UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 14-1243 (RMC) BRIEF

FEDERAL ELECTION COMMISSION'S BRIEF OPPOSING CERTIFICATION AND IN SUPPORT OF SUMMARY JUDGMENT IN FAVOR OF THE COMMISSION

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This case has become moot and, in any event, does not present a substantial constitutional question warranting en banc consideration by every active member of the United States Court of Appeals for the D.C. Circuit. For decades, the Federal Election Campaign Act ("FECA" or "the Act") has imposed limits on the amount of money an individual may contribute to a federal candidate in connection with each election in which that candidate participates. During the most recent election cycle, the Act permitted individuals to contribute up to $2,600 per candidate, per election. Thus, an individual who sought to contribute to a candidate who ran in one primary and one general election during the 2013-2014 election cycle could legally contribute $2,600 to that candidate for each of those elections, for a combined total of $5,200. For a candidate who also competed in one or more special elections or runoff contests, in addition to a primary and general election, the combined total amount that an individual could contribute to that candidate was higher.

As this Court previously recognized, "the Supreme Court . . . long ago concluded that [these] restrictions on the amount of money one can contribute per election prevent corruption and the appearance of corruption by allowing candidates to compete fairly in each stage of the political process." *Holmes v. FEC*, No. 14-1243, __ F. Supp. 3d __, 2014 WL 5316216, at *4 (D.D.C. Oct. 20, 2014). In this case, plaintiffs seek to relitigate the constitutionality of that per-election limit based on certain double-the-limit contributions plaintiffs wished to make to individuals who were candidates in the November 2014 general elections. That election has now passed and plaintiffs' claims are thus moot. But even if they were not, plaintiffs' claims are plainly foreclosed by the "analysis and conclusion of the Supreme Court in *Buckley v. Valeo* and its progeny," *id.* at *1, and they therefore raise settled legal questions that do not merit

certification to the en banc Court of appeals under the extraordinary judicial review procedure in 52 U.S.C. § 30110 (formerly 2 U.S.C. § 437h).

Neither of plaintiffs' constitutional claims is substantial. The per-election contribution limit, already upheld by the Supreme Court, easily passes muster under the First and Fifth Amendments, as this Court held in its denial of plaintiffs' request for a preliminary injunction. The limit is closely drawn to prevent actual and apparent corruption. By applying separately to each election within a particular election cycle, the contribution limit sensibly accounts for variations in election procedures among the states and does not impose a free speech burden substantially mismatched to the Congressional anticorruption purpose. And because the limit applies equally to every contributor and candidate, it creates no classification that implicates the Fifth Amendment's guarantee of equal protection. Even if it could be deemed to create some sorts of distinct "classes" of contributors, the limit operates well within constitutional parameters. Indeed, for the same reasons the limit does not violate the First Amendment, it is entirely satisfactory under the Fifth.

In denying plaintiffs' request for preliminary relief, this Court held that plaintiffs were unlikely to succeed on the merits of their claims. Even if plaintiffs' claims were not moot, those claims directly challenge the holdings of the Supreme Court on the very constitutional questions plaintiffs present for certification, are insubstantial, and should not be certified. Instead, this case should be dismissed as moot or summary judgment should be awarded to the Commission.

BACKGROUND

I. THE PARTIES

Defendant Federal Election Commission ("Commission" or "FEC") is the independent agency of the United States government with exclusive jurisdiction to administer, interpret, and

civilly enforce FECA. *See* 52 U.S.C. §§ 30101-30146 (formerly 2 U.S.C. §§ 431-57).[1]

The plaintiffs are Laura Holmes and Paul Jost, a married couple residing in Miami, Florida. (Compl. ¶ 8; FEC's Proposed Findings of Fact / Statement of Material Facts and Constitutional Questions ¶ 1 ("FEC Facts").) Plaintiffs' claims are based on campaign contributions they wanted to make to two individuals who were seeking election to Congress in 2014. (Compl. ¶¶ 18-26; FEC Facts ¶¶ 64-76.) Both plaintiffs admit that they chose not to make any contributions to the primary-election campaigns of those preferred candidates. (Compl. ¶¶ 21, 24, 57, 61; FEC Facts ¶¶ 65, 71.) Instead, plaintiffs sought to contribute the combined maximum amounts permitted for primary and general-election campaigns during the 2013-2014 election cycle — $5,200 — "solely for use in the [November 2014] general election." *Holmes*, 2014 WL 5316216, at *6; Compl. ¶ 26. Plaintiffs thus sought to make general-election contributions in amounts that were double FECA's per-election limit for contributions made during the 2013-2014 election cycle. Compl. ¶¶ 18, 59; FEC Facts ¶¶ 68-69, 74-76; *Holmes*, 2014 WL 5316216, at *4 n.5.

