistant treasurer).

Full Name of Treasurer

James J. Carey

Mailing Address

6022 Knights Ridge Way

Alexandria

VA

22310-1635

Title or Position

CITY

STATE

ZIP CODE

Treasurer

Telephone number

203-971-3220

Full Name of Designated Agent

James J. Carey

Mailing Address

6022 Knights Ridge Way

Alexandria

VA

22310-1635

Title or Position

CITY

STATE

ZIP CODE

Treasurer

Telephone number

203-971-3220

22037850719

FD-101 Form 1 (Revised 1/01)

Page 4

9. Banks or Other Depositories: List all banks or other depositories in which the commission deposits funds, holds securities, maintains safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

Bank of Herkent Bank & Trust Co.

Mailing Address

P. O. Box 268

Alexandria VA 22313

CITY

STATE

ZIP CODE

Name of Bank, Depository, etc.

Mailing Address

CITY

STATE

ZIP CODE

22037850720

Federal Election Commission
**ENVELOPE REPLACEMENT PAGE
 FOR INCOMING DOCUMENTS**

The Commission has added this page to the end of this filing to indicate how it was received.

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<input type="checkbox"/> Registered/Certified Mail	POSTMARKED (R/C)
<input type="checkbox"/> No Postmark	
<input type="checkbox"/> Postmark Illegible	
<input type="checkbox"/> Received from the House office of Records and Registration	Date of Receipt
<input type="checkbox"/> Received from the Senate Office of Public Records	Date of Receipt
<input type="checkbox"/> Other (Specify):	Postmarked and/or Date of Receipt
<input type="checkbox"/> Electronic Filing	
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PREPARED	DATE PREPARED

2011-03-07 10:07:20

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 8



FEDERAL ELECTION COMMISSION

HOME / CAMPAIGN FINANCE REPORTS AND DATA / REPORT IMAGE SEARCH / REPORTS IMAGE INDEX

Reports Image Index for Committee ID: C00383182

[FEC HOME](#) [NEW SEARCH](#) [NEW ADVANCED SEARCH](#)

NATIONAL DEFENSE COMMITTEE PAC

PO BOX 75021
 WASHINGTON, DC 20013

Treasurer Name: CAREY, JAMES
Committee Designation: U (UNAUTHORIZED)
Committee Type: N (NON-PARTY NON-QUALIFIED)

Candidate listings may appear here as a result of draft committees or independent expenditure committees registering with the FEC. If no official documents of an authorized committee appear below, the individual identified here has taken no action to become a candidate.

Click here if you have a problem viewing the images. NOTE: Images are best viewed using the latest version of Adobe Reader.								
Year 2010								
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report	
APRIL QUARTERLY		04/06/2010	01/01/2010	03/31/2010	5	10990430495	PDF	
JULY QUARTERLY		07/08/2010	04/01/2010	06/30/2010	7	10990831101	PDF	
OCTOBER QUARTERLY		10/11/2010	07/01/2010	09/30/2010	5	10931411635	PDF	
PRE-GENERAL		10/20/2010	10/01/2010	10/13/2010	6	10991702550	PDF	
POST-GENERAL		11/30/2010	10/14/2010	11/22/2010	5	10992076894	PDF	
YEAR-END		01/11/2011	11/23/2010	12/31/2010	5	11990039107	PDF	
Year 2009								
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report	
STATEMENT OF ORGANIZATION	AMEND	12/29/2009			5	29993513677	PDF	
MID-YEAR REPORT		06/22/2009	01/01/2009	06/30/2009	5	29992281150	PDF	
MID-YEAR REPORT	AMEND	12/09/2009	01/01/2009	06/30/2009	6	29935547076	PDF	
YEAR-END		01/14/2010	07/01/2009	12/31/2009	5	10990039770	PDF	
Year 2008								
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report	
APRIL QUARTERLY		04/14/2008	01/01/2008	03/31/2008	5	28990805317	PDF	
JULY QUARTERLY		07/15/2008	04/01/2008	06/30/2008	5	28991475294	PDF	
OCTOBER QUARTERLY		10/13/2008	07/01/2008	09/30/2008	5	28933447637	PDF	
PRE-GENERAL		10/21/2008	10/01/2008	10/15/2008	5	28992875296	PDF	
POST-GENERAL		11/24/2008	10/16/2008	11/24/2008	5	28993144823	PDF	
YEAR-END		01/31/2009	11/25/2008	12/31/2008	5	29932122361	PDF	
Year 2007								

Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
MID-YEAR REPORT		07/17/2007	01/01/2007	06/30/2007	5	27990308693	PDF
YEAR-END		02/01/2008	07/01/2007	12/31/2007	7	28990416039	PDF
Year 2006							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
APRIL QUARTERLY		04/18/2006	01/01/2006	03/31/2006	5	26940093023	PDF
JULY QUARTERLY		07/06/2006	04/01/2006	06/30/2006	5	26940219986	PDF
OCTOBER QUARTERLY		10/10/2006	07/01/2006	09/30/2006	5	26930425541	PDF
PRE-GENERAL		10/26/2006	10/01/2006	10/18/2006	5	26940555867	PDF
POST-GENERAL		12/05/2006	10/19/2006	11/27/2006	5	26940624541	PDF
YEAR-END		01/09/2007	11/28/2006	12/31/2006	5	27930028985	PDF
Year 2005							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
MISCELLANEOUS REPORT FROM FEC		12/16/2005			2	25038934070	PDF
APRIL QUARTERLY		04/13/2005	01/01/2005	03/31/2005	5	25990454150	PDF
MID-YEAR REPORT		07/20/2005	04/01/2005	06/30/2005	5	25970711413	PDF
YEAR-END		01/10/2006	07/01/2005	12/31/2005	5	26990038771	PDF
Year 2004							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
APRIL QUARTERLY		04/12/2004	01/01/2004	03/31/2004	5	24990959717	PDF
JULY QUARTERLY		07/07/2004	04/01/2004	06/30/2004	5	24961724704	PDF
OCTOBER QUARTERLY		10/10/2004	07/01/2004	09/30/2004	5	24962397832	PDF
POST-GENERAL		11/23/2004	11/03/2004	11/22/2004	5	24962901929	PDF
YEAR-END		01/29/2005	11/23/2004	12/31/2004	5	25970058833	PDF
Year 2003							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
APRIL QUARTERLY		04/29/2003	01/01/2003	03/31/2003	6	23990847556	PDF
MID-YEAR REPORT		06/27/2003	04/01/2003	06/30/2003	5	23991181063	PDF
YEAR-END		01/29/2004	07/01/2003	12/31/2003	6	24990275406	PDF
Year 2002							
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Report Page By Page	Display Full Report
STATEMENT OF ORGANIZATION		11/03/2002			5	22037832706	PDF
STATEMENT OF ORGANIZATION	AMEND	11/22/2002			5	22037850716	PDF
REQUEST FOR ADDITIONAL INFORMATION		11/27/2002		11/27/2002	2	22037854147	PDF
POST-GENERAL		01/08/2003	11/03/2002	11/25/2002	6	23037912710	PDF
NOTICE OF FAILURE TO FILE		12/23/2002	11/03/2002	11/25/2002	2	23037914667	PDF
YEAR-END		02/06/2003	11/26/2002	12/31/2002	4	23037971919	PDF

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 9

12/29/2009 16 : 47

Image# 29993513677

**FEC
FORM 1**

**STATEMENT OF
ORGANIZATION**

(See instructions)

Office use only

1. NAME OF COMMITTEE (in full) (Check if name is changed) Example: If typing, type over the lines 12FE4M5

NATIONAL DEFENSE COMMITTEE PAC

ADDRESS (number and street) PO BOX 75021

X (Check if address is changed)

Washington DC 20013

CITY STATE ZIP CODE

COMMITTEE'S E-MAIL ADDRESS (Please provide only one e-mail address)

X (Check if address is changed) danbacker@hotmail.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

(Check if address is changed)

2. DATE 12 / 24 / 2009

3. FEC IDENTIFICATION NUMBER C C00383182

4. IS THIS STATEMENT X NEW (N) OR AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete

Type or Print Name of Treasurer Dan Backer, Esq.

Signature of Treasurer Electronically Filed by Dan Backer, Esq. Date 12 / 29 / 2009

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS

Office Use Only				
-----------------	--	--	--	--

For further information contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-694-1100

FEC FORM 1
(Revised 02/2009)

Image# 29993513678

FEC Form 1 (Revised 02/2009)

Page 2

5. TYPE OF COMMITTEE (Check One)

Candidate Committee:

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate

Candidate	Office	House	Senate	President	State
Party Affiliation	Sought:				District

- (c) This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate

Party Committee:

- (d) This committee is a (National, State (or subordinate) committee of the (Democratic, Republican, etc.) Party.

Political Action Committee (PAC):

- (e) This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:

<input type="checkbox"/> Corporation	<input type="checkbox"/> Corporation w/o Capital Stock	<input type="checkbox"/> Labor Organization
<input type="checkbox"/> Membership Organization	<input type="checkbox"/> Trade Association	<input type="checkbox"/> Cooperative

- (f) In addition, this committee is a Lobbyist/Registrant PAC.
- (f) This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)

In addition, this committee is a Lobbyist/Registrant PAC.

In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

Joint Fundraising Representative:

- (g) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.

- (h) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1.	<input style="width: 95%; height: 20px;" type="text"/>	FEC ID number	<input style="width: 95%; height: 20px;" type="text"/>
2.	<input style="width: 95%; height: 20px;" type="text"/>	FEC ID number	<input style="width: 95%; height: 20px;" type="text"/>
3.	<input style="width: 95%; height: 20px;" type="text"/>	FEC ID number	<input style="width: 95%; height: 20px;" type="text"/>
4.	<input style="width: 95%; height: 20px;" type="text"/>	FEC ID number	<input style="width: 95%; height: 20px;" type="text"/>

Image# 29993513679

FEC Form 1 (Revised 02/2009)

Page 3

Write or Type Committee Name

NATIONAL DEFENSE COMMITTEE PAC

6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor

National Defense PAC

Mailing Address

PO BOX 75021

Washington

DC

20013

CITY ▲

STATE ▲

ZIP CODE ▲

Relationship:

Connected Organization

Affiliated Committee

Joint Fundraising Representative

Leadership PAC Sponsor

7. Custodian of Records: Identify by name, address, (phone number -- optional), and position of the person in possession of Committee books and records.

Full Name

Dan Backer, Esq.

Mailing Address

PO BOX 75021

Washington

DC

20013

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

Assistant Treasurer

Telephone number **202** - **210** - **5431**

8. Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer

James Carey

Mailing Address

6022 Knights Ridge Way

Alexandria

VA

22315

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

Treasurer

Telephone number **703** - **971** - **3220**

Image# 29993513680

FEC Form 1 (Revised 02/2009)

Page 4

Full Name of Designated Agent

Dan Backer, Esq.

Mailing Address

PO BOX 75021

Washington

DC

20013 -

Title or Position

CITY

STATE

ZIP CODE

Assistant Treasurer

Telephone number 202 - 210 - 5431

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc.

Burke & Herbert Bank and Trust

Mailing Address

5519 Franconia road

Alexandria

VA

22310 -

CITY

STATE

ZIP CODE

Name of Bank, Depository, etc.

Mailing Address

CITY

STATE

ZIP CODE

A. Form/Schedule : **F1N**

Transaction ID :

The original Form 1 filing for the National Defense Committee PAC incorrectly listed the PAC as a Separate Segregated Fund (SSF) of an organization named the National Defense Committee. This amended Form 1 removes that notation. While these organizations share a common name and were started by the same individual, there is no relationship of control, management, oversight, financing, or otherwise between the two entities, and they are operated as wholly separate and unaffiliated entities. Additionally, this amended Form 1 indicates an affiliation between this PAC and the National Defense PAC (C00359992), which is simultaneously amending its Form 1 to indicate this affiliation. Both PAC's share the same Treasurer and some circumstances indicating affiliation such that we will treat both PAC's as affiliated pending an Advisory Opinion request & response to the contrary.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 10

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EUSATRIX CORPORATION

PUBLIC RELATIONS + POLITICAL CONSULTING

ABOUT

Eusatrix Corporation is a strategic public relations and political consulting firm specializing in campaigns and issue advocacy, public affairs, and online strategy. Founded by Kelly S. Eustis in 2007, Eusatrix serves conservative political, non-profit, and corporate clients across the United States.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 11



FEDERAL ELECTION COMMISSION

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FEC EXHIBIT 12

Presented by the Federal Election Commission

Committees And Candidates Supported/Opposed

CLUB FOR GROWTH PAC

Party: No Associated Party

**2001 L ST NW SUITE 600
 WASHINGTON, DC 20036**

Recipient's Name	Date	Amount	Image Number
INDEPENDENT EXPENDITURE AGAINST THE CANDIDATE			
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ANGLE, SHARRON E	05/26/2010	80.00	10990739887
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ANGLE, SHARRON E	05/27/2010	41.00	10990739888
ANGLE, SHARRON E	05/27/2010	164.00	10990739887
ANGLE, SHARRON E	05/27/2010	288.00	10990739889
ANGLE, SHARRON E	05/27/2010	30000.00	10990739874
ANGLE, SHARRON E	05/27/2010	208126.00	10990739894

ANGLE, SHARRON E	05/28/2010	397.00	10990739890
ANGLE, SHARRON E	06/01/2010	43.00	10990998749
ANGLE, SHARRON E	06/02/2010	43.00	10990998750
ANGLE, SHARRON E	06/02/2010	525.00	10990998749
ANGLE, SHARRON E	06/03/2010	20.00	10990998750
ANGLE, SHARRON E	06/07/2010	19.00	10990998751
ANGLE, SHARRON E	06/07/2010	21.00	10990998752
ANGLE, SHARRON E	06/09/2010	523.00	10990998752
ANGLE, SHARRON E	06/10/2010	160.00	10990998755
ANGLE, SHARRON E	06/12/2010	141.00	10990998759
ANGLE, SHARRON E	06/14/2010	141.00	10990998763
ANGLE, SHARRON E	06/14/2010	538.00	10990998764
ANGLE, SHARRON E	06/14/2010	814.00	10990998774
ANGLE, SHARRON E	06/14/2010	4616.00	10990998772
ANGLE, SHARRON E	06/16/2010	484.00	10990998769
ANGLE, SHARRON E	07/06/2010	21.00	10991113051
ANGLE, SHARRON E	09/13/2010	21.00	10991435774
ANGLE, SHARRON E	10/05/2010	21.00	10931706376
ANGLE, SHARRON E	10/11/2010	19.00	10931706378
ANGLE, SHARRON E	10/15/2010	22.00	10931937276
ANGLE, SHARRON E	10/20/2010	196.00	10931937281
ANGLE, SHARRON E	10/20/2010	1191.00	10931937290
BACHMANN, MICHELE	10/14/2008	51.00	28992901589
BACHMANN, MICHELE	10/14/2008	694.00	28992901613
BACHMANN, MICHELE	10/17/2008	98.00	28934544538
BACHMANN, MICHELE	10/17/2008	724.00	28934544587
BACHMANN, MICHELE	10/20/2008	22.00	28934544545
BACHMANN, MICHELE	10/22/2008	36.00	28934544551
BACHMANN, MICHELE	10/22/2008	329.00	28934544595
BACHMANN, MICHELE	10/24/2008	56.00	28934544560
BACHMANN, MICHELE	10/24/2008	700.00	28934544601

