

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)
)
 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.)
)
 FEDERAL ELECTION COMMISSION)
 999 E Street, NW)
 Washington, DC 20463,)
)
 Defendant.)
 _____)

Civil Case No. _____

 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;

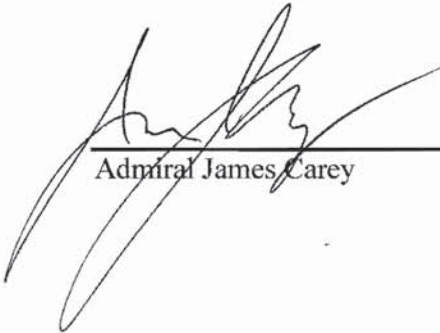
7. Any other relief that the Court deems just and appropriate.

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,

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

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

RECEIVED
FEDERAL ELECTION
COMMISSION

2010 AUG 17 PM 3: 21

OFFICE OF GENERAL
COUNSEL



"Dan Backer"
<DBacker@DBCapitolStrategies.com>

08/16/2010 10:03 PM

To <WPowers@fec.gov>

cc

bcc

Subject RE: National Defense PAC

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”

AGENDA DOCUMENT NO. 10-60-B

RECEIVED
FEDERAL ELECTION
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

AO 2010-20
Revised Draft A
Page 8

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.”

453 U.S. at 199 n.19.

1 ADVISORY OPINION 2010-20

2
3 Dan Backer, Esq.
4 DB Capitol Strategies
5 P.O. Box 75821
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

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Revised Draft A
Page 2

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).

AO 2010-20
Revised Draft A
Page 3

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

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Revised Draft A
Page 4

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”).

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Revised Draft A
Page 5

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.

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Revised Draft A
Page 6

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.

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Page 7

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:

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Revised Draft A
Page 9

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

On behalf of the Commission,

7

8

9

10

Matthew S. Petersen

11

Chairman

EXHIBIT C

FEC Advisory Opinion 2010-20, Draft “B”

AGENDA DOCUMENT NO. 10-60-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

FEDERAL ELECTION
COMMISSION
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

AO 2010-20
Draft B
Page 2

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

AO 2010-20
Draft B
Page 3

- 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).

AO 2010-20
Draft B
Page 4

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.*

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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.

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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 unions 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

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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*.

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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

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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.

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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 On behalf of the Commission,

10
11
12
13
14

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





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)

911-259
Rmc

JS-44
(Rev. 1/05 DC)

I (a) PLAINTIFFS Rear Admiral James J Carey [Ret], Kelly S Eustis, and National Defense Political Action Committee	DEFENDANTS Federal Election Commission
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES) <u>Alexandria, VA</u> 88886	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) Dan Backer, Esq. DB Capitol Strategies, PLLC PO BOX 75021 Washington, DC 20013 202.210.5431	ATTORNEYS (IF KNOWN) Case: 1:11-cv-00259 Assigned To : Collyer, Rosemary M. Assign. Date : 1/31/2011 Description: TRO/PI

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!																								
<input type="radio"/> 1 U.S. Government Plaintiff <input checked="" type="radio"/> 2 U.S. Government Defendant <input type="radio"/> 3 Federal Question (U.S. Government Not a Party) <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	<table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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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)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act Social Security: <input type="checkbox"/> 861 HIA ((1395ff)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) Other Statutes <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input checked="" type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input checked="" type="radio"/> 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)*
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E. General Civil (Other) OR **F. Pro Se General Civil**

Real Property <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property Personal Property <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	Bankruptcy <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 Prisoner Petitions <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition Property Rights <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark Federal Tax Suits <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	Forfeiture/Penalty <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other Other Statutes <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)
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<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/PRIVACY ACT <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 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.)
 ;28 USC section 1331, unconstitutional enforcement of campaign finance laws, namely 2 USC 441a(a)(1)(C) and (3) as applied to Plaintiffs.

VII. REQUESTED IN COMPLAINT CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ 1.00 Check YES only if demanded in compl. JURY DEMAND: YES NO

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

DATE 01/31/2011 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.

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