Plaintiff Holmes supported Carl DeMaio, a candidate who sought to represent California's Congressional District 52. (Compl. ¶ 21; FEC Facts ¶ 64.) Under California's "top two" primary system, all candidates for United States congressional offices are listed on the same primary ballot and the two candidates who receive the most votes, regardless of party preference, proceed to compete in the general election. *Holmes*, 2014 WL 6190937, at *2; *see*

[1] Effective September 1, 2014, the provisions of FECA that were codified in Title 2 of the United States Code were recodified in a new title, Title 52. No text of any provision has been changed. The Office of the Law Revision Counsel has prepared a table summarizing the changes made in the course of creating Title 52. Editorial Reclassification Table, http://uscode.house.gov/editorialreclassification/t52/Reclassifications_Title_52.html. To avoid confusion about the recodification, this submission will use citations to the new provisions of Title 52 with parentheses indicating the former Title 2 citations.

Declaration of Jayci A. Sadio, Mar. 12, 2015 ("Sadio Decl.") Exh. 9. Four candidates were listed on the primary ballot for California's June 3, 2014 congressional primary election: Carl DeMaio, incumbent Representative Scott Peters, and two other candidates. (Sadio Decl. Exh. 10.) Both DeMaio and Peters thus competed directly against three candidates in the primary, including each other. (*Id.*; *contra* Pls.' Mem. of Law in Supp. of Mot. for Prelim. Inj. (Pls.' Prelim. Inj. Mem.) (Docket No. 6-1) at 16 (stating that Peters was "essentially unopposed" in the California primary); Sadio Decl. Exh. 1 (Holmes Interrog. Resp. ¶ 2 (suggesting Peters lacked a "substantial primary opponent" because he lacked an *intraparty* challenger)).) Ultimately, Peters and DeMaio received the largest numbers of votes and were the "top two" finishers in the primary, so they moved on to face each other again in the general election. (Sadio Decl. Exh. 10.) DeMaio later lost the general election to Peters. (Sadio Decl. Exh. 11.).

Plaintiff Holmes chose not to make a primary-election contribution to DeMaio but contributed $2,600 to DeMaio's general-election campaign. (Compl. ¶ 21; Sadio Decl. Exh. 1 (Holmes RFA Resp. ¶ 2); FEC Facts ¶ 65, 68.) Holmes sought to contribute an additional $2,600 to DeMaio's general-election campaign, so that her total contributions in support of DeMaio's general-election campaign would have amounted to $5,200, twice the statutory limit. Compl. ¶ 21; FEC Facts ¶ 69; *Holmes*, 2014 WL 5316216, at *4 n.5.

Plaintiff Jost supported Mariannette Miller-Meeks, a candidate who sought to represent Iowa's Second Congressional District. (Compl. ¶ 22; FEC Facts ¶ 70.) Miller-Meeks won her 2014 primary election but lost in the general election to incumbent Representative David Loebsack. (Sadio Decl. Exhs. 20-21.) Like Holmes, Jost chose not to make a primary-election contribution to Miller-Meeks, but contributed $2,600 to the candidate's general-election campaign. (Compl. ¶ 24; Sadio Decl. Exh. 2 (Jost RFA Resp. ¶ 1); FEC Facts ¶ 71.) Jost sought

to contribute an additional $2,600 to Miller-Meeks's general-election campaign, so that his total contributions in support of Miller-Meeks's general-election campaign would have amounted to $5,200, twice the statutory limit for individual campaign contributions made during the 2013-2014 election cycle . (Compl. ¶ 24; FEC Facts ¶ 74-75.)

As indicated above, the candidates to whom plaintiffs sought to make above-the-limit contributions in connection with those candidates' respective 2014 general-election campaigns each lost their general elections. Plaintiffs have alleged no plans to contribute to any particular candidate in future federal elections.