BARNETT, JAMES A	07/20/2010	109982.00	10991113060
BROUN, PAUL COLLINS	04/24/2008	91.00	28991031295
BROUN, PAUL COLLINS	06/04/2008	243.00	28991503342
BROUN, PAUL COLLINS	06/04/2008	1565.00	28991503347
BROUN, PAUL COLLINS	07/09/2008	72.00	28932478579
BROUN, PAUL COLLINS	07/10/2008	54.00	28932478579
BROWN, SCOTT P	01/18/2010	160.00	10930329214
BUCK, KENNETH R	08/17/2010	101.00	10931277435
BUCK, KENNETH R	08/20/2010	289.00	10931277439
BUCK, KENNETH R	08/20/2010	2862.00	10931277447
BUCK, KENNETH R	09/11/2010	119.00	10991435773
BUCK, KENNETH R	09/11/2010	371.00	10991435784
BUCK, KENNETH R	09/11/2010	2857.00	10991435781
BUCK, KENNETH R	10/20/2010	226.00	10931937279
BUCK, KENNETH R	10/20/2010	1374.00	10931937288
BUCK, KENNETH R	10/22/2010	21.00	10931937282
BUEHRER, STEVE	10/02/2007	102.00	28930995941
BUEHRER, STEVE	10/04/2007	245.00	28930995942
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BUEHRER, STEVE	10/05/2007	1443.00	28930995943
BUEHRER, STEVE	10/05/2007	10027.00	28930995951
BUEHRER, STEVE	10/05/2007	46663.00	28930995952
BUEHRER, STEVE	10/06/2007	67.00	28930995944
BUEHRER, STEVE	10/08/2007	493.00	28930995945
BUEHRER, STEVE	10/09/2007	135.00	28930995946
BUEHRER, STEVE	10/10/2007	592.00	28930995947
BUEHRER, STEVE	10/12/2007	22025.00	28930995953
BUEHRER, STEVE	10/23/2007	236.00	28930147487
CALVEY, KEVIN	03/04/2009	79.00	29991945968
CALVEY, KEVIN	05/14/2009	266.00	29934004698
CALVEY, KEVIN	06/04/2009	186.00	29934248696

CALVEY, KEVIN	06/05/2009	641.00	29934248697
CALVEY, KEVIN	06/05/2009	6073.00	29934248700
CALVEY, KEVIN	09/11/2009	242.00	29992893992
CALVEY, KEVIN	09/11/2009	405.00	29992893999
CALVEY, KEVIN	09/11/2009	2587.00	29992893997
CALVEY, KEVIN	10/14/2009	407.00	29935446240
CALVEY, KEVIN	12/12/2009	390.00	10990130832
CALVEY, KEVIN	12/12/2009	4243.00	10990130834
CALVEY, KEVIN	06/14/2010	254.00	10990998765
CALVEY, KEVIN	06/14/2010	384.00	10990998775
CALVEY, KEVIN	06/14/2010	2177.00	10990998763
CALVEY, KEVIN	07/29/2010	562.00	10991113057
CALVEY, KEVIN	07/30/2010	225.00	10991113058
CALVEY, KEVIN	08/04/2010	206.00	10931277429
CALVEY, KEVIN	08/06/2010	398.00	10931277430
CALVEY, KEVIN	08/06/2010	752.00	10931277430
CALVEY, KEVIN	08/06/2010	1042.00	10931277450
CALVEY, KEVIN	08/06/2010	8143.00	10931277445
CALVEY, KEVIN	08/16/2010	251.00	10931277435
CALVEY, KEVIN	08/16/2010	51500.00	10931277429
CHAMBLISS, SAXBY	11/07/2008	66.00	28934544567
CHAMBLISS, SAXBY	11/08/2008	1254.00	28934544567
CHAMBLISS, SAXBY	11/08/2008	10621.00	28934544602
CHAMBLISS, SAXBY	11/10/2008	173.00	28934544568
CHAMBLISS, SAXBY	11/13/2008	289.00	28934544568
CHAMBLISS, SAXBY	11/20/2008	284.00	28934544569
COBURN, THOMAS A	04/07/2009	939.00	29933757786
COBURN, THOMAS A	04/07/2009	5288.00	29933757800
COBURN, THOMAS A	04/14/2009	34.00	29933757787
COBURN, THOMAS A	06/01/2009	109.00	29934248694
COBURN, THOMAS A	06/04/2009	186.00	29934248695

COBURN, THOMAS A	10/14/2009	407.00	29935446242
COFFMAN, MICHAEL	10/10/2008	75.00	28992901582
COFFMAN, MICHAEL	10/14/2008	51.00	28992901591
COFFMAN, MICHAEL	10/14/2008	694.00	28992901615
DEMINT, JAMES W	04/07/2009	751.00	29933757786
DEMINT, JAMES W	04/07/2009	4231.00	29933757800
DEMINT, JAMES W	04/14/2009	34.00	29933757787
DEMINT, JAMES W	06/04/2009	186.00	29934248695
DEMINT, JAMES W	10/14/2009	407.00	29935446241
DEMINT, JAMES W	08/06/2010	61.00	10931277432
DUNCAN, JEFF	02/17/2010	197.00	10930400613
DUNCAN, JEFF	02/18/2010	21.00	10930400613
DUNCAN, JEFF	03/19/2010	288.00	10990613535
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DUNCAN, JEFF	05/15/2010	257.00	10990739878
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DUNCAN, JEFF	05/15/2010	3789.00	10990739891
DUNCAN, JEFF	05/26/2010	127.00	10990739886
DUNCAN, JEFF	05/26/2010	109985.00	10990739894
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DUNCAN, JEFF	06/10/2010	160.00	10990998753
DUNCAN, JEFF	06/11/2010	241.00	10990998756
DUNCAN, JEFF	06/11/2010	465.00	10990998756
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DUNCAN, JEFF	06/14/2010	199.00	10990998762
DUNCAN, JEFF	06/14/2010	289.00	10990998762
DUNCAN, JEFF	06/15/2010	119.00	10990998767

DUNCAN, JEFF	06/16/2010	102.00	10990998768
DUNCAN, JEFF	06/16/2010	133.00	10990998768
DUNCAN, JEFF	06/16/2010	97624.00	10990998773
DUNCAN, JEFF	06/22/2010	40.00	10990998771
FEENEY, TOM	10/14/2008	51.00	28992901592
FEENEY, TOM	10/14/2008	694.00	28992901616
FINCHER, STEVE	08/19/2010	25.00	10931277437
FINCHER, STEVE	08/20/2010	176.00	10931277441
FINCHER, STEVE	08/20/2010	1744.00	10931277449
FINCHER, STEVE	10/12/2010	272.00	10931706382
FINCHER, STEVE	10/12/2010	1848.00	10931706386
GARRETT, SCOTT REP.	10/14/2008	51.00	28992901589
GARRETT, SCOTT REP.	10/14/2008	694.00	28992901612
GARRETT, SCOTT REP.	10/17/2008	85.00	28934544538
GARRETT, SCOTT REP.	10/17/2008	634.00	28934544587
GARRETT, SCOTT REP.	10/20/2008	22.00	28934544544
GARRETT, SCOTT REP.	10/22/2008	36.00	28934544550
GARRETT, SCOTT REP.	10/22/2008	329.00	28934544594
GARRETT, SCOTT REP.	10/24/2008	56.00	28934544554
GARRETT, SCOTT REP.	10/24/2008	700.00	28934544596
GIULIANI, RUDOLPH W	01/09/2008	88.00	28990485581
GRAVES, JOHN THOMAS MR. JR.	09/11/2009	312.00	29992893991
GRAVES, JOHN THOMAS MR. JR.	09/11/2009	521.00	29992893998
GRAVES, JOHN THOMAS MR. JR.	09/11/2009	3327.00	29992893996
GRAVES, JOHN THOMAS MR. JR.	09/14/2009	55.00	29992893993
GRAVES, JOHN THOMAS MR. JR.	09/25/2009	348.00	29992893994
GRAVES, JOHN THOMAS MR. JR.	10/14/2009	407.00	29935446240
GRAVES, JOHN THOMAS MR. JR.	12/12/2009	437.00	10990130831
GRAVES, JOHN THOMAS MR. JR.	12/12/2009	4752.00	10990130833
GRAVES, JOHN THOMAS MR. JR.	03/26/2010	303.00	10990613538
GRAVES, JOHN THOMAS MR. JR.	04/08/2010	59.00	10990685275

GRAVES, JOHN THOMAS MR. JR.	04/16/2010	432.00	10990685277
GRAVES, JOHN THOMAS MR. JR.	04/16/2010	598.00	10990685286
GRAVES, JOHN THOMAS MR. JR.	04/16/2010	4867.00	10990685283
GRAVES, JOHN THOMAS MR. JR.	05/15/2010	195.00	10990739877
GRAVES, JOHN THOMAS MR. JR.	05/15/2010	288.00	10990739896
GRAVES, JOHN THOMAS MR. JR.	05/15/2010	2875.00	10990739891
GRIFFIN, JOHN TIMOTHY	08/19/2010	25.00	10931277437
GRIFFIN, JOHN TIMOTHY	08/20/2010	201.00	10931277440
GRIFFIN, JOHN TIMOTHY	08/20/2010	1993.00	10931277448
HACKETT, CHRISTOPHER	02/25/2008	88.00	28990634440
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HACKETT, CHRISTOPHER	03/21/2008	244.00	28931176630
HACKETT, CHRISTOPHER	04/08/2008	45.00	28991031285
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HACKETT, CHRISTOPHER	04/08/2008	4097.00	28991031304
HACKETT, CHRISTOPHER	04/08/2008	45902.00	28991031297
HACKETT, CHRISTOPHER	04/15/2008	54.00	28991031289
HACKETT, CHRISTOPHER	04/15/2008	3465.00	28991031299
HACKETT, CHRISTOPHER	04/15/2008	23300.00	28991031298
HACKETT, CHRISTOPHER	04/17/2008	42.00	28991031292
HACKETT, CHRISTOPHER	04/22/2008	83.00	28991031293
HACKETT, CHRISTOPHER	07/17/2008	280.00	28932478582
HACKETT, CHRISTOPHER	07/17/2008	1459.00	28932478586
HACKETT, CHRISTOPHER	09/11/2008	251.00	28933575883
HACKETT, CHRISTOPHER	09/11/2008	1662.00	28933575899
HACKETT, CHRISTOPHER	09/17/2008	15.00	28933575909
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HACKETT, CHRISTOPHER	09/26/2008	13.00	28933575905
HACKETT, CHRISTOPHER	09/26/2008	24.00	28933575893

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HACKETT, CHRISTOPHER	10/14/2008	694.00	28992901614
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HACKETT, CHRISTOPHER	10/17/2008	245.00	28934544537
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HACKETT, CHRISTOPHER	10/20/2008	67.00	28934544579
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HACKETT, CHRISTOPHER	10/22/2008	329.00	28934544583
HACKETT, CHRISTOPHER	10/23/2008	10.00	28934544585
HACKETT, CHRISTOPHER	10/24/2008	56.00	28934544557
HACKETT, CHRISTOPHER	10/24/2008	700.00	28934544599
HARDIMAN, CLYDE PRESTON (WILLIAM)	10/12/2010	332.00	10931706379
HARMER, DAVID	09/01/2010	20.00	10991435766
HARMER, DAVID	10/12/2010	2259.00	10931706384
HARRIS, ANDREW P	08/13/2007	230.00	28930995935
HARRIS, ANDREW P	08/16/2007	263.00	28930995936

HARRIS, ANDREW P	08/20/2007	792.00	28930995936
HARRIS, ANDREW P	08/20/2007	7487.00	28930995950
HARRIS, ANDREW P	11/01/2007	168.00	28930147490
HARRIS, ANDREW P	11/07/2007	1487.00	28930147491
HARRIS, ANDREW P	11/07/2007	8900.00	28930147500
HARRIS, ANDREW P	12/06/2007	786.00	28930147494
HARRIS, ANDREW P	12/06/2007	5958.00	28930147500
HARRIS, ANDREW P	12/12/2007	16.00	28930147496
HARRIS, ANDREW P	12/20/2007	1026.00	28930147498
HARRIS, ANDREW P	12/20/2007	6879.00	28930147501
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HARRIS, ANDREW P	01/11/2008	52.00	28990485585
HARRIS, ANDREW P	01/11/2008	4705.00	28990485592
HARRIS, ANDREW P	08/11/2008	323.00	28992183281
HARRIS, ANDREW P	08/11/2008	1798.00	28992183298
HARRIS, ANDREW P	09/26/2008	7.00	28933575894
HARRIS, ANDREW P	09/26/2008	13.00	28933575905
HARRIS, ANDREW P	09/26/2008	251.00	28933575894
HARRIS, ANDREW P	10/08/2008	543.00	28992901578
HARRIS, ANDREW P	10/08/2008	4471.00	28992901602
HARRIS, ANDREW P	10/10/2008	175.00	28992901582
HARRIS, ANDREW P	10/10/2008	2030.00	28992901608
HARRIS, ANDREW P	10/14/2008	51.00	28992901591
HARRIS, ANDREW P	10/14/2008	694.00	28992901615
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HARRIS, ANDREW P	10/17/2008	2174.00	28934544585
HARRIS, ANDREW P	10/21/2008	152.00	28934544546
HARRIS, ANDREW P	10/22/2008	341.00	28934544549
HARRIS, ANDREW P	10/22/2008	3073.00	28934544593
HARRIS, ANDREW P	10/23/2008	34.00	28934544552
HARRIS, ANDREW P	10/23/2008	551.00	28934544569

HARRIS, ANDREW P	10/24/2008	16.00	28934544571
HARRIS, ANDREW P	10/24/2008	168.00	28934544558
HARRIS, ANDREW P	10/24/2008	2101.00	28934544599
HARRIS, ANDREW P	10/28/2008	92.00	28934544562
HARRIS, ANDREW P	09/01/2010	20.00	10991435767
HARRIS, ANDREW P	10/12/2010	335.00	10931706383
HARRIS, ANDREW P	10/12/2010	2280.00	10931706387
HAYWORTH, NAN	09/01/2010	20.00	10991435766
HAYWORTH, NAN	10/12/2010	248.00	10931706380
HAYWORTH, NAN	10/12/2010	1687.00	10931706385
HOFFMAN, DOUGLAS L. MR.	09/28/2009	103.00	29992893994
HOFFMAN, DOUGLAS L. MR.	09/29/2009	386.00	29992893995
HOFFMAN, DOUGLAS L. MR.	09/29/2009	1462.00	29992893995
HOFFMAN, DOUGLAS L. MR.	09/29/2009	2000.00	29992894000
HOFFMAN, DOUGLAS L. MR.	09/29/2009	11300.00	29992893998
HOFFMAN, DOUGLAS L. MR.	10/01/2009	139.00	29935446233
HOFFMAN, DOUGLAS L. MR.	10/05/2009	392.00	29935446234
HOFFMAN, DOUGLAS L. MR.	10/06/2009	463.00	29935446235
HOFFMAN, DOUGLAS L. MR.	10/07/2009	583.00	29935446235
HOFFMAN, DOUGLAS L. MR.	10/08/2009	402.00	29935446236
HOFFMAN, DOUGLAS L. MR.	10/09/2009	10.00	29935446236
HOFFMAN, DOUGLAS L. MR.	10/09/2009	27.00	29935446237
HOFFMAN, DOUGLAS L. MR.	10/10/2009	1402.00	29935446238
HOFFMAN, DOUGLAS L. MR.	10/10/2009	9874.00	29935446248
HOFFMAN, DOUGLAS L. MR.	10/14/2009	407.00	29935446239
HOFFMAN, DOUGLAS L. MR.	10/14/2009	437.00	29935446238
HOFFMAN, DOUGLAS L. MR.	10/15/2009	658.00	29935446242
HOFFMAN, DOUGLAS L. MR.	10/19/2009	159.00	29935446243
HOFFMAN, DOUGLAS L. MR.	10/19/2009	273.00	29935446244
HOFFMAN, DOUGLAS L. MR.	10/20/2009	18.00	29935446245
HOFFMAN, DOUGLAS L. MR.	10/20/2009	50.00	29935446244