II. RELEVANT STATUTORY AND REGULATORY PROVISIONS

A. Congress's Original Enactment of Per-Year Limits on Contributions to Candidates

Contribution limits have been one of the principal tools for preventing political corruption in this country for nearly seventy-five years. In the first half of the twentieth century, Congress grew particularly concerned about corruption arising from contributions to candidate campaigns and political parties. In 1939, Senator Carl Hatch introduced, and Congress passed, S. 1871, officially titled "An Act to Prevent Pernicious Political Activities" and commonly referred to as the Hatch Act. S. Rep. No. 101-165, at *18 (1939); *U.S. Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 560 (1973) ("*Letter Carriers*"); 84 Cong. Rec. 9597-9600 (1939). Congress established individual contribution limits in the 1940 amendments to the Hatch Act, Pub. L. No. 76-753, 54 Stat. 767 (1940). That legislation prohibited "any person, directly or indirectly" from making "contributions in an aggregate amount in excess of $5,000, during any calendar year" to any candidate for federal office. *Id.* § 13(a), 54 Stat. 770. The limit was sponsored by Senator John H. Bankhead, who expressed his hope that it would help "bring about clean politics and clean elections": "We all know that large contributions to

political campaigns . . . put the political party under obligation to the large contributors, who demand pay in the way of legislation . . . ." 86 Cong. Rec. 2720 (1940) (statement of Sen. Bankhead).

B. FECA's Per-Election Limits on Contributions to Candidates

By 1971, when Congress began debating the initial enactment of FECA, the Hatch Act's $5,000 individual contribution limit was being "routinely circumvented." 117 Cong. Rec. 43,410 (1971) (statement of Rep. Abzug). In 1974, shortly after the Watergate-era scandals, Congress substantially revised FECA. These amendments established new contribution limits on the amounts that individuals, political parties, and political committees can contribute to candidates, including a $1,000 per-candidate, per-election limit on individual contributions to candidates and their authorized political committees. Fed. Election Campaign Act Amendments of 1974, Pub. L. No. 93-443 § 101(b)(3), 88 Stat. 1263 (first codified at 18 U.S.C. § 608(b)(3)).

The statutory contribution limits challenged here apply on a per-candidate, per-election basis, with "election" defined to include each of the following:

> (A) a general, special, primary, or runoff election; (B) a convention or caucus of a political party which has authority to nominate a candidate; (C) a primary election held for the selection of delegates to a national nominating convention of a political party; and (D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

52 U.S.C. § 30101(1) (2 U.S.C. § 431(1)). FECA's contribution limits apply both to direct contributions of money and to in-kind contributions of goods or services. *Id.* § 30101(8)(A) (§ 431(8)(A)).

C. The Supreme Court's Affirmance of FECA's Contribution Limits

Shortly after the 1974 amendments to FECA were enacted, the statute was the subject of a broad constitutional challenge in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). The

Supreme Court affirmed the constitutionality of FECA's individual contribution limits and held that the limits were consistent with both the First and Fifth Amendments. 424 U.S. at 29, 35.

Specifically, the Court found that the limits served the government's important anti-corruption interests. It explained that in the United States, candidates "lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful [electoral] campaign" and that the great "importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy." *Id.* at 26-27. At the same time, the Court recognized that "[t]o the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined." *Id.*; *see also id.* at 27 ("Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.")

The individual contribution limits were further justified, the *Buckley* Court held, by the "almost equal[ly] concern[ing] . . . impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Id.* at 27. The Court concluded that "Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.'" *Id.* at 27 (quoting *Letter Carriers*, 413 U.S. at 565).

The *Buckley* Court also rejected an equal protection challenge to FECA's individual contribution limits. The Court observed that FECA "applies the same limitations on

contributions to all candidates" and rejected arguments that the limits discriminate against major-party challengers to incumbents, explaining that "[c]hallengers can and often do defeat incumbents in federal elections." *Id.* at 31, 32. The Court explained that "the danger of corruption and the appearance of corruption apply with equal force to challengers and to incumbents" and thus found that "Congress had ample justification for imposing the same fundraising constraints upon both." *Id.* at 33.

In addition to its First and Fifth Amendment holdings, the *Buckley* Court found that FECA's then-$1,000 contribution was not unconstitutionally overbroad. *Id.* at 30. The Court rejected the argument that the limit was "unrealistically low" and held that courts should not second-guess Congress's decision regarding the exact dollar figure at which to set a contribution limit. *Buckley*, 424 U.S. at 30.

D. FECA's Current Per-Election Contribution Limit and the Commission's Implementing Regulations

The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 ("BCRA"), subsequently amended FECA to raise the individual contribution limit and index it for inflation. *See* BCRA § 307(b), 116 Stat. 102-103 (codified at 52 U.S.C. § 30116(a)(3) (2 U.S.C. § 441a(a)(3)); BCRA § 307(d), 116 Stat. 103 (codified at 52 U.S.C. § 30116(c) (2 U.S.C. § 441a(c)(1)). The limit that applied to contributions made to federal candidates during the 2013-2014 election cycle, including the contributions at issue in this case, was $2,600 per candidate, per election. FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013).[2]

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[2] The FEC recently raised the individual contribution limit for the 2015-2016 election cycle to $2,700 per candidate, per election. FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 80 Fed. Reg. 5750, 5751

Because FECA defines "election" to include various types of electoral contests, the total amount that one may contribute to a particular candidate during a particular election cycle depends on how many elections that candidate must participate in to successfully pursue the federal office being sought. *Holmes*, 2014 WL 5316216, at *1. This means that an individual who supported a candidate that participated in one primary election and one general election during the 2013-2014 election cycle was permitted to contribute a total of $5,200 over the course of that election cycle — $2,600 for the candidate's primary-election campaign and $2,600 for the candidate's general-election campaign. *Id.* In an election cycle in which a candidate competes in one or more special elections, runoff elections, or a political party caucus or convention, in addition to a primary and general election, the total amount that an individual may contribute to that candidate over the course of that election cycle is higher. *See infra* pp. 21-24.

Commission regulations "encourage[]" contributors to designate in writing the particular election for which an individual contribution is intended. 11 C.F.R. § 110.1(b)(2)(i). Undesignated contributions count against the donor's contribution limits for the candidate's next election; designated contributions count against the donor's contribution limits for the named election. *Id.* § 110.1(b)(2)(ii).

When a candidate has net debts outstanding from a past election — including a primary election — a contributor may designate a contribution in writing for that past election. Such contributions may only be accepted for the purpose of retiring debt and only up to the extent of the debt. *Id.* §§ 110.1(b)(3)(i), (b)(5)(i)(B). If that candidate's net outstanding debts amount to less than the amount of a contribution designated for a previous election, Commission

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(Feb. 3, 2015). The claims at issue here, however, concern contributions plaintiffs sought to make during the 2013-2014 election cycle. The FEC's arguments in this brief thus refer to the $2,600 limit that applied to plaintiffs' proposed 2014 general election contributions, but would apply with equal force to the current, higher per-election limits.

regulations permit the candidate (or his committee) to refund the contribution, redesignate it (with the donor's written authorization) for a subsequent election, or reattribute the contribution as from a different person. 11 C.F.R. §§ 110.1(b)(3)(i)(A) & (C). A primary contribution that is redesignated for use in the candidate's general election counts against the contributor's general-election limit. 11 C.F.R. § 110.1(b)(5)(iii) ("A contribution redesignated for another election shall not exceed the limitations on contributions made with respect to that election."). If a candidate fails to qualify for the general election, then all general-election contributions received by that candidate must similarly be returned, redesignated, or reattributed. *Id.* § 110.1(b)(3)(i). Past Commission Advisory Opinions and administrative enforcement actions illustrate these constraints that are placed on committees. (*See* FEC Facts ¶¶ 23-30; Sadio Decl. Exhs. 5-8.)

Commission regulations permit general-election candidates with unused primary contributions to use such contributions to pay for general-election expenses. 11 C.F.R. § 110.3(c)(3). General-election candidates are similarly permitted to use general-election contributions to retire outstanding primary-election debts. *Id.* § 110.1(b)(3)(iv). Candidates need not obtain contributor authorization to make such transfers between their primary, general, and any other election accounts, and such transfers by candidates do not change the per-election contribution limits for individual contributors. *Id.* §§ 110.1(b)(3)(iv), 110.3(c)(3); *see generally* Sadio Decl. Exh. 3 at 21 (FEC Campaign Guide for Congressional Candidates and Committees).