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HOFFMAN, DOUGLAS L. MR.	10/21/2009	20.00	29935446246
HOFFMAN, DOUGLAS L. MR.	10/21/2009	213.00	29935446246
HOFFMAN, DOUGLAS L. MR.	10/21/2009	299.00	29935446247
HOFFMAN, DOUGLAS L. MR.	10/22/2009	318.00	29935446247
HOFFMAN, DOUGLAS L. MR.	10/26/2009	334.00	29935446248
HOFFMAN, DOUGLAS L. MR.	11/02/2009	296.00	29935566624
HOFFMAN, DOUGLAS L. MR.	11/03/2009	206.00	29935566624
HUELSKAMP, TIMOTHY A	09/11/2009	251.00	29992893991
HUELSKAMP, TIMOTHY A	09/11/2009	420.00	29992893999
HUELSKAMP, TIMOTHY A	09/11/2009	2680.00	29992893996
HUELSKAMP, TIMOTHY A	09/14/2009	55.00	29992893993
HUELSKAMP, TIMOTHY A	10/14/2009	407.00	29935446241
HUELSKAMP, TIMOTHY A	12/12/2009	484.00	10990130831
HUELSKAMP, TIMOTHY A	12/12/2009	5261.00	10990130833
JENKINS, LOUIS	02/26/2008	88.00	28990634441
JENKINS, LOUIS	02/26/2008	497.00	28990634441
JENKINS, LOUIS	02/28/2008	240.00	28990634442
JENKINS, LOUIS	02/29/2008	193.00	28990634442
JENKINS, LOUIS	03/04/2008	56.00	28931176627
JENKINS, LOUIS	03/05/2008	111.00	28931176627
JENKINS, LOUIS	03/05/2008	6812.00	28931176638
JENKINS, LOUIS	03/10/2008	50.00	28931176638
JENKINS, LOUIS	03/10/2008	259.00	28931176628
JENKINS, LOUIS	03/14/2008	339.00	28931176629
JENKINS, LOUIS	03/14/2008	3997.00	28931176637
JENKINS, LOUIS	03/31/2008	76.00	28931176636
JENKINS, LOUIS	03/31/2008	10540.00	28931176639
JENKINS, LOUIS	04/23/2008	47.00	28991031293
JOHNSON, RONALD HAROLD	07/14/2010	50.00	10991113053

JOHNSON, RONALD HAROLD	07/14/2010	417.00	10991113054
JOHNSON, RONALD HAROLD	08/06/2010	327.00	10931277431
JOHNSON, RONALD HAROLD	08/06/2010	453.00	10931277450
JOHNSON, RONALD HAROLD	08/06/2010	3541.00	10931277445
JOHNSON, RONALD HAROLD	08/20/2010	388.00	10931277438
JOHNSON, RONALD HAROLD	08/20/2010	3835.00	10931277446
JOHNSON, RONALD HAROLD	09/11/2010	125.00	10991435771
JOHNSON, RONALD HAROLD	09/11/2010	391.00	10991435783
JOHNSON, RONALD HAROLD	09/11/2010	3101.00	10991435779
JOHNSON, RONALD HAROLD	09/22/2010	21.00	10991435777
JOHNSON, RONALD HAROLD	09/24/2010	58.00	10991435778
KELLY, JESSE	09/01/2010	20.00	10991435767
KELLY, JESSE	10/12/2010	221.00	10931706383
KELLY, JESSE	10/12/2010	1501.00	10931706388
KELLY, JESSE	10/20/2010	239.00	10931937277
KELLY, JESSE	10/20/2010	1449.00	10931937286
LAMBORN, DOUGLAS	03/21/2008	244.00	28931176633
LAMBORN, DOUGLAS	03/25/2008	91.00	28931176635
LAMBORN, DOUGLAS	08/12/2008	71.00	28992183282
LEE, MIKE	07/14/2010	50.00	10991113053
MCCLINTOCK, THOMAS	04/02/2008	64.00	28991031284
MCCLINTOCK, THOMAS	04/09/2008	616.00	28991031287
MCCLINTOCK, THOMAS	04/09/2008	3089.00	28991031300
MCCLINTOCK, THOMAS	04/28/2008	45.00	28991031295
MCCLINTOCK, THOMAS	05/02/2008	360.00	28931928951
MCCLINTOCK, THOMAS	05/02/2008	2415.00	28931928955
MCCLINTOCK, THOMAS	05/05/2008	26.00	28931928953
MCCLINTOCK, THOMAS	06/04/2008	71.00	28991503343
MCCLINTOCK, THOMAS	08/11/2008	210.00	28992183282
MCCLINTOCK, THOMAS	08/11/2008	1166.00	28992183299
MCCLINTOCK, THOMAS	09/26/2008	7.00	28933575890

MCCLINTOCK, THOMAS	09/26/2008	13.00	28933575902
MCCLINTOCK, THOMAS	10/08/2008	328.00	28992901577
MCCLINTOCK, THOMAS	10/08/2008	2699.00	28992901602
MCCLINTOCK, THOMAS	10/14/2008	51.00	28992901587
MCCLINTOCK, THOMAS	10/14/2008	694.00	28992901611
MCCLINTOCK, THOMAS	10/17/2008	110.00	28934544541
MCCLINTOCK, THOMAS	10/17/2008	815.00	28934544590
MCCLINTOCK, THOMAS	10/22/2008	48.00	28934544550
MCCLINTOCK, THOMAS	10/22/2008	439.00	28934544595
MCCLINTOCK, THOMAS	10/24/2008	64.00	28934544555
MCCLINTOCK, THOMAS	10/24/2008	800.00	28934544597
MILLER, JOSEPH W	08/27/2010	88.00	10931277442
MILLER, JOSEPH W	08/27/2010	467.00	10931277443
MILLER, JOSEPH W	08/30/2010	21.00	10931277444
MILLER, JOSEPH W	08/31/2010	80.00	10931277444
MILLER, JOSEPH W	09/01/2010	486.00	10991435765
MILLER, JOSEPH W	09/03/2010	21.00	10991435768
MILLER, JOSEPH W	09/11/2010	152.00	10991435772
MILLER, JOSEPH W	09/11/2010	473.00	10991435783
MILLER, JOSEPH W	09/11/2010	3644.00	10991435780
MILLER, JOSEPH W	09/22/2010	58.00	10991435777
MILLER, JOSEPH W	09/23/2010	472.00	10991435778
MILLER, JOSEPH W	09/28/2010	508.00	10991435779
MILLER, JOSEPH W	10/06/2010	447.00	10931706377
MILLER, JOSEPH W	10/07/2010	21.00	10931706378
MILLER, JOSEPH W	10/20/2010	334.00	10931937279
MILLER, JOSEPH W	10/20/2010	2025.00	10931937288
MULVANEY, JOHN MICHAEL 'MICK'	08/19/2010	25.00	10931277436
MULVANEY, JOHN MICHAEL 'MICK'	08/20/2010	190.00	10931277440
MULVANEY, JOHN MICHAEL 'MICK'	08/20/2010	1877.00	10931277448
MULVANEY, JOHN MICHAEL 'MICK'	10/12/2010	335.00	10931706381

MULVANEY, JOHN MICHAEL 'MICK'	10/12/2010	2275.00	10931706385
MULVANEY, JOHN MICHAEL 'MICK'	10/20/2010	257.00	10931937278
MULVANEY, JOHN MICHAEL 'MICK'	10/20/2010	1563.00	10931937287
OLLER, THOMAS (RICO)	02/04/2008	89.00	28990634437
OLLER, THOMAS (RICO)	10/17/2008	724.00	28934544588
OLSON, PETER G	10/14/2008	51.00	28992901588
OLSON, PETER G	10/14/2008	694.00	28992901611
OLSON, PETER G	10/17/2008	98.00	28934544539
OLSON, PETER G	10/22/2008	36.00	28934544549
OLSON, PETER G	10/22/2008	329.00	28934544594
OLSON, PETER G	10/24/2008	48.00	28934544555
OLSON, PETER G	10/24/2008	600.00	28934544596
ONDER, ROBERT FRANK JR	07/17/2008	71.00	28932478581
ONDER, ROBERT FRANK JR	07/17/2008	137.00	28932478582
ONDER, ROBERT FRANK JR	07/17/2008	315.00	28932478581
ONDER, ROBERT FRANK JR	07/17/2008	1885.00	28932478585
ONDER, ROBERT FRANK JR	07/18/2008	37.00	28932478583
PARNELL, SEAN	06/04/2008	705.00	28991503342
PARNELL, SEAN	06/04/2008	4533.00	28991503347
PARNELL, SEAN	06/06/2008	113.00	28991503344
PARNELL, SEAN	06/06/2008	169.00	28991503344
PARNELL, SEAN	06/25/2008	583.00	28991503345
PARNELL, SEAN	06/25/2008	4109.00	28991503348
PARNELL, SEAN	06/30/2008	148.00	28991503346
PARNELL, SEAN	07/17/2008	560.00	28932478580
PARNELL, SEAN	07/17/2008	2918.00	28932478585
PARNELL, SEAN	08/05/2008	349.00	28992183295
PARNELL, SEAN	08/05/2008	373.00	28992183279
PARNELL, SEAN	08/05/2008	1368.00	28992183301
PARNELL, SEAN	08/14/2008	218.00	28992183284
PARNELL, SEAN	08/19/2008	37.00	28992183286

PARNELL, SEAN	08/19/2008	71.00	28992183288
PARNELL, SEAN	08/19/2008	338.00	28992183287
PARNELL, SEAN	08/19/2008	2250.00	28992183302
PARNELL, SEAN	08/19/2008	6000.00	28992183303
PARNELL, SEAN	08/19/2008	16805.00	28992183296
PARNELL, SEAN	08/22/2008	175.00	28992183289
PARNELL, SEAN	08/22/2008	12500.00	28992183292
PARNELL, SEAN	08/22/2008	12500.00	28992183292
PARNELL, SEAN	08/23/2008	84.00	28992183291
PARNELL, SEAN	08/25/2008	650.00	28992183293
PARNELL, SEAN	08/26/2008	944.00	28992183294
PAUL, RAND	07/30/2010	80.00	10991113058
PAUL, RAND	07/30/2010	225.00	10991113059
PAUL, RAND	08/06/2010	364.00	10931277431
PAUL, RAND	08/06/2010	3942.00	10931277446
PAUL, RAND	08/13/2010	99.00	10931277433
PAUL, RAND	08/20/2010	293.00	10931277439
PAUL, RAND	08/20/2010	2895.00	10931277447
PAUL, RAND	09/11/2010	137.00	10991435771
PAUL, RAND	09/11/2010	3383.00	10991435780
PAUL, RAND	09/20/2010	21.00	10991435776
PAUL, RAND	10/20/2010	154.00	10931937280
PAUL, RAND	10/20/2010	938.00	10931937289
PAUL, RAND	10/26/2010	21.00	10931937283
PEARCE, STEVE	01/30/2008	89.00	28990485589
PEARCE, STEVE	03/21/2008	244.00	28931176631
PEARCE, STEVE	04/09/2008	591.00	28991031287
PEARCE, STEVE	04/09/2008	2968.00	28991031300
PEARCE, STEVE	05/08/2008	319.00	28931928953
PEARCE, STEVE	05/13/2008	787.00	28931928954
PEARCE, STEVE	05/13/2008	6291.00	28931928956

PEARCE, STEVE	06/04/2008	75.00	28991503343
PEARCE, STEVE	06/25/2008	804.00	28991503345
PEARCE, STEVE	06/25/2008	3755.00	28991503348
PEARCE, STEVE	10/14/2008	51.00	28992901592
PEARCE, STEVE	10/14/2008	694.00	28992901616
POMPEO, MICHAEL RICHARD	02/12/2010	48.00	10930400610
POMPEO, MICHAEL RICHARD	05/15/2010	232.00	10990739879
POMPEO, MICHAEL RICHARD	05/15/2010	344.00	10990739898
POMPEO, MICHAEL RICHARD	05/15/2010	3429.00	10990739893
ROSS, CHARLES EDWIN	02/04/2008	102.00	28990634436
ROSS, CHARLES EDWIN	02/04/2008	260.00	28990634436
ROSS, CHARLES EDWIN	02/08/2008	1671.00	28990634439
ROSS, CHARLES EDWIN	02/08/2008	9288.00	28990634444
ROSS, CHARLES EDWIN	02/29/2008	142.00	28990634443
ROSS, CHARLES EDWIN	03/14/2008	341.00	28931176628
ROSS, CHARLES EDWIN	03/14/2008	4017.00	28931176636
ROSS, CHARLES EDWIN	03/25/2008	88.00	28931176634
ROSS, CHARLES EDWIN	03/25/2008	126.00	28931176634
ROSS, CHARLES EDWIN	03/25/2008	57452.00	28931176639
ROTHFUS, KEITH J	09/01/2010	20.00	10991435768
ROTHFUS, KEITH J	10/12/2010	308.00	10931706380
ROTHFUS, KEITH J	10/12/2010	2097.00	10931706384
ROTHFUS, KEITH J	10/20/2010	230.00	10931937278
ROTHFUS, KEITH J	10/20/2010	1396.00	10931937287
ROTHFUS, KEITH J	10/27/2010	21.00	10931937284
RUBIO, MARCO	11/09/2009	370.00	29935566625
RUBIO, MARCO	11/12/2009	431.00	29935566625
RUBIO, MARCO	11/21/2009	719.00	29935566626
RUBIO, MARCO	11/21/2009	1287.00	29935566628
RUBIO, MARCO	11/21/2009	5009.00	29935566627
RUBIO, MARCO	12/17/2009	80.00	10990130832

RUBIO, MARCO	02/12/2010	632.00	10930400611
RUBIO, MARCO	03/11/2010	288.00	10990613534
RUBIO, MARCO	03/19/2010	267.00	10990613537
RUBIO, MARCO	03/19/2010	446.00	10990613544
RUBIO, MARCO	03/19/2010	4027.00	10990613541
RUBIO, MARCO	04/16/2010	307.00	10990685278
RUBIO, MARCO	04/16/2010	424.00	10990685287
RUBIO, MARCO	04/16/2010	3454.00	10990685285
RUBIO, MARCO	05/15/2010	106.00	10990739880
RUBIO, MARCO	05/15/2010	157.00	10990739898
RUBIO, MARCO	05/15/2010	1570.00	10990739893
RUBIO, MARCO	06/14/2010	266.00	10990998765
RUBIO, MARCO	06/14/2010	403.00	10990998775
RUBIO, MARCO	06/14/2010	2286.00	10990998773
RUBIO, MARCO	07/26/2010	12.00	10991113056
RUBIO, MARCO	07/28/2010	12.00	10991113057
RUBIO, MARCO	08/13/2010	99.00	10931277434
RUBIO, MARCO	08/25/2010	21.00	10931277442
RUBIO, MARCO	09/11/2010	62.00	10991435774
RUBIO, MARCO	09/11/2010	195.00	10991435785
RUBIO, MARCO	09/11/2010	1502.00	10991435782
RUBIO, MARCO	09/16/2010	21.00	10991435775
SALI, WILLIAM T.	09/11/2008	160.00	28933575882
SALI, WILLIAM T.	09/11/2008	1062.00	28933575897
SALI, WILLIAM T.	09/17/2008	9.00	28933575907
SALI, WILLIAM T.	09/17/2008	19.00	28933575885
SALI, WILLIAM T.	09/26/2008	7.00	28933575889
SALI, WILLIAM T.	09/26/2008	13.00	28933575901
SALI, WILLIAM T.	10/07/2008	278.00	28992901576
SALI, WILLIAM T.	10/08/2008	287.00	28992901577
SALI, WILLIAM T.	10/08/2008	2362.00	28992901601

SALI, WILLIAM T.	10/10/2008	131.00	28992901580
SALI, WILLIAM T.	10/10/2008	1522.00	28992901606
SALI, WILLIAM T.	10/14/2008	51.00	28992901586
SALI, WILLIAM T.	10/14/2008	694.00	28992901610
SALI, WILLIAM T.	10/17/2008	196.00	28934544540
SALI, WILLIAM T.	10/17/2008	1449.00	28934544589
SALI, WILLIAM T.	10/22/2008	316.00	28934544548
SALI, WILLIAM T.	10/22/2008	2853.00	28934544592
SALI, WILLIAM T.	10/23/2008	34.00	28934544552
SALI, WILLIAM T.	10/23/2008	249.00	28934544553
SALI, WILLIAM T.	10/23/2008	551.00	28934544570
SALI, WILLIAM T.	10/24/2008	16.00	28934544572
SALI, WILLIAM T.	10/24/2008	185.00	28934544558
SALI, WILLIAM T.	10/24/2008	2301.00	28934544600
SALI, WILLIAM T.	10/30/2008	105.00	28934544565
SCALISE, STEVE MR.	02/08/2008	497.00	28990634439
SCALISE, STEVE MR.	02/08/2008	3449.00	28990634444
SCALISE, STEVE MR.	02/12/2008	87.00	28990634440
SCHAFFER, ROBERT W	05/31/2007	103.00	27990422489
SCHAFFER, ROBERT W	06/19/2007	1362.00	27990422490
SCHAFFER, ROBERT W	06/19/2007	6413.00	27990422491
SCHAFFER, ROBERT W	03/21/2008	244.00	28931176631
SCHAFFER, ROBERT W	05/02/2008	390.00	28931928951
SCHAFFER, ROBERT W	05/02/2008	2616.00	28931928956
SCHAFFER, ROBERT W	07/17/2008	402.00	28932478580
SCHAFFER, ROBERT W	07/17/2008	2097.00	28932478584
SCHAFFER, ROBERT W	08/11/2008	320.00	28992183280
SCHAFFER, ROBERT W	08/11/2008	2545.00	28992183297
SCHAFFER, ROBERT W	09/11/2008	189.00	28933575881
SCHAFFER, ROBERT W	09/11/2008	1250.00	28933575896
SCHAFFER, ROBERT W	09/17/2008	11.00	28933575906

SCHAFFER, ROBERT W	09/17/2008	22.00	28933575884
SCHAFFER, ROBERT W	09/24/2008	244.00	28933575887
SCHAFFER, ROBERT W	09/26/2008	40.00	28933575888
SCHAFFER, ROBERT W	09/26/2008	160.00	28933575900
SCHAFFER, ROBERT W	09/26/2008	211.00	28933575888
SCHAFFER, ROBERT W	09/26/2008	391.00	28933575899
SCHAFFER, ROBERT W	10/01/2008	152.00	28992901599
SCHAFFER, ROBERT W	10/09/2008	229.00	28992901603
SCHAFFER, ROBERT W	10/10/2008	116.00	28992901578
SCHAFFER, ROBERT W	10/10/2008	1347.00	28992901605
SCHAFFER, ROBERT W	10/13/2008	20.00	28992901583
SCHAFFER, ROBERT W	10/13/2008	120.00	28992901593
SCHAFFER, ROBERT W	10/14/2008	51.00	28992901585
SCHAFFER, ROBERT W	10/14/2008	230.00	28992901595
SCHAFFER, ROBERT W	10/14/2008	694.00	28992901609
SCHAFFER, ROBERT W	10/15/2008	158.00	28992901597
SCHAFFER, ROBERT W	10/16/2008	120.00	28934544575
SCHAFFER, ROBERT W	10/17/2008	14.00	28934544542
SCHAFFER, ROBERT W	10/17/2008	127.00	28934544577
SCHAFFER, ROBERT W	10/20/2008	110.00	28934544578
SCHAFFER, ROBERT W	10/21/2008	115.00	28934544580
SCHAFFER, ROBERT W	10/22/2008	74.00	28934544582
SCHAFFER, ROBERT W	10/23/2008	16.00	28934544584
SCHAFFER, ROBERT W	10/24/2008	64.00	28934544557
SCHAFFER, ROBERT W	10/24/2008	800.00	28934544598
SCHWEIKERT, DAVID	11/16/2007	110.00	28930147493
SCHWEIKERT, DAVID	12/19/2007	194.00	28930147498
SCHWEIKERT, DAVID	12/20/2007	839.00	28930147499
SCHWEIKERT, DAVID	12/20/2007	5628.00	28930147501
SCHWEIKERT, DAVID	03/21/2008	244.00	28931176633
SCHWEIKERT, DAVID	09/01/2010	80.00	10991435765

SCHWEIKERT, DAVID	09/07/2010	101.00	10991435769
SCHWEIKERT, DAVID	09/08/2010	585.00	10991435769
SCHWEIKERT, DAVID	09/11/2010	124.00	10991435772
SCHWEIKERT, DAVID	09/11/2010	386.00	10991435784
SCHWEIKERT, DAVID	09/11/2010	2973.00	10991435781
SCHWEIKERT, DAVID	10/12/2010	270.00	10931706382
SCHWEIKERT, DAVID	10/12/2010	1835.00	10931706387
SCHWEIKERT, DAVID	10/20/2010	271.00	10931937277
SCHWEIKERT, DAVID	10/20/2010	1645.00	10931937286
SCOTT, TIMOTHY E	03/19/2010	206.00	10990613536
SCOTT, TIMOTHY E	03/19/2010	343.00	10990613542
SCOTT, TIMOTHY E	03/19/2010	2754.00	10990613540
SCOTT, TIMOTHY E	03/23/2010	75.00	10990613538
SCOTT, TIMOTHY E	04/16/2010	259.00	10990685278
SCOTT, TIMOTHY E	04/16/2010	357.00	10990685287
SCOTT, TIMOTHY E	04/16/2010	2907.00	10990685284
SCOTT, TIMOTHY E	05/15/2010	225.00	10990739878
SCOTT, TIMOTHY E	05/15/2010	333.00	10990739897
SCOTT, TIMOTHY E	05/15/2010	3322.00	10990739892
SCOTT, TIMOTHY E	06/10/2010	102.00	10990998754
SCOTT, TIMOTHY E	06/10/2010	160.00	10990998754
SCOTT, TIMOTHY E	06/10/2010	164.00	10990998755
SCOTT, TIMOTHY E	06/11/2010	241.00	10990998757
SCOTT, TIMOTHY E	06/11/2010	465.00	10990998757
SCOTT, TIMOTHY E	06/12/2010	141.00	10990998758
SCOTT, TIMOTHY E	06/14/2010	21.00	10990998761
SCOTT, TIMOTHY E	06/14/2010	57.00	10990998759
SCOTT, TIMOTHY E	06/14/2010	199.00	10990998761
SCOTT, TIMOTHY E	06/14/2010	289.00	10990998760
SCOTT, TIMOTHY E	06/14/2010	17700.00	10990998748
SCOTT, TIMOTHY E	06/15/2010	79.00	10990998766

SCOTT, TIMOTHY E	06/15/2010	119.00	10990998767
SCOTT, TIMOTHY E	06/15/2010	4500.00	10990998777
SCOTT, TIMOTHY E	06/15/2010	29989.00	10990998776
SCOTT, TIMOTHY E	06/16/2010	133.00	10990998769
SCOTT, TIMOTHY E	06/22/2010	40.00	10990998770
SHADEGG, JOHN B.	10/14/2008	51.00	28992901588
SHADEGG, JOHN B.	10/14/2008	694.00	28992901612
SHADEGG, JOHN B.	10/17/2008	171.00	28934544539
SHADEGG, JOHN B.	10/17/2008	1268.00	28934544588
SHADEGG, JOHN B.	10/20/2008	22.00	28934544543
SHADEGG, JOHN B.	10/22/2008	329.00	28934544548
SHADEGG, JOHN B.	10/22/2008	2963.00	28934544593
SHADEGG, JOHN B.	10/24/2008	176.00	28934544556
SHADEGG, JOHN B.	10/24/2008	2201.00	28934544597
SHADEGG, JOHN B.	10/28/2008	92.00	28934544563
SHADEGG, JOHN B.	10/30/2008	317.00	28934544564
SHADEGG, JOHN B.	10/30/2008	20000.00	28934544534
SHANER, MATT	04/07/2008	88.00	28991031284
SHANER, MATT	04/16/2008	32.00	28991031290
SHANER, MATT	04/16/2008	24114.00	28991031301
SMITH, HARRI ANNE	04/09/2008	92.00	28991031288
SMITH, ROBIN TUCKER	02/12/2010	48.00	10930400611
SMITH, ROBIN TUCKER	03/19/2010	164.00	10990613536
SMITH, ROBIN TUCKER	03/19/2010	273.00	10990613543
SMITH, ROBIN TUCKER	03/19/2010	2191.00	10990613540
SMITH, ROBIN TUCKER	04/07/2010	21.00	10990685275
SMITH, ROBIN TUCKER	05/15/2010	231.00	10990739879
SMITH, ROBIN TUCKER	05/15/2010	342.00	10990739897
SMITH, ROBIN TUCKER	05/15/2010	3408.00	10990739892
SPECTER, ARLEN	04/28/2009	18.00	29933757793
SUNUNU, JOHN E	04/10/2007	347.00	27990422488

SUNUNU, JOHN E	04/20/2007	906.00	27990422488
SUNUNU, JOHN E	04/20/2007	2789.00	27990422491
SUNUNU, JOHN E	06/05/2007	413.00	27990422489
SUNUNU, JOHN E	06/19/2007	524.00	27990422490
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SUNUNU, JOHN E	03/28/2008	200.00	28931176635
SUNUNU, JOHN E	04/09/2008	495.00	28991031288
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SUNUNU, JOHN E	09/26/2008	7.00	28933575891
SUNUNU, JOHN E	09/26/2008	13.00	28933575903
SUNUNU, JOHN E	09/26/2008	27.00	28933575891
SUNUNU, JOHN E	09/26/2008	109.00	28933575902
SUNUNU, JOHN E	10/01/2008	103.00	28992901599
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SUNUNU, JOHN E	10/17/2008	86.00	28934544576
SUNUNU, JOHN E	10/20/2008	7.00	28934544544
SUNUNU, JOHN E	10/20/2008	75.00	28934544578
SUNUNU, JOHN E	10/21/2008	78.00	28934544580
SUNUNU, JOHN E	10/22/2008	50.00	28934544582
SUNUNU, JOHN E	10/23/2008	11.00	28934544584
SUNUNU, JOHN E	10/24/2008	56.00	28934544556
SUNUNU, JOHN E	10/24/2008	700.00	28934544598
TOOMEY, PATRICK JOSEPH	04/16/2009	187.00	29933757788

TOOMEY, PATRICK JOSEPH	04/16/2009	274.00	29933757788
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TOOMEY, PATRICK JOSEPH	04/21/2009	8623.00	29933757801
TOOMEY, PATRICK JOSEPH	04/23/2009	237.00	29933757791
TOOMEY, PATRICK JOSEPH	04/24/2009	20.00	29933757792
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TOOMEY, PATRICK JOSEPH	04/29/2009	20.00	29933757796
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TOOMEY, PATRICK JOSEPH	05/01/2009	19.00	29934004696
TOOMEY, PATRICK JOSEPH	05/05/2009	19.00	29934004696
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TOOMEY, PATRICK JOSEPH	05/27/2009	416.00	29934004698
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TOOMEY, PATRICK JOSEPH	06/05/2009	488.00	29934248697
TOOMEY, PATRICK JOSEPH	06/05/2009	4626.00	29934248700
TOOMEY, PATRICK JOSEPH	06/30/2009	231.00	29934248699
TOOMEY, PATRICK JOSEPH	07/01/2009	18.00	29992572833
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TOOMEY, PATRICK JOSEPH	09/11/2009	390.00	29992893992
TOOMEY, PATRICK JOSEPH	09/11/2009	652.00	29992894000
TOOMEY, PATRICK JOSEPH	09/11/2009	4158.00	29992893997
TOOMEY, PATRICK JOSEPH	10/14/2009	407.00	29935446239
TOOMEY, PATRICK JOSEPH	11/21/2009	398.00	29935566627
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TOOMEY, PATRICK JOSEPH	11/21/2009	2821.00	29935566628
TOOMEY, PATRICK JOSEPH	03/11/2010	288.00	10990613534
TOOMEY, PATRICK JOSEPH	03/19/2010	273.00	10990613537

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TOOMEY, PATRICK JOSEPH	03/19/2010	3655.00	10990613541
TOOMEY, PATRICK JOSEPH	04/14/2010	19.00	10990685276
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TOOMEY, PATRICK JOSEPH	10/25/2010	21.00	10931937283
WALBERG, TIMOTHY L.	01/25/2008	105.00	28990485588
WALBERG, TIMOTHY L.	03/21/2008	244.00	28931176632
WALBERG, TIMOTHY L.	09/11/2008	215.00	28933575881
WALBERG, TIMOTHY L.	09/11/2008	1424.00	28933575897
WALBERG, TIMOTHY L.	09/17/2008	13.00	28933575907
WALBERG, TIMOTHY L.	09/17/2008	25.00	28933575884
WALBERG, TIMOTHY L.	09/26/2008	7.00	28933575889
WALBERG, TIMOTHY L.	09/26/2008	16.00	28933575900
WALBERG, TIMOTHY L.	10/08/2008	461.00	28992901576
WALBERG, TIMOTHY L.	10/08/2008	3796.00	28992901601
WALBERG, TIMOTHY L.	10/10/2008	278.00	28992901579
WALBERG, TIMOTHY L.	10/10/2008	3214.00	28992901605
WALBERG, TIMOTHY L.	10/14/2008	51.00	28992901586

WALBERG, TIMOTHY L.	10/14/2008	291.00	28992901585
WALBERG, TIMOTHY L.	10/14/2008	694.00	28992901609
WALBERG, TIMOTHY L.	10/16/2008	73.00	28934544535
WALBERG, TIMOTHY L.	10/17/2008	306.00	28934544541
WALBERG, TIMOTHY L.	10/17/2008	2264.00	28934544590
WALBERG, TIMOTHY L.	10/22/2008	377.00	28934544547
WALBERG, TIMOTHY L.	10/22/2008	3402.00	28934544592
WALBERG, TIMOTHY L.	10/23/2008	34.00	28934544554
WALBERG, TIMOTHY L.	10/23/2008	551.00	28934544571
WALBERG, TIMOTHY L.	10/24/2008	16.00	28934544573
WALBERG, TIMOTHY L.	10/24/2008	152.00	28934544559
WALBERG, TIMOTHY L.	10/24/2008	1901.00	28934544601
WALBERG, TIMOTHY L.	10/28/2008	92.00	28934544562
YOUNG, TODD CHRISTOPHER	08/19/2010	25.00	10931277438
YOUNG, TODD CHRISTOPHER	08/20/2010	244.00	10931277441
YOUNG, TODD CHRISTOPHER	08/20/2010	2411.00	10931277449
YOUNG, TODD CHRISTOPHER	10/12/2010	236.00	10931706381
YOUNG, TODD CHRISTOPHER	10/12/2010	1604.00	10931706386
CONTRIBUTIONS			
DEMINT, JAMES W VIA TEAM DEMINT	12/19/2007	2500.00	28930147278
DEMINT, JAMES W VIA TEAM DEMINT	02/17/2009	-1200.00	29991763273
FLAKE, JEFF VIA JEFF FLAKE FOR US SENATE INC	11/01/2007	1000.00	28930147279
HARRIS, ANDREW P VIA ANDY HARRIS FOR CONGRESS	11/01/2007	1000.00	28930146946
HOFFMAN, DOUGLAS L. MR. VIA DOUG HOFFMAN FOR CONGRESS	11/02/2009	2750.00	29935566484
PENCE, MIKE VIA MIKE PENCE COMMITTEE	04/29/2008	5000.00	28991031099

SCHAFFER, ROBERT W VIA BOB SCHAFFER FOR US SENATE	11/01/2007	1000.00	28930147246
SUNUNU, JOHN E VIA TEAM SUNUNU	11/01/2007	1000.00	28930147479
TOOMEY, PATRICK JOSEPH VIA FRIENDS OF PAT TOOMEY	07/17/2009	-4500.00	29992572756
WALBERG, TIMOTHY L. VIA WALBERG FOR CONGRESS	11/01/2007	1000.00	28930147485
WIN BACK AMERICA POLITICAL ACTION COMMITTEE	08/12/2010	5000.00	10931277427
IN-KIND CONTRIBUTIONS			
ANGLE, SHARRON E VIA FRIENDS OF SHARRON ANGLE	08/03/2010	1612.00	10931276810
DEMINT, JAMES W VIA TEAM DEMINT	05/21/2007	319.00	27990422487
DEMINT, JAMES W VIA TEAM DEMINT	02/18/2009	1098.00	29991763277
FLAKE, JEFF VIA JEFF FLAKE FOR US SENATE INC	04/11/2008	1375.00	28991031241
FLAKE, JEFF VIA JEFF FLAKE FOR US SENATE INC	04/11/2008	2283.00	28991030772
HACKETT, CHRISTOPHER VIA CHRIS HACKETT FOR CONGRESS	03/31/2008	1586.00	28990860843
HOFFMAN, DOUGLAS L. MR. VIA DOUG HOFFMAN FOR CONGRESS	11/02/2009	315.00	29935566492
JOST FOR CONGRESS	11/02/2007	110.00	28930147246
JOST FOR CONGRESS	11/06/2007	342.00	28930147246
JOST FOR CONGRESS	11/06/2007	4400.00	28930147245
SCHWEIKERT, DAVID VIA DAVID SCHWEIKERT FOR CONGRESS	12/04/2007	1082.00	28930147247

SCHWEIKERT, DAVID VIA DAVID SCHWEIKERT FOR CONGRESS	12/04/2007	3287.00	<u>28930147278</u>
SHADEGG, JOHN B. VIA JOHN SHADEGGS FRIENDS	05/30/2008	400.00	<u>28931928351</u>
SHADEGG, JOHN B. VIA JOHN SHADEGGS FRIENDS	05/30/2008	1019.00	<u>28931928944</u>
TOOMEY, PATRICK JOSEPH VIA FRIENDS OF PAT TOOMEY	06/16/2009	350.00	<u>29934248692</u>
TOOMEY, PATRICK JOSEPH VIA FRIENDS OF PAT TOOMEY	06/16/2009	1898.00	<u>29934248522</u>
TOOMEY, PATRICK JOSEPH VIA FRIENDS OF PAT TOOMEY	06/16/2009	2475.00	<u>29934248546</u>

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 13

Presented by the Federal Election Commission

Individuals Who Gave To This Committee

NATIONAL DEFENSE PAC

Party: No Associated Party

**P.O. BOX 75021
 WASHINGTON, DC 20013**

The query you have chosen matched 28 individual contributions.