E. Procedural History

Plaintiffs filed their complaint challenging FECA's per-election contribution limits on July 21, 2014, and moved for a preliminary injunction one month later. (Docket Nos. 1, 6.) This Court denied plaintiffs' motion, holding that plaintiffs' challenge is foreclosed by "the analysis and conclusion of the Supreme Court in *Buckley v. Valeo* and its progeny." *Holmes*, 2014 WL

5316216, at *1. The Court explained that it did not have the "luxury" of overruling such Supreme Court precedent, which upheld the same statutory per-election limit on individual contributions to candidates. *Id.* at *1.

After ordering plaintiffs to show cause why the Court should not convert the order denying their preliminary-injunction motion into a final appealable order that denied their request to certify constitutional issues to the en banc Court of Appeals, this Court issued an order making two dozen findings of fact and certifying two constitutional questions for consideration by the en banc Court of Appeals. *Holmes v. FEC*, No. 14-1243, __ F. Supp. 3d __, 2014 WL 6190937 (D.D.C. Nov. 17, 2014).

On January 30, 2015, the Court of Appeals remanded the case to this Court with instructions to "complete the functions mandated by § 30110 and described in *Wagner v. FEC*, 717 F.3d [1007, 1009 (D.C. Cir. 2013) (per curiam)]." Order, *Holmes v. FEC*, No. 14-5281 (D.C. Cir. Jan. 30, 2015). On remand, this Court established an expedited schedule for discovery, briefing, and proposed findings of facts, and set a hearing on the issues for March 31, 2015.

ARGUMENT

I. STANDARD OF REVIEW

A. Legal Questions That are Settled, Insubstantial, or Frivolous Must Not Be Certified to the En Banc Court of Appeals

Section 30110 provides a special procedure for certain plaintiffs to bring suits "to construe the constitutionality of any provision of [FECA]," and for the district court to certify questions of constitutionality of the Act to the appropriate court of appeals sitting en banc. This certification procedure was enacted in 1974 to provide expedited consideration of anticipated constitutional challenges to the extensive amendments made to FECA that year. *See* Fed.

Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 208(A), 88 Stat. at 1285-86 (1974).

Section 30110 claims are "circumscribed by the constitutional limitations on the jurisdiction of the federal courts." *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 192 n.14 (1981) ("*Cal. Med.*"). If a section 30110 claim passes that and other threshold inquiries, a district court "should perform three functions. First, it must develop a record for appellate review by making findings of fact. Second, [it] must determine whether the constitutional challenges are frivolous or involve settled legal questions," *Wagner*, 717 F.3d at 1009 (internal citations omitted), or as the Supreme Court phrased it, when the issues presented are "neither insubstantial nor settled," *Cal. Med.*, 453 U.S. at 192 n.14; *see also Mott v. FEC*, 494 F. Supp. 131, 134 (D.D.C. 1980) (section 30110 available "only where a 'serious' constitutional question was presented" (quoting Sen. James L. Buckley, the sponsor of the amendment that became section 30110, 120 Cong. Rec. 10562 (1974))); *Buckley v. Valeo*, 387 F. Supp. 135, 138 (D.D.C. 1975) (section 30110 certification appropriate where "a *substantial* constitutional question is raised by a complaint" (emphasis added)), *remanded on other grounds*, 519 F.2d 817 (D.C. Cir. 1975). And third, only then should it "certify the record and all non-frivolous constitutional questions" to the en banc court of appeals. *Wagner*, 717 F.3d at 1009; *see* 52 U.S.C. § 30110 (2 U.S.C. § 437h).

The Supreme Court narrowly construed section 30110 by assigning the district court in such cases a gatekeeping function, and it did so for good reason. Certifying constitutional questions to courts of appeals sitting en banc necessarily disrupts their dockets. Section 30110 creates "a class of cases that command the immediate attention of . . . the courts of appeals sitting en banc, displacing existing caseloads and calling court of appeals judges away from their

normal duties." *Bread Political Action Comm. v. FEC*, 455 U.S. 577, 580 (1982).[3] Screening for settled questions reduces "the burden [the special review procedure places] on the federal courts" and prevents its "potential abuse." *Cal. Med.*, 453 U.S. at 192 nn.13-14. FECA "is not an unlimited fountain of constitutional questions"; the Court expected that resort to the provision "will decrease in the future" and thus that the special review procedure would not pose "any significant threat to the effective functioning of the federal courts." *Id.* at 192 n.13. Substantiality screening was one of the "restrictions on the use of" the special procedure that led the Court to conclude that the provision would not be subject to "abuse" and would not so "burden" the courts of appeals as to impede "the sound functioning of the federal courts." *Id.* at 192-94 nn.13-14.