Contributor	Address	Date	Amount	Employer/Occupation	Image Number
CONTRIBUTIONS FROM AN INDIVIDUAL					
BOCK, JOHN V	RANCHO PALOS VERDI CA 90275	08/09/2000	250.00	RETIRED	20036212233
CAREY, JAMES	ALEXANDRIA VA 22310	10/21/2000	1000.00	ITR IAC	20036333517
CAREY, JAMES ADM.	ALEXANDRIA VA 22310	05/21/2003	1000.00	ND PAC TREASURER	23991180086
CAREY, JAMES J	ALEXANDRIA VA 22310	10/24/2002	1000.00	ITR INC	22037881077
CAREY, JAMES J	ALEXANDRIA VA 22310	09/05/2000	1000.00	ITR INC	20036212233
CHARLES, ROBERT	BETHESDA MD 20817	10/05/2000	250.00	DIRECT ACCESS	20036333516
GUZZARDI, ROBERT R	ARDMORE PA 19003	03/13/2004	2000.00	SELF EMPLOYED/REAL ESTATE INVESTME	24990962924
HARTWELL, ROB	ALEXANDRIA VA 22306	05/08/2003	5000.00	AMERICAN SYSTEMS INCORPORATED	23991180086
HARTWELL, ROB	ALEXANDRIA VA 22306	10/12/2004	1000.00	AMERICAN SYSTEMS INCORPORATED	24962413992

HARTWELL, ROBERT	ALEXANDRIA VA 22306	10/24/2002	1000.00	HARTWELL CAPITOL	22037881077
HARTWELL, ROBERT V	ALEXANDRIA VA 22306	01/10/2002	1000.00	BERMAN ASSOC	22037544140
HARTWELL, STEPHEN	MT VERNON VA 22121	02/12/2002	1000.00	WASHINGTON MUTUAL FUND	22037544132
HARTWELL, STEVE MR.	MT. VERNON VA 22121	03/04/2003	5000.00	WASHINGTON MUTUAL INVESTMENT FUNDS	23990847170
MOORE, WILLIAM C	MCLEAN VA 22102	02/12/2002	1000.00		22037544132
MOORE, WILLIAM C.	MC LEAN VA 22102	06/03/2003	1000.00	WILLIAM C. MOORE	23991180087
NEITZ, ROBERT H	BURKE VA 22015	02/15/2002	1000.00	ATTORNEY	23038111893
OCHSNER, RICH	MANASSAS VA 20112	05/09/2003	5000.00	ICHIBAN	23991180087
OCHSNER, RICHARD		10/24/2002	500.00	ICHIBAN INC	22037881078
OCHSNER, RICHARD		02/13/2002	1000.00	ICHIBAN INC	22037544134
PECK, MICHAEL E	ARLINGTON VA 22203	02/12/2002	250.00		22037544133
PECK, MIKE	DOUGLASVILLE GA 30135	10/05/2000	200.00	QUARTUM RESEARCH	20036333516
RANKIN, DIANNA Y	EAU CLAIRE WI 54701	04/19/2002	1000.00	HOUSEWIFE	22037662621
SKIPPER, WILLIAM		10/24/2002	1000.00	ASIC	22037881077
SKIPPER, WILLIAM MR.	VIENNA VA 22181	10/26/2007	5000.00	ABDG/EXECUTIVE	29935546987
SNIEGON, GINNY	ALEXANDRIA VA 22303	06/03/2003	5000.00	DEFENSE ANALYSES INSTITUTE/ANALYST	23991180087
SNIEGON, VIRGINIA A	ALEXANDRIA VA 22303	02/12/2002	1000.00		22037544133
STINSON, JOHN	ALEXANDRIA VA 22315	10/05/2000	250.00		20036333516
WASHINGTON, ARNEZE	OAKLAND CA 94605	09/20/2000	250.00	ASTUTE COMMUNICATIONS	20036212233

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Presented by the Federal Election Commission

Contributions Received By This Candidate's Committee(s)

NATIONAL DEFENSE PAC

Party: No Associated Party

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 WASHINGTON, DC 20013**

Recipient's Name	Date	Amount	Image Number
CONTRIBUTIONS			
AMERICAN COUNCIL FOR HEALTH CARE REFORM	09/18/2002	100.00	<u>22992109746</u>
CROWELL & MORING PAC	05/30/2003	125.00	<u>23038173144</u>
MEDIA FUSION PAC	12/30/2002	300.00	<u>23037971933</u>
NATIONAL DEFENSE COMMITTEE PAC	10/13/2010	1000.00	<u>10991702555</u>
ORBITAL SCIENCES CORPORATION POLITICAL ACTION COMMITTEE (ORBPAC)	02/11/2002	1000.00	<u>22990613392</u>
ORBITAL SCIENCES CORPORATION POLITICAL ACTION COMMITTEE (ORBPAC)	10/21/2002	1000.00	<u>22992895839</u>
ROLLS-ROYCE NORTH AMERICA HOLDINGS INC. PAC (ROLLS-ROYCE NORTH AMERICA PAC)	06/02/2003	1000.00	<u>23991577040</u>

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

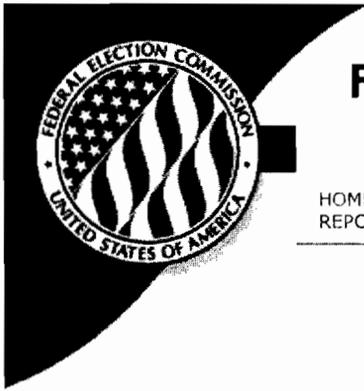
FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 14



FEDERAL ELECTION COMMISSION

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Committee (C00359992) Summary Reports - 2009-2010 Cycle

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NATIONAL DEFENSE PAC

C00359992 Non-Party Qualified District of Columbia

Total Receipts:	\$2,971
Transfers From Authorized:	\$1,000
Individual Contributions:	\$1,532
Other Committee Contributions:	\$0
Other Loans:	\$0
Non-Federal Transfers:	\$0

Total Disbursements:	\$2,959
Transfers To Authorized:	\$0
Contributions To Other Committees:	\$1,490
Independent Expenditures:	\$0
Coordinated Expenditures:	\$0
Individual Refunds:	\$0
Other Committee Refunds:	\$0
Other Loan Repayments:	\$0
Non-Federal Expenditures:	\$0

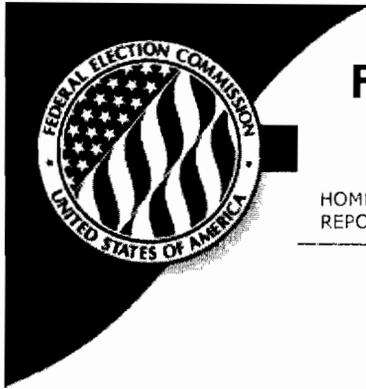
Beginning Cash:	\$954
Latest Cash On Hand:	\$966
Debts Owed By:	\$0

Through: 12/31/2010

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Committee (C00359992) Summary Reports - 2007-2008 Cycle

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NATIONAL DEFENSE PAC

C00359992 Non-Party Qualified [District of Columbia](#)

Total Receipts:	\$5,000
Transfers From Authorized:	\$0
Individual Contributions:	\$5,000
Other Committee Contributions:	\$0
Other Loans:	\$0
Non-Federal Transfers:	\$0

Total Disbursements:	\$2,900
Transfers To Authorized:	\$0
Contributions To Other Committees:	\$2,900
Independent Expenditures:	\$0
Coordinated Expenditures:	\$0
Individual Refunds:	\$0
Other Committee Refunds:	\$0
Other Loan Repayments:	\$0
Non-Federal Expenditures:	\$0

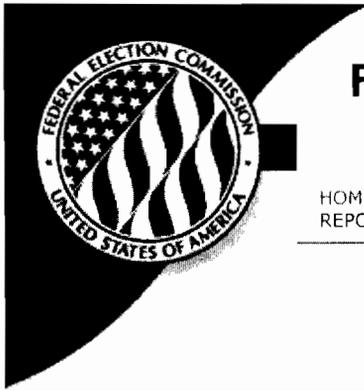
Beginning Cash:	\$-1,146
Latest Cash On Hand:	\$954
Debts Owed By:	\$0

Through: 12/31/2008

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Committee (C00359992) Summary Reports - 2005-2006 Cycle

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NATIONAL DEFENSE PAC

C00359992 Non-Party Qualified [District of Columbia](#)

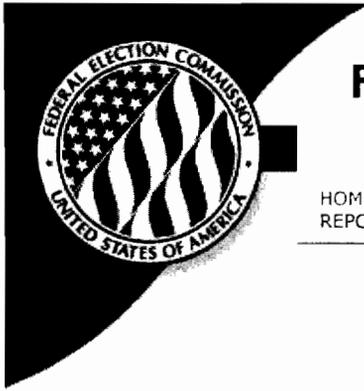
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Transfers From Authorized:	\$0
Individual Contributions:	\$0
Other Committee Contributions:	\$0
Other Loans:	\$0
Non-Federal Transfers:	\$0
Total Disbursements:	\$1,000
Transfers To Authorized:	\$0
Contributions To Other Committees:	\$1,000
Independent Expenditures:	\$0
Coordinated Expenditures:	\$0
Individual Refunds:	\$0
Other Committee Refunds:	\$0
Other Loan Repayments:	\$0
Non-Federal Expenditures:	\$0
Beginning Cash:	\$-146
Latest Cash On Hand:	\$-1,146
Debts Owed By:	\$0

Through: 12/31/2006

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Committee (C00359992) Summary Reports - 2003-2004 Cycle

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NATIONAL DEFENSE PAC

C00359992 Non-Party Qualified District of Columbia

Total Receipts:	\$29,935
Transfers From Authorized:	\$0
Individual Contributions:	\$28,800
Other Committee Contributions:	\$1,125
Other Loans:	\$0
Non-Federal Transfers:	\$0

Total Disbursements:	\$31,154
Transfers To Authorized:	\$0
Contributions To Other Committees:	\$23,000
Independent Expenditures:	\$0
Coordinated Expenditures:	\$0
Individual Refunds:	\$0
Other Committee Refunds:	\$0
Other Loan Repayments:	\$0
Non-Federal Expenditures:	\$0

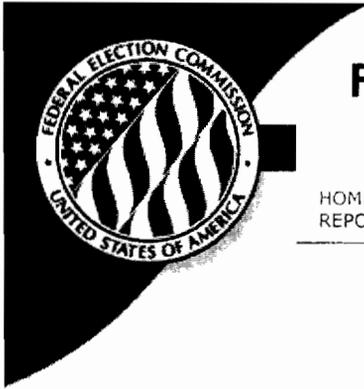
Beginning Cash:	\$1,075
Latest Cash On Hand:	\$-146
Debts Owed By:	\$0

Through: 12/31/2004

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Committee (C00359992) Summary Reports - 2001-2002 Cycle

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NATIONAL DEFENSE PAC

C00359992 Non-Party Non-Qualified District of Columbia

Total Receipts:	\$13,525
Transfers From Authorized:	\$0
Individual Contributions:	\$12,225
Other Committee Contributions:	\$1,300
Other Loans:	\$0
Non-Federal Transfers:	\$0

Total Disbursements:	\$13,491
Transfers To Authorized:	\$0
Contributions To Other Committees:	\$9,250
Independent Expenditures:	\$0
Coordinated Expenditures:	\$0
Individual Refunds:	\$0
Other Committee Refunds:	\$0
Other Loan Repayments:	\$0
Non-Federal Expenditures:	\$0

Beginning Cash:	\$1,075
Latest Cash On Hand:	\$1,108
Debts Owed By:	\$0

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NATIONAL DEFENSE PAC

C00359992 Non-Party Non-Qualified [District of Columbia](#)

Total Receipts:	\$3,825
Transfers From Authorized:	\$0
Individual Contributions:	\$3,825
<u>Other Committee Contributions:</u>	\$0
Other Loans:	\$0
Non-Federal Transfers:	\$0
Total Disbursements:	\$2,750
Transfers To Authorized:	\$0
<u>Contributions To Other Committees:</u>	\$2,750
Independent Expenditures:	\$0
Coordinated Expenditures:	\$0
Individual Refunds:	\$0
Other Committee Refunds:	\$0
Other Loan Repayments:	\$0
Non-Federal Expenditures:	\$0
Beginning Cash:	\$0
Latest Cash On Hand:	\$1,075
Debts Owed By:	\$0

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

FEC Exhibits

FEC EXHIBIT 15

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

DECLARATION

Jayci A. Sadio hereby declares as follows:

1. My name is Jayci A. Sadio. I am a resident of Upper Marlboro, Maryland. I am over 21 years of age.

2. I am employed as a Paralegal Specialist in the Office of the General Counsel of the Federal Election Commission (“FEC or “Commission”), located at 999 E Street, NW, Washington, DC 20463. I have been employed in this capacity since January 2006.

3. As part of my duties at the Commission I am familiar with campaign registration and disclosure reports that certain entities are required to file with the Commission. I am also familiar with such disclosure reports and data derived therefrom being available on the Commission’s website (www.fec.gov).

4. Unless otherwise indicated, I make this declaration based on my personal knowledge. I make this declaration in support of the Commission’s Opposition to Plaintiffs’ Motion for a Preliminary Injunction in this case and all references to numbered exhibits herein

are to those submitted by the Commission with that opposition memorandum. I visited the websites listed below on March 7, 2011.

5. FEC Exhibit 1 is a true and accurate copy of material available at http://www.nationaldefensecommittee.org/?page_id=13. See National Defense Committee, *Who We Are* (Feb. 25, 2011).