In determining whether any constitutional questions should be certified, the court may consider the factual record. The standard for section 30110 certification is "somewhere between a motion to dismiss — where no factual review is appropriate — and a motion for summary judgment — where the Court must review for genuine issues of material fact." *Cao v. FEC*, 688 F. Supp. 2d 498, 503 (E.D. La. 2010). A question is insubstantial, and thus should not be certified under section 30110, if it fails to state a claim upon which relief may be granted. *Goland v. United States*, 903 F.2d 1247, 1257-58 (9th Cir. 1990); *Cao*, 688 F. Supp. 2d at 501-02 & n.1. But even where, unlike here, a constitutional challenge is not foreclosed as a matter of law, the district court undertaking section 30110 review may go beyond the complaint and

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[3] Part of the Supreme Court's concern in *Bread Political Action Committee* was the requirement in the statute at that time that section 30110 proceedings be expedited. 455 U.S. at 580. Though the expedition provision has been repealed, section 30110 "continues to pretermit review by district courts and panels of courts of appeals and that pretermission undoubtedly serves the Congress's goal of expedition." *Wagner*, 717 F.3d at 1014 (noting that expedition repeal changed only section 30110's "volume, not its tune"). It thus continues to pose a danger of docket disruption.

review the facts, and only if it "concludes that colorable constitutional issues are raised from the facts" should it certify those questions. *Cao*, 688 F. Supp. 2d at 502 (emphasis omitted) (quoting *Khachaturian v. FEC*, 980 F.2d 330, 331 (5th Cir. 1992) (en banc))).[4]

B. Where There Are No Substantial Constitutional Questions Presented, Summary Judgment Is Appropriate

This Court may grant summary judgment if there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In view of the standard for certification under section 30110, "it follows that any question that the Court finds [insubstantial] is also appropriate for summary judgment." *Cao*, 688 F. Supp. 2d at 503; *see Libertarian Nat'l Comm., Inc. v. FEC*, 930 F. Supp. 2d 154, 162 (D.D.C. 2013) (same), *aff'd*, No. 13-5094, 2014 WL 590973 (D.C. Cir. Feb. 7, 2014) ("*LNC*"). Thus, if this Court determines that plaintiffs have failed to present a question warranting certification, the Court should grant summary judgment to the Commission.[5]

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[4] Portions of the September 28, 2009 order in *SpeechNow.org v. FEC* — which this Court cited in its October 20 certification order — may be misleading if viewed in isolation. When making findings of fact and issuing its final order regarding the certification of constitutional questions, the court in *SpeechNow* did state that its prerogative was "not to answer any constitutional questions, or to render a judgment of any kind." *SpeechNow*, No. 08-0248, 2009 WL 3101036, at *1 (D.D.C. Sept. 28, 2009). But the district court had earlier reviewed briefing from the parties and determined whether the questions plaintiffs sought to have certified were frivolous or insubstantial, as discussed in an unpublished order. *See* Order, *SpeechNow.org v. FEC*, No. 08-0248 (JR) (D.D.C. July 29, 2008) (Docket No. 40) (certifying questions following briefing by the parties regarding frivolousness).

[5] In that event, plaintiffs would retain the right to appeal this Court's decision to a three-judge panel of the D.C. Circuit, but there would be no initial en banc review pursuant to section 30110. *See, e.g.*, *Libertarian Nat'l Comm. v. FEC*, No. 13-5094, 2014 WL 590973, *1 (Feb. 7, 2014) (concluding that "a three-judge panel" of the Court of Appeals had jurisdiction to review denial of a motion to certify).