6. FEC Exhibit 2 is a true and accurate copy of material available at http://www.jamesjcarey.us/links_description.php#NDC. See Rear Adm. (Ret.) James J. Carey, *Links* (Feb. 27, 2011).

7. FEC Exhibits 3, 5-9, and 11-14 are true and accurate copies of registration reports, disclosure reports, or summary pages on file with the Commission and publicly available in the FEC's Public Records Office and on its website (www.fec.gov).

8. FEC Exhibit 4 is a true and accurate copy of material available at <http://nationaldefensepac.org>. See National Defense PAC (Feb. 25, 2011).

9. FEC Exhibit 10 is a true and accurate copy of material available at <http://www.eusatrix.com/about/>. See Eusatrix Corp., *About Eusatrix* (Feb. 25, 2011).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



Jayci A. Sadio
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463
(202) 694-1650

Executed March 7, 2011.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REAR ADM. JAMES J. CAREY [Ret.],)	
)	
KELLY S. EUSTIS,)	
)	
NATIONAL DEFENSE PAC,)	
)	
Plaintiffs,)	
)	
v.)	Civil Case No. 11-259-RMC
)	
FEDERAL ELECTION COMMISSION,)	
)	
Defendant.)	

**PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

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ARGUMENT

Introduction

Plaintiffs are before this court seeking protection of their First Amendment rights to assemble together and speak out about political issues important to them. The Federal Election Commission (FEC) has responded to that request by listing, in exhaustive detail, a myriad of burdensome alternative ways Plaintiffs, or acquaintances of Plaintiffs might speak — even going so far as to suggest that National Defense PAC should clone itself to do so. While the Commission would demand that Plaintiffs suffer repeat injuries or undergo radical organizational changes—just to speak—the First Amendment does not countenance such demands. “The Government may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation.” *Citizens United v. FEC*, 130 S.Ct. 876, 889 (2010). Here, this court faces a familiar trend in the FEC’s regulatory zeal—to deny the fundamental constitutional liberties of speakers while pointing to legions of burdensome alternatives to demonstrate why regulation, and not free speech, should reign supreme. In the wake of *Citizens United* and *EMILY’s List*, these arguments are unavailing.

The crux of the Commission’s arguments boil down to two main points: (1) Plaintiffs are not injured because they should speak first and defend against criminal or civil enforcement second, and (2) a plentitude of FEC-approved ways to speak and associate adequately protect First Amendment interests here. The FEC’s tried and not so true arguments fail to account for controlling precedent from the Supreme Court’s campaign finance and First Amendment jurisprudence that favor Plaintiffs’ request for injunctive relief in this matter.

I. The FEC Elides the Fact That *EMILY's List* was a Challenge to Federal Contribution Limits

Plaintiffs rely on *EMILY's List* to demonstrate that the Constitution compels the relief they request. But the FEC frames *EMILY's List* as a controversy about allocation regulations and not about the constitutional reach of speech-limiting contribution statutes. Specifically, the FEC claims that, unlike this case, “*EMILY's List* involved a challenge to Commission regulations—not to any statutory provisions of FECA—governing how funds contributed for nonfederal activity could be spent [and] how certain ‘mixed’ federal and nonfederal activity could be financed.” Opp’n Memo. at 17, 20. Plaintiffs will demonstrate, however, that *EMILY's List's* challenge to the allocation regulations of 11 CFR 106.6 was necessarily a challenge to the contribution limits (and source restrictions) of the Federal Election Campaign Act (FECA), and that the holding in *EMILY's List* is not *dicta*. *EMILY's List* prevents the FEC from enforcing contribution limits against a non-connected committee that uses separate accounts to speak independently about federal candidates. 581 F.3d 1, 12 (D.C. Cir. 2009). The Supreme Court’s opinion in *Citizens United*, 130 S. Ct. 876 (2010), prevents the FEC from enforcing the corporate source prohibition of 2 U.S.C. § 441b against non-connected committees for the same communications. See *EMILY's List*, 581 F.3d at 12 n.11 (“If *Austin* were overruled, then non-profits would be able to make unlimited express-advocacy expenditures from their soft-money accounts even if they accepted donations from for-profit corporations or unions to those accounts.”).

It is important for this Court to understand, despite the FEC’s repeated suggestion, that the term “non-federal funds” does not merely mean “state funds,” though non-federal

funds happen to finance state elections in many instances. Rather, the term “non-federal funds,” like its synonym “soft money,” is shorthand for a precise definition. It defines funds the FEC has *no* authority to restrict, whether or not a state has authority to restrict them, either because the FECA does not restrict those funds or because those funds further speech that the FEC cannot restrict under the *First Amendment* to the U.S. Constitution.¹ See Federal Election Commission, “Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,” Final Rule, 67 Fed. Reg. 49064 at 49064-65 (July 29, 2002) (term “non-federal funds” is preferable to the term “soft money” but each denotes “unregulated funds” or funds regulated only “under state law”).

The FEC concedes that in challenging the allocation regulations EMILY’s List challenged the line between “federal” and “non-federal” funds. Opp’n Memo. at 19. However, by challenging the federal funds percentage as too high, EMILY’s List was necessarily arguing that the FEC’s regulations had in fact reached funds the FEC had no authority to restrict *at all*. After all, the FEC restricts the receipt of funds in two ways: It either 1) limits the contributions an organization receives pursuant to 2 U.S.C. § 441a, or it 2) prohibits the receipt of funds from certain sources altogether; pursuant to 2 U.S.C. § 441b.

In determining which funds FEC regulations could legitimately reach, the *EMILY’s List* Court by necessity had to determine what activities the FEC had the power to reach at all. The Court correctly held that the FEC may restrict only those funds that the Supreme Court has ruled can corrupt candidates as a matter of law. 581 F.3d at 6.

¹ Here is an example of where the funds are “non-federal” (a.k.a “soft money”) but the activity furthered appears to be federal: An individual gives money to an organization above a contribution limit for independent expenditures in favor of a candidate to federal office. See *Citizens United v. FEC*, 130 S. Ct. 876 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

With this as its standard, the D.C. Circuit held that those funds that EMILY's List accepts for contributions to candidates may be restricted as to source and amount. 581 F.3d at 12. Funds accepted to administer contributions to candidates may also be restricted. *Id.* But all other funds may not be so restricted (even though they must be reported under 2 U.S.C. 434(a)). *Id.* This led the D.C. Circuit Court of Appeals to hold that “a non-profit that makes expenditures *and* makes contributions to candidates” is “entitled to make their expenditures ... out of a[n] account that is not subject to source and *amount limitations*.” *EMILY's List*, 581 F.3d at 12 (emphasis added). The reference to “amount limitations” is a reference to the contribution limits of 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). It is these contribution-limit statutes that provide the FEC's authority for its (flawed) regulation at 11 CFR 106.6. Much as the FEC might wish this away, there is no other conclusion.

The FEC suggests that its advisory opinion process honors the holding in *EMILY's List* “by permitting groups to maintain one political committee to accept limited funds for contributions to federal candidates, and also establish a second political committee to accept unlimited contributions for independent expenditures.” Opp'n Memo. at 21. *Citizens United* eclipses the Commission's reasoning because a “PAC is a separate association.” 130 S. Ct. at 897. That a separate, distinct legal entity may speak does nothing to cure the constitutional injuries at hand. *Id.*

The FEC goes on to argue that while the *EMILY's List* opinion did decide where federal activity ends and non-federal activity begins, the opinion can have no bearing on a committee like NDPAC that engages in federal activity (contributions) and still other federal activity (independent expenditures). Opp'n. Memo. at 20. In deciding which

activities were “non-federal,” the *EMILY’s List* Court had to determine the outer reach of federal campaign funding restrictions. It freed the organization of restrictions on funds that would be used to make independent expenditures. The definition of “independent expenditure” includes federal candidates. *See* 2 U.S.C. 431(17) (“independent expenditure” means expressly advocating the election or defeat of a *federal* candidate). Independent expenditures clearly are, as the FEC would have it, federal activity. Yet, there is no doubt that the *EMILY’s List* Court permitted those expenditures to be made with 100% “non-federal funds”—that is, with “soft money”; that is, with *unrestricted* funds. The essence of the FEC’s argument is that the *EMILY’s List* opinion might help a non-connected committee determine what funds it can raise to communicate in, say, gubernatorial races, but it offers *no* relief to non-connected committees that want to make independent expenditures about federal candidates. Opp’n. Memo. at 22. Not only does the FEC’s argument deny the very logic of the *EMILY’s List* opinion, it denies its very words. *EMILY’s List*, 581 F.3d at 12.

The error can be exposed fully by Plaintiffs speaking the FEC’s language. The FEC claims that the *EMILY’s List* case merely challenged the allocation regulations for non-connected committees at 11 CFR 106.6 but *not* FECA’s contribution limits. Opp’n. Memo. at 17. While on the books, section 106.6 required that “(1) The following shall be paid 100 percent from the Federal account of the nonconnected committee: (i) Public communications that refer to one or more clearly identified federal candidates.” *See* 11 CFR 106.6(f)(1)(i) (invalidated as unconstitutional in *EMILY’s List*, 581 F.3d at 25). Invalidating section 106.6, the *EMILY’s* Court held that independent public communications that refer to one or more clearly identified federal candidates can be paid

100 percent from the *non-federal* account. The court held it unconstitutional for the FEC to require that those communications be paid from the federal account. 581 F.3d at 12.

But what is the “federal account”? It is an account made up of funds received under the contribution limits of 2 U.S.C. § 441a and the source restrictions of 2 U.S.C. § 441b. *See* 11 CFR 300.30(b)(3)(i) (“Only contributions that are permissible pursuant to the limitations and prohibitions of the [Federal Election Campaign] Act may be deposited into any Federal account.”); *see also* 11 CFR 300.2(g) (“*Federal funds* mean funds that comply with the limitations, prohibitions, and reporting requirements of the Act”). Because the section 106.6 allocation rested on the limits and restrictions of 2 U.S.C. §§ 441a and 441b, the *EMILY’s List* case was effectively an as-applied challenge to the scope of FECA’s contribution limits and source prohibitions.

No matter how the FEC seeks to recast the issue, it is true that *EMILY’s List* protects the right of non-connected committees to accept unrestricted funds into a separate account to make independent expenditures about federal candidates. 581 F.3d at 12. The *EMILY’s List* holding is not *dicta*. Because NDPAC is a non-connected committee like EMILY’s List, the opinion is binding on the case at hand.

II. The D.C. Circuit Examined *CalMed* at Length in *EMILY’s List* and Rejected the Same Arguments Made by the FEC Here

The FEC submits “accepting plaintiffs’ view of *EMILY’s List* would require the Court to ignore or decline to follow the Supreme Court’s decision in *CalMed*.” Opp’n Memo at 22. The argument is remarkable when one considers the depth to which *EMILY’s List* considers and integrates the *CalMed* opinion. *See EMILY’s List*, 581 F.3d at 12 (“[n]on-profits may be compelled to use their hard-money accounts to pay an

appropriately tailored share of administrative expenses associated with their contributions”) (quoting *California Medical Ass’n v. FEC*, 453 U.S. 182, 198-99 n.19 (1981) (opinion of Marshall, J.)).

The FEC goes out of its way to argue that *CalMed* already decided the constitutionality of applying contribution limits to a political committee that makes both contributions to candidates and independent expenditures. The FEC makes this argument despite *EMILY’s List’s* holding that a non-connected committee “that makes expenditures to support federal candidates does not suddenly forfeit its First Amendment rights when it decides also to make direct contributions to ... candidates.” 581 F.3d at 12. It makes this argument despite *CalMed’s* footnote 17, in which the plurality noted an *amicus* brief that claimed the contribution limit “would violate the First Amendment if construed to limit the amount individuals could jointly expend to express their political views.” 453 U.S. at 197 n.17. And, the FEC makes the argument despite the plurality’s explanation that, “[c]ontributions to such committees are therefore distinguishable from expenditures made jointly by groups of individuals in order to express common political views.” *Id.*

The FEC believes that if it can just find independent expenditures in the record of the *CalMed* case then nothing stated in *EMILY’s List* or *Citizens United* can vindicate Plaintiffs’ claim. The FEC argues that “contrary to plaintiffs’ suggestion, ‘CALPAC ma[de] contributions to and expenditures *on behalf of* candidates in state and federal elections.’ *FEC v. Cal. Med. Ass’n*, 502 F. Supp. 196, 198 (N.D. Cal. 1980) (emphasis added).” Opp’n Memo. at 17 n.3. The FEC’s memorandum equates “expenditures on behalf of” candidates with independent expenditures. But that is inconsistent with the *CalMed* opinion and the FEC’s position in AO 2010-09 (Club for Growth).

Plaintiffs can find nothing in the record to support the assertion that California Medical Association actually made independent expenditures calling for the election or defeat of a federal candidate or that the funding of independent expenditures was the issue in the case.² What's more, the FEC has elsewhere maintained that expenditures "on behalf of" does not mean "independent expenditures," it means "coordinated expenditures," which are treated as in-kind contributions. In AO 2010-09, the FEC made the following statement:

The Commission's current regulation at 11 CFR 110.1(h) limits a person that has already contributed to a specific candidate from also contributing to an unauthorized political committee if the contributor "give[s] with the knowledge that a substantial portion will be contributed to, or *expended on behalf of*, that candidate for the same election." Section 110.1(h) "governs the circumstances under which contributions to a candidate and his or her authorized campaign committee(s) must be aggregated with contributions to other political committees for the purposes of the contribution limits of section 110.1." Explanation and Justification, Contribution and Expenditure Limitations and Prohibitions, 52 FR 760, 765 (Jan. 9, 1987). In other words, the Commission's earmarking regulation is designed to prevent the circumvention of contribution limits.

However, the Club has represented that the Committee will not, itself, make any contributions or transfer any funds to any political committee if the amount of a contribution to the recipient committee is governed by the Act, *nor will the Committee make any coordinated communications or coordinate any expenditures* with any candidate, authorized committee, political party committee, or agent of such persons. Thus, because there is no possibility of circumvention of any contribution limit, section 110.1(h) and its rationale do not apply to the Committee's solicitations or any contributions it receives that are earmarked for specific independent expenditures.

² Plaintiffs are aware of no evidence of independent expenditures made by the California Medical Association in the record. See generally *FEC v. California Medical Assn.*, 502 F. Supp. 196 (1980). Rather, the record shows the association making in-kind contributions to CALPAC in excess of \$5000 per year to cover the expense of CALPAC employees. *Id.* One would think that CALPAC was the separate segregated fund of California Medical Association, which would permit the association to pay CALPAC's administrative expenses. See 11 CFR Part 114. It appears, however, that CALPAC was established as a non-connected committee able to accept contributions from the general public. This made the association's payment for CALPAC's administrative expenses impermissible in-kind contributions. But plaintiffs can find no evidence that the Association made independent expenditures or that the *CalMed* Court ruled it is permissible to restrict funds that would finance them. See *California Medical Ass'n v. FEC*, 453 U.S. 182 (1981).

AO 2010-09 at 5 (emphasis added). From this it is clear that an expenditure "on behalf of" a candidate is an in-kind contribution, not an independent expenditure. *See also Buckley v. Valeo*, 424 U.S. 1, 24 n.25 (1976) ("Expenditures by persons or associations that are 'authorized or requested' by the candidate ... are treated as contributions under the Act."). This seems supported by the numerous occurrences of "on behalf of" in the federal regulations. *See, e.g.*, 11 CFR §§ 100.5(e)(2) and (f)(2), 100.16(b), 100.87(c). Thus, the Club for Growth's Independent Expenditure-PAC was free to accept earmarked contributions to be used for independent expenditures because they were *not* expenditures "on behalf of" the candidate. Absent further evidence, it seems fair to assume that the quote the FEC cites (Opp'n. Memo. at 17 n.3) indicates that the California Medical Association was making in-kind contributions by paying bills on behalf of CALPAC, not making independent expenditures. The FEC's reliance on *CalMed* is wholly misplaced.

III. If Separate Bank Accounts Cure the Threat of Corruption in Mixed Purpose Non-Connected Committees, They must also Cure the Threat for Non-Connected Committees Like NDPAC

If separate bank accounts are adequate to prevent the corruption of federal candidates for mixed purpose non-connected committees, they are adequate to prevent corruption here. The FEC does not explain how a mixed purpose non-connected committee may swell with soft money in one account and not corrupt candidates, but that a non-connected committee that would accept unrestricted funds into a separate account for independent expenditures suddenly poses a threat of corruption. The FEC's argument is nonsensical.

The FEC also argues that "[t]he creation of separate bank accounts does not eliminate the potential for individuals, groups, corporations, or unions to try to leverage

unlimited donations as a means to pressure an organization to direct contributions to particular federal candidates.” Opp’n. Memo. at 16. Actually, it does. The reason is simple. The same individuals, groups, corporations, or unions could try to leverage unlimited donations to the state side of the non-connected committee and achieve the same result the FEC fears with independent expenditures. Yet, this prospect does not trouble the FEC, as it cannot: Mixed purpose non-connected committees have a right to speak without restriction where they pose no the threat of corruption. *See generally Buckley v. Valeo*, 424 U.S 1 (1976). Is it the FEC’s position that a corporation could give unlimited amounts to a non-connected committee for gubernatorial races and not sway the committee’s decision makers on candidate contributions, but that the moment the same corporation gave generously for independent expenditures the committee’s decision makers would lose their integrity?

There is another aspect of the argument this Court should consider: The FEC’s remedy here is to stifle NDPAC’s independent expenditures. The FEC argues that Plaintiffs’ robust exercise of their rights to independent speech from one account will sway the decision of which candidates will receive contributions from another account. Therefore, argues the FEC, NDPAC and its supporters must renounce their right to robust independent speech by subjecting themselves to contribution limits and source prohibitions to ensure that NDPAC’s contributions to federal candidates—made from another account, subject to limits, to source restrictions, and to thorough reporting requirements—are truly the decision of Admiral James Carey. This is hardly a compelling interest. *See FEC v. Nat’l. Conservative PAC*, 470 U.S. 480 (“[a] restriction on the amount of money a ... group can spend on political communications ...

necessarily reduces the quantity of expression.”) It surely can be met by the less burdensome requirement that NDPAC report its every receipt and disbursement as required under 2 U.S.C. § 434(a).

Earmarking contributions is already illegal. 2 U.S.C. § 441f. The biennial aggregate limit on contributions to all political committee accounts that, in turn, go to candidates ensures that no one donor will assert too much influence. *See Buckley*, 424 U.S. at 264. The FEC’s position—that NDPAC forfeits its rights to independent speech when it makes contributions to candidates—is contrary to the holding in *EMILY’s List* and untenable.

IV. Plaintiffs Need Not Clone Itself to Make Independent Expenditures

The FEC argues that “requiring NDPAC to create a separate political committee to accept unlimited contributions to make independent expenditures will increase full and clear disclosure of NDPAC’s federal campaign activity.” Opp’n. Memo. at 27. Requiring Plaintiffs to establish and administer two political committees is unnecessarily burdensome. *See Citizens United v. FEC*, 130 S. Ct. 876 (2010). And it ignores the fact that plaintiff NDPAC is already a political committee under 2 U.S.C. 431(4). NDPAC not only reports every (federal) “contribution” it accepts, *see* 2 U.S.C. 431(8), and every (federal) “expenditure” it makes, *see* 2 U.S.C. § 431(9), it also reports every (non-federal) receipt and disbursement. *See* 2 U.S.C. 434(a). The FEC cannot argue that funds will go unreported if NDPAC does not clone itself and Adm. Carey is not forced to administer two committees. Every receipt and disbursement will be reported. Nonetheless, the FEC argues that people may better understand the reports if one political committee would

handle the independent expenditures and another the contributions. With due respect to the FEC, the argument is nonsense: non-connected committees may currently make independent expenditures, which are quickly reported and readily understood. And, whatever its merit, the FEC's argument does not justify restricting funds for NDPAC's independent expenditures, essentially saying that NDPAC may speak as loudly as it wants so long as it only speaks as loudly as the FEC permits. Assuming, *arguendo*, there is some benefit in requiring all political committees to create sister committees to handle their independent expenditures, such is the prerogative of Congress.

Furthermore, any public communication by NDPAC that contains express advocacy will contain a disclaimer. *See* 2 U.S.C. 441d(a). The definition of "independent expenditure" subsumes express advocacy, *see* 2 U.S.C. § 431(17), and is the kind of communications NDPAC would make if it prevails.

The FEC says Adm. Carey is qualified to operate two political committees. Opp'n Memo. at 27. Plaintiffs note that seasoned political operative, David Bossie, of Citizens United, is no less qualified. But that fact hardly constitutes a legitimate, let alone compelling, governmental interest. *See Citizens United*, 130 S. Ct. at 897 (establishing a PAC is burdensome); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 263 (1986) ("While the burden on MCFL's speech [establishing a political committee] is not insurmountable, we cannot permit it to be imposed without a constitutionally adequate justification").

As the FEC clings to its regulatory requirements, it misses important constitutional developments in First Amendment jurisprudence necessary for the

disposition of this matter. Taking these considerations into view helps better illustrate why Plaintiffs' request for injunctive relief should be granted.

V. Recognizing Cognizable Injuries in First Amendment Jurisprudence

The Commission maintains that Plaintiffs have not suffered enough injuries to warrant injunctive relief by this court. This position ignores the careful instruction given to the FEC in its recent trilogy of First Amendment losses before the Supreme Court.

A. Setting Speech Protective Standards

In response to Plaintiffs' request for preliminary injunctive relief, the FEC is silent concerning salient First Amendment benchmarks applicable to this case. Following the FEC's losses in *Federal Election Comm'n v. Wisconsin Right to Life, Inc.* ("WRTL"), 540 U.S. 93 (2007), *Davis v. FEC*, 554 U.S. 724 (2008), and *Citizens United*, several rules that give proper preference to the operation of the First Amendment must be integrated into this challenge.

First Amendment case law recognizes that pre-enforcement challenges are entirely permissible, if not welcome. Where a challenged law targets speech by the class belonged to by plaintiffs, a credible threat of enforcement and corresponding injury exists. *See Chamber of Commerce of U.S. v. FEC*, 69 F.3d 600, 603 (D.C. Cir. 1995) (FEC's inability to affirmatively vote on an advisory opinion request confers standing because nothing "prevents the Commission from enforcing its rule at any time"); *but see* Opp'n Memo. at 35-36 n.10 (where the FEC suggests there is no harm because the Commission will probably not enforce this rule). A related rule holds that a party most assuredly may challenge a statute in the pre-enforcement context if "First Amendment

rights are arguably chilled, so long as there is a credible threat of prosecution.” *Chamber of Commerce*, at 603-04. Because speakers might have to undergo costly compliance or risk prosecution, pre-enforcement challenges in the context of the First Amendment are appropriate. *Virginia v. American Booksellers Ass’n, Inc.*, 484 U.S. 383, 391 (1988); *but see* Opp’n Memo. at 36 (where the FEC explains that Plaintiffs should risk investigations and litigation to speak).

It should be recounted that a fundamental maxim of the Supreme Court’s First Amendment jurisprudence is that while speakers could employ other methods to disseminate their message, such a fact “does not take their speech . . . outside the bounds of First Amendment protection.” *Meyer v. Grant*, 486 U.S. 414, 424 (1988) (citing *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986)). This then means that speakers not only possess the right to determine their message, but also to “select what they believe to be the most effective means for so doing.” *Id.*; *But see* Opp’n Memo. at 32 (detailing the many ways the FEC suggests Plaintiffs should associate and speak). This principle was confirmed most recently in *WRTL*, where the Court noted that instructing individuals that they may speak, but only in a manner the government approves, is “akin to telling Cohen that he cannot wear his jacket because he is free to wear one that says ‘I disagree with the draft.’” 551 U.S. at 477 n.9 (citing *Cohen v. California*, 403 U.S. 15 (1971)).

The principles of *Meyer* and *Hurley* take especially strong force in the context of political speech – communication at the very core of the First Amendment. *Buckley*, 424 U.S. at 39. It is when citizens unite that effective advocacy is had, as the Supreme Court has routinely protected the “close nexus” between freedoms of speech and assembly.

NAACP v. Alabama, 357 U.S. 449, 460 (1958). The right to speak effectively proves crucial in the context of association, because it would be “diluted if it does not include the right to pool money through contributions, for funds are often essential if ‘advocacy’ is to be truly or optimally ‘effective.’” *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 296 (1981) (quoting *Buckley*, 424 U.S. at 65-66).

These principles find their realization in *Wisconsin Right to Life* and *Citizens United*. In *WRTL*, the Supreme Court was careful to explain that while the FEC might expound about the many ways an organization could speak, such burdensome options did nothing to cure the constitutional maladies. *WRTL*, 551 U.S. at 477 n.9. While the FEC argued that a “PAC option” was sufficient to protect First Amendment speech, the Court explained that PACs “well-documented and onerous burdens, particularly on small nonprofits” did not cure the constitutional injuries at hand. *Id.* Similarly, while the speakers in *WRTL* might have availed themselves of other communication outlets, such alternatives might not be as effective. *Id.* As a result, they were no remedy to the real constitutional injuries suffered by the *WRTL* speakers. *WRTL* returned the Supreme Court’s jurisprudence to one favoring speech, not regulation. *Id.* at 482 (“we give the benefit of the doubt to speech, not censorship”).

After the FEC lost *WRTL*, it went on to lose *Citizens United* by revamping its regulations to include a two-prong, eleven factor speech code – designed as a response to the *WRTL* Court’s admonition that speech tests must not rely on an “open-ended rough-and-tumble of factors.” *Id.* at 451 (quoting *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 547 (1995)). The Court then offered another rule of hand: “The First Amendment does not permit laws that force speakers to retain a

campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day.” *Citizens United*, 130 S.Ct. at 889. Thus, a guiding principle emerges from *Citizens United* – the continued maintenance of complicated regulatory structures that inhibit First Amendment rights must fall if average speakers are to have their rights protected.

In the wake of the Supreme Court’s speech-friendly precedent, most recently recognized in *Wisconsin Right to Life* and *Citizens United*, any review of First Amendment burdens must incorporate, not ignore, these principles. To wit, citizens facing overbroad provisions that smother and inhibit speech must have a remedy to protect their constitutional rights. This remedy is not found in piling burdensome alternatives on already-strained grassroots organizations like National Defense PAC. Nor is an adequate remedy found by demanding that citizens risk enforcement actions when they associate together about issues they care about and speak out to the public. Instead, it is the proper function of this court to ensure that Plaintiffs’ speech is not chilled and that their ongoing injuries to their First Amendment rights receive an appropriate remedy – injunctive relief.

B. Applying the Correct First Amendment Standards to the FEC’s Arguments

The FEC submits that Plaintiffs have failed to meet the threshold standards to satisfy preliminary injunctive relief. Most specifically, it claims that Plaintiffs cannot demonstrate any cognizable irreparable injury. To make this claim, the FEC relies on cases resting outside of the special protection enjoyed by speakers under the First Amendment. For example, the FEC asserts that any “additional administrative burden of setting up a new political committee” is only “[m]ere injuries of money, time, and

energy.” Opp’n Memo. at 37 (internal quotations and citations omitted). Or having to “respond to an administrative enforcement proceeding would not create irreparable harm.” *Id.* How quickly the FEC forgets the lessons of *Citizens United*.³

The D.C. Circuit has held that when it comes to the First Amendment and preliminary injunctions, speakers must “establish they are or will be engaging in constitutionally protected behavior to demonstrate that the allegedly impermissible government action would chill allowable individual conduct.” *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 301 (D.C. Cir. 2006). Where plaintiffs have demonstrated that First Amendment rights are “either threatened or in fact being impaired at the time relief is sought,” irreparable harm will be demonstrated. *National Treasury Employees Union v. U.S.*, 927 F.2d 1253, 1254-55 (D.C.Cir. 1991) (quoting *Wagner v. Taylor*, 836 F.2d 566, 577 n.76 (D.C.Cir. 1987)). More recently, while the *Speechnow* district court denied preliminary injunctive relief based on a similar argument, the D.C. Circuit Court of Appeals reversed that ruling. 599 F.3d 686.

The D.C. Circuit has likewise recognized the inherent difficulty in alleging irreparable harm in the context of the First Amendment, leading it to note what the Third Circuit has stated, that the “assertion of First Amendment rights does not automatically require a finding of irreparable injury . . . rather the plaintiffs must show ‘a chilling effect on free expression.’” *Chaplaincy of Full Gospel Churches*, 454 F.3d at 301 (internal citations omitted). Thus, where this chilling effect appears true, such allegations “clearly

³ The FEC bends over backwards to rely on non-speech oriented cases to substantiate its claim that no irreparable injury exists here. *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232 (1980), cited in the Opposition Memo on page 37, is a case that has nothing to do with constitutionally protected liberties. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290 (D.C. Cir. 2006), involved the Establishment Clause of the First Amendment, and did not concern itself with the special speech-protective rules applicable to political speech.

show irreparable injury.” *Dombrowski v. Pfister*, 380 U.S. 479, 486 (1965). It is fair to state in the context of political speech being threatened by unconstitutional regulation and enforcement that a finding of irreparable injury is more easily met. *See, e.g., Connection Distributing Co. v. Holder*, 557 F.3d 321 (6th Cir. 2009); *New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495 (10th Cir. 1995) (First Amendment pre-enforcement challenges employ relaxed standards due to the “fear of irretrievable loss”); *American-Arab Anti-Discrimination Committee v. Reno*, 70 F.3d 1045 (9th Cir. 1995) (explaining that joining “organizations that participate in public debate, making contributions to them, and attending their meetings are activities that enjoy substantial First Amendment protection” so that “the duration of a trial is an ‘intolerably long’ period during which to permit the continuing impairment of First Amendment rights”). In sum, courts are more apt to grant this form of extraordinary relief due to the high value of political speech under the Constitution.

In *Citizens United*, even the Supreme Court explained that “When the FEC issues advisory opinions that prohibit speech, ‘[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech—harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas.’” 130 S. Ct. at 896. In this challenge, the FEC could not muster four votes to issue an advisory opinion indicating that Plaintiffs would be safe associating and speaking in the manner contemplated, even though the holding of *EMILY’s List* demands so. Fearful of being investigated, fined, or imprisoned, Plaintiffs had no other remedy than to seek injunctive relief before this court.

Oddly enough, the FEC submits that Plaintiffs have nothing to complain about – speakers can take their odds with a not-so-friendly-sounding “investigative proceeding” or enjoy the “institution of an enforcement suit” where they would have a “full opportunity to present their constitutional arguments.” Opp’n Memo. at 36. Under this unconstitutional game of First Amendment Russian Roulette, Plaintiffs could face criminal or civil penalties just for following this very advice. Chilling. Of course, the Commission’s position runs headlong into the Supreme Court’s instruction in *Citizens United*, where it explained that a “speaker’s ability to engage in political speech that could have a chance of persuading voters is stifled if the speaker must first commence a protracted lawsuit. By the time the lawsuit concludes, the election will be over and the litigants in most cases will have neither the incentive nor, perhaps, the resources to carry on.” *Citizens United*, 130 S. Ct. at 895. Déjà vu *Citizens United*.

Without reference to the aforementioned principles, the FEC argues that if Plaintiffs are not willing to dance with the Enforcement Division, they “could fully accomplish their plans while this case proceeds” in at least four ways. Opp’n Memo. at 32. First, the FEC contends that Plaintiff Eustis could donate *less* money to fund National Defense PAC’s independent expenditures because his funds could be comingled with those of NDPAC. *Id.* Second, NDPAC could accept the lower-amount contribution from Eustis and spend time fundraising to find additional money to perhaps, one day, enable it to produce its independent expenditures. *Id.* Third, NDPAC could “set up a separate entity that accepts contributions of unlimited amounts” – alleging that NDPAC’s First Amendment rights might be fungible and otherwise transferred to a separate organization. *Id.* Fourth, the FEC submits that NDPAC need not speak at all and that

Eustis should be forced to pay for the advertisement himself. *Id.* Each of these arguments suffers from one fundamental flaw – they ignore the recognition of Plaintiffs’ full First Amendment rights.

To argue, as the FEC does, that forcing individuals to speak less, spend less, or associate less adequately protects First Amendment interests puts an entirely new spin on “less is more.” It remains a basic principle that speakers are free to “select what they believe to be the most effective means for [communicating].” *Meyer*, 486 U.S. at 424. To demand that speakers do less, or that government possesses the authority to instruct free people how to communicate otherwise turns this principle on its head. In this matter, Plaintiffs have done exactly this – forming together as NDPAC and wishing to exercise their rights to speak out about Anthony Weiner and other candidates for federal office. The Supreme Court has affirmed just this right in *Citizens United*, itself explaining that the government “may not render a ban on political speech constitutional by carving out a limited exemption through an amorphous regulatory interpretation.” 130 S.Ct. at 889. In attempting to fashion four regulatory exemptions to explain how some members of NDPAC might speak runs against the Supreme Court’s holding in *Citizens United*. Plaintiffs’ full First Amendment rights must be recognized, not through an FEC regulatory exemption, but in realization that acts of speech and association are not inherently corrupt, but are, instead, inherently protected under the First Amendment.⁴ *See WRTL*, 551 U.S. at 457 (the “First Amendment requires us to err on the side of protecting political speech rather than suppressing it”).

⁴ Indeed, the Supreme Court noted that because the FEC’s “business is to censor, there inheres the danger that [it] may well be less responsive than a court – part of an independent branch of government – to the constitutionally protected interests in free expression.” *Citizens United*, 130 S. Ct. at 896.

In this instance, it is members of National Defense PAC who would like to engage in independent expenditure campaigns while also making contributions from a separate account. To argue that one contributor to NDPAC may speak instead of the organization fully misses the constitutional argument at hand. To suggest that members might donate *less* money or that NDPAC should be forced to fundraise more in hopes of bringing in enough funding for its speech is likewise unavailing. National Defense PAC wishes to speak, unabridged in the manner it has selected, and cannot due to the challenged laws and the FEC's interpretation of them.

The FEC next focuses on an especially narrow construction of *Elrod v. Burns*, 427 U.S. 347 (1976), in discussing the injuries at hand. The Commission seems to allege that because there are no specific threats of enforcement here and no “governmental action,” that no irreparable injury could be had. Opp’n Memo. at 33. But a narrow focus on the factual holding of *Elrod* is misplaced. The D.C. Circuit has held that when plaintiffs have demonstrated their First Amendment rights are “either threatened or in fact being impaired” irreparable harm will be demonstrated. *National Treasury Employees Union*, 927 F.2d at 1254-55. When a chilling effect has been demonstrated, these allegations “clearly show irreparable injury.” *Dombrowski*, 380 U.S. at 486.

The Commission submits that its inability to issue an advisory opinion clearing Plaintiffs for the independent expenditure campaign they hoped to run does not work a cognizable injury in this case. Opp’n Memo at 33. Plaintiffs are not required to illustrate that they have been specifically threatened or are currently facing government investigation or enforcement to obtain injunctive relief. As *Dombrowski* holds, when “statutes also have an overbroad sweep . . . the hazard of loss or substantial impairment

of those precious rights may be critical.” 380 U.S. at 486. To force Plaintiffs to step out on their own and risk enforcement actions by the FEC is not tolerated under controlling First Amendment case law. *Citizens United*, 130 S. Ct. at 896.

In this challenge, Plaintiffs have established concrete, well-articulated plans to engage in a focused independent expenditure campaign as soon as they are legally permitted to do so. In fact, ¶ 24 of the Verified Complaint indicates that “*as soon as possible*” NDPAC would like to engage in an independent expenditure campaign directed against Anthony Weiner in New York’s Ninth Congressional District. VC at ¶ 24 (emphasis added). Plaintiffs specifically included EXHIBIT F, which includes the proposed advertisement to be run on Newsmax. *Id.* Going further, National Defense PAC articulated its plans for additional independent expenditure campaigns in the near future, having contacted donors willing to give more than \$5,000.00 per calendar year to finance such campaigns. *Id.* at ¶ 25. Plaintiffs NDPAC and Eustis articulated clear and concrete plans to engage in speech protected at the very core of the First Amendment, as well as association with other likeminded individuals, both now and in the near future. *Id.* at ¶¶ 26-29.

Plaintiffs have satisfied well-established rules to demonstrate the need for injunctive relief in the context of the First Amendment. National Defense PAC, its members, and Plaintiff Eustis need not test the FEC’s enforcement division by engaging in its independent expenditure campaign risking fines or criminal penalties. Just the same, Plaintiffs need not exhaust burdensome FEC alternatives to its own plans to reach the public with its political message. In this challenge, that means allowing Plaintiff Eustis to donate beyond the \$5,000.00 annual federal limit to be able to permit NDPAC

to run advertisements about its views on Anthony Weiner. It also means that NDPAC should be permitted to keep two separate bank accounts for its independent expenditures and contributions, as detailed earlier.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' motion for preliminary injunction and enjoin the contribution limits contained in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) and applicable regulatory requirements as they apply to Plaintiffs.

Dated: March 28, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2011, I caused to be served this Reply Memorandum by electronic mail, pursuant to the agreement of counsel, upon the following counsel:

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Dated: March 28, 2011

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JAMES J. CAREY, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 11- 259-RMC

ANSWER

DEFENDANT FEDERAL ELECTION COMMISSION'S ANSWER

Defendant Federal Election Commission (“FEC” or “Commission”) submits this answer to the Verified Complaint for Declaratory and Injunctive Relief, filed January 31, 2011. Any allegation not specifically responded to below is DENIED.

1. DENY that the plaintiffs’ rights or donors’ rights are infringed or abridged.

Neither this paragraph’s description of certain statutes nor its legal conclusions require a response.

2. The first sentence is a legal conclusion for which no response is required.

ADMIT that National Defense PAC (“NDPAC”) is a nonconnected political committee. The Commission is without knowledge or information sufficient to admit or deny the other assertions in the second and third sentences of this paragraph.

3. This paragraph contains plaintiffs’ characterization of judicial decisions, to which no response is required.

4. Plaintiffs' characterization of judicial decisions requires no response. DENY that the Commission "has failed to implement the ruling[s] of the D.C. Circuit Court of Appeals and United States Supreme Court." ADMIT that during the advisory opinion process in AO Request 2010-20 that two commissioners supported issuance of Draft A, three supported issuance of Draft B, and one did not vote. (Ver. Compl. Exh. D.) Because the affirmative vote of four members of the Commission is required for the Commission to render an advisory opinion, 2 U.S.C. §§ 437c(c), 437d(a)(7); 11 C.F.R. § 112.4(a), the Commission was unable to render an opinion in this matter. DENY sentences three and four.

5. This paragraph contains plaintiffs' legal conclusions and characterization of a judicial decision which require no response. DENY that the Commission failed to comply with the *EMILY's List* opinion or infringed constitutionally protected rights.

6. ADMIT that the cited statutes provide statutory jurisdiction.

7. ADMIT that venue is proper in this Court.

8. ADMIT that James J. Carey is the founder and treasurer of NDPAC, and has served as treasurer since 2000. The Commission is without knowledge or information sufficient to admit or deny the remainder of the paragraph.

9. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

10. ADMIT that NDPAC is a "nonconnected political action committee registered with the Commission." The Commission is without knowledge or information sufficient to admit or deny the remainder of the factual allegations in this paragraph.

11. ADMIT that the FEC is the federal agency charged with civil enforcement of the Federal Election Campaign Act and is located in Washington, D.C.

12. ADMIT that NDPAC raises and expends fund in support of candidates for federal office using funds raised subject to the federal amount and source limits. ADMIT that NDPAC makes contributions to federal candidates within the applicable limits. DENY that it makes independent expenditures. The Commission is without knowledge or information sufficient to admit or deny the other factual allegations in this paragraph.

13. Plaintiffs' characterization of judicial decisions and other legal conclusions require no response. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

14. In this single-sentence paragraph, the first clause contains plaintiffs' characterization of a judicial decision, which requires no response. DENY the second clause.

15-19. ADMIT.

20. ADMIT the first two sentences. DENY the third sentence.

21. DENY that the Commission "refus[ed] to issue an advisory option," but ADMIT that during the advisory opinion process in AO Request 2010-20 two commissioners supported issuance of Draft A, three supported issuance of Draft B, and one did not vote. (Ver. Compl. Exh. D.) Because the affirmative vote of four members of the Commission is required for the Commission to render an advisory opinion, 2 U.S.C. §§ 437c(c), 437d(a)(7); 11 C.F.R. § 112.4(a), the Commission was unable to render an opinion in this matter and plaintiffs have no advisory opinion upon which they can rely under 2 U.S.C. § 437f(c). ADMIT that the advisory opinion process in AOR 2010-20 is complete. DENY that plaintiffs were "deprived of a legal right – to engage freely in constitutionally protected speech and association." This paragraph also contains plaintiffs' characterizations of judicial decisions, which require no response.

22. ADMIT the first sentence. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the second sentence. ADMIT that NDPAC sought an expedited advisory opinion request and that the Commission issued its response 43 days later. ADMIT that on September 28, 2010, the Commission issued a certification of its vote, but lacked the four votes necessary to be able to issue an advisory opinion. DENY that plaintiff was “required to mute itself and curtail activities during the 2010 cycle.”

23. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. ADMIT that NDPAC is subject to the contribution limits in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3). DENY the last sentence of this paragraph.

24. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. ADMIT that plaintiffs attached Exhibit F to their complaint, which purports to be a proposed advertisement advocating for the defeat of Anthony Weiner.

25. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first sentence. DENY the factual allegations in the second and third sentence.

26. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph. ADMIT that plaintiffs submitted with their complaint Exhibit G, which purports to be a letter from Kelly S. Eustis stating his wishes to donate “\$6,300.00 to help fund independent expenditure communications against Anthony Weiner” The final clause of this paragraph contains a legal conclusion for which no response is required.

27. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

28. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first sentence of this paragraph. Regarding the second sentence, ADMIT that there were not four affirmative votes on the Commission approving NDPAC's separate bank account request.

29. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in the first and third sentence of this paragraph. Regarding the second sentence, ADMIT that there were not four affirmative votes on the Commission approving NDPAC's separate bank account request.

30. DENY that NDPAC is an unincorporated association; it is incorporated in Virginia. (Ver. Compl. Exh. A, at ECF p. 7 (email from Dan Backer, NDPAC, to William Powers, FEC, Aug. 16, 2010) (confirming NDPAC is incorporated in Virginia). ADMIT that NDPAC is now registered as "a nonconnected political action committee with the FEC." ADMIT that plaintiffs have attached Exhibit H to their complaint which purports to be bylaws of NDPAC and purports to require that any independent expenditures not be coordinated as defined by the Commission. The Commission is without knowledge or information sufficient to admit or deny the other factual allegations in the paragraph.

31. The paragraph contains plaintiffs' conclusions of law to which no response is required. ADMIT that plaintiffs attached Exhibit F to their complaint, which purports to be a proposed advertisement advocating for the defeat of Anthony Weiner. The Commission is without knowledge or information sufficient to admit or deny the remaining factual allegations in this paragraph.

32. The Commission is without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

33. This paragraph contains conclusions of law to which no response is required. ADMIT that contributions from Kelly Eustis to NDPAC are subject to the contribution limits in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3).

34. This paragraph contains conclusions of law to which no response is required. ADMIT that NDPAC is subject to the contribution limits in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3).

35. DENY that the contribution limits in 2 U.S.C. §§ 441a(a)(1)(C) and 441a(a)(3) “limit the type and number of times [NDPAC] could run advertisements.” The Commission is without knowledge or information sufficient to admit or deny the factual allegations in sentences two and three. DENY the fourth sentence.

36. This paragraph contains conclusions of law to which no response is required. ADMIT that the Federal Election Campaign Act (“Act”), 2 U.S.C. §§ 431-57, prohibits any individual from making contributions that exceed \$5,000 per year to a political committee (that is not a national party committee). 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any individual from making contributions to political committees (that are not national party committees) that in the aggregate exceed \$46,200 for the 2011-2012 biennial period. 2 U.S.C. § 441a(a)(3)(B). The Act prohibits political committees from knowingly accepting contributions in excess of these limitations. 2 U.S.C. § 441a(f). ADMIT that there are civil and criminal penalties for violating the Act. 2 U.S.C. §§ 431-57.

37. This paragraph contains conclusions of law to which no response is required. ADMIT that the Act prohibits any individual from making contributions that exceed \$5,000 per year to a political committee (that is not a national party committee). 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any individual from making contributions to political committees (that are

not national party committees) that in the aggregate exceed \$46,200 for the 2011-2012 biennial period. 2 U.S.C. § 441a(a)(3)(B). DENY that these limits prevent Eustis “from associating with NDPAC and with other like minded individuals, as well as speaking, for the purpose of producing and distributing the advertisements described [in the complaint].”

38. This paragraph contains conclusions of law to which no response is required. ADMIT that the Act prohibits any individual from making contributions that exceed \$5,000 per year to a nonconnected political committee. 2 U.S.C. § 441a(a)(1)(C). The Act also prohibits any individual from making contributions to a nonconnected committee that in the aggregate exceed \$46,200 for the 2011-2012 biennial period. 2 U.S.C. § 441a(a)(3)(B). ADMIT that the Act prohibits political committees from knowingly accepting contributions in excess of these limitations. 2 U.S.C. § 441a(f).

39. This paragraph contains conclusions of law to which no response is required.

40. This paragraph contains conclusions of law to which no response is required.

41. This paragraph incorporates all previous paragraphs. The Commission likewise incorporates its previous responses.

42. DENY.

43. DENY the first sentence. The second sentence contains plaintiffs’ description of a judicial decision, to which no response is required. The third sentence contains legal conclusions and argument for which no response is required.

44-46. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

47. This paragraph contains plaintiffs’ characterizations of judicial decisions and statutory provisions to which no response is necessary.

48. DENY.

49. DENY the first sentence. The Commission is without knowledge or information sufficient to admit or deny the second and third sentences.

50. DENY.

51. This paragraph contains plaintiffs' description of a judicial decision, to which no response is required.

52. This paragraph contains plaintiffs' description of a judicial decision, to which no response is required. DENY any factual allegations.

53. This paragraph incorporates all previous paragraphs. The Commission likewise incorporates its previous responses.

54. ADMIT that plaintiffs submitted, with their complaint, Exhibit G, which purports to be a letter from Kelly S. Eustis stating that he wishes to donate \$6,300 to ND PAC. The Commission is otherwise without knowledge or information sufficient to admit or deny the factual allegations in this paragraph.

55. The Commission is without knowledge or information sufficient to admit or deny the allegations in this paragraph.

56. This paragraph contains plaintiffs' characterizations of judicial decisions and statutory provisions to which no response is necessary. ADMIT that Kelly S. Eustis is prohibited from making contributions in excess of the statutory limit to NDPAC.

57. DENY the first sentence. The second sentence contains plaintiffs' description of a judicial decision to which no response is necessary.

58. DENY the first sentence. The second sentence contains plaintiffs' description of a judicial decision to which no response is necessary.

59. DENY the first sentence. The Commission is without knowledge or information sufficient to admit or deny the second and third sentences.

60. DENY.

PRAYER FOR RELIEF

No response is required, but the relief requested by plaintiff should be denied.

AFFIRMATIVE DEFENSES

The Complaint fails to state a claim upon which relief may be granted.

Respectfully submitted,

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April 1, 2011

Certificate of Service

I hereby certify that on this 1st day April, 2011, I caused to be served by e-mail pursuant to Fed. R. Civ. P. 5(b)(2)(E) and Local Rule 5.4(d), with written consent, copies of the Federal Election Commission's Answer on the counsel listed below:

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