II. PLAINTIFFS' MOOT CLAIMS ARE NOT CAPABLE OF REPETITION

Plaintiffs' claims concern specific campaign contributions that they sought to make in connection with an election that occurred more than four months ago. The passage of the November 2014 election "makes it impossible for this or any court to grant meaningful relief with respect to" the particular contributions that are the basis of this lawsuit. *Virginians Against a Corrupt Congress v. Moran*, No. 92-5498, 1993 WL 260710, at *1 (D.C. Cir. June 29, 1993) (per curiam); *see Herron for Congress v. FEC*, 903 F. Supp. 2d 9, 13 (D.D.C. 2012) (explaining that the plaintiff's FECA claim concerning a past election was moot because "[o]f course, th[e] court has no power to alter the past"). Plaintiffs may avoid dismissal based on mootness only if they demonstrate that their claims are "capable of repetition yet evading review." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463 (2007). To invoke that exception to mootness, plaintiffs must demonstrate a "reasonable expectation" or a "demonstrated probability" that "the same controversy will recur involving the same complaining party." *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (per curiam). To make this demonstration, courts "[o]rdinarily . . . require plaintiffs to submit evidence suggesting that their controversy is likely to recur." *Herron for Congress*, 903 F. Supp. 2d at 14 (citing *Davis v. FEC*, 554 U.S. 724, 736 (2008); *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 463 (2007)).

It is true, as this Court previously found, that "the same limitations [adjusted for inflation] would apply to [plaintiffs'] contributions in the next federal election in which they wish to contribute." *Holmes*, 2014 WL 6190937, at *3. But plaintiffs have not carried their burden of demonstrating that the particulars of their claims are sufficiently likely to recur such that the claims fall within the capable-of-repetition-yet-evading-review exception to mootness. The above-the-limit contributions plaintiffs wished to make in 2014 were directed to specific general-

election candidates whose opponents had purportedly lacked a "substantial primary opponent." (Compl. ¶ 66.) The mere theoretical *possibility* that plaintiffs *could*, *at some point in the future*, decide to contribute to candidates in materially similar circumstances does not create a "reasonable expectation" or "demonstrated probability." *Murphy*, 455 U.S. at 482; *Herron for Congress*, 903 F. Supp. 2d at 14. Plaintiffs have not made any allegations about future contributions whatsoever, let alone that they intend to contribute to specific candidates whose opponents will have lacked "substantial primary opponents" in future federal elections. Their claims are thus moot and fail to identify any live constitutional questions that can be certified to the en banc Court of Appeals. *See Bois v. Marsh*, 801 F.2d 462, 466 (D.C. Cir. 1986) (finding a claim not capable of repetition because "there are . . . too many variables to allow a prediction that appellant will again be subjected to [an] action of this sort").

III. PLAINTIFFS DO NOT PRESENT A SUBSTANTIAL FIRST AMENDMENT QUESTION

Even if plaintiffs' claims were not moot, their First Amendment challenge to FECA's per-election contribution limit is insubstantial and does not qualify for certification under section 30110. As this Court previously recognized, the Supreme Court "long ago concluded" that the per-election limits "prevent corruption and the appearance of corruption by allowing candidates to compete fairly in each stage of the political process." *Holmes*, 2014 WL 5316216, at *4. Indeed, the per-election limit not only is constitutionally permissible, it is sensible in that it fairly accounts for variations in election procedures that exist among the states.

Recognizing that plaintiffs' First Amendment challenge is foreclosed by "the analysis and conclusion of the Supreme Court in *Buckley v. Valeo* and its progeny," this Court previously determined that plaintiffs are unlikely to succeed on the merits of their First Amendment claims. *Holmes*, 2014 WL 5316216, at *1. "[N]ot every sophistic twist that arguably presents a 'new'

question should be certified.'" *Mariani v. United States*, 212 F.3d 761, 769 (3d Cir. 2000) (en banc) (quoting *Goland v. United States*, 903 F.2d 1247, 1257 (9th Cir. 1990)). Plaintiffs' claims represent nothing more than a "sophistic twist" on a legal question *Buckley* itself settled nearly four decades ago and do not merit certification to the en banc Court of Appeals.

A. FECA's Individual, Per-Election Contribution Limit is Closely Drawn to Prevent Actual and Apparent Corruption

As this Court recognized, contribution limits are subject to a lesser standard of constitutional scrutiny than restrictions on expenditures. *Holmes*, 2014 WL 5316216, at *3-4. Contribution limits "'entail[] only a marginal restriction upon the contributor's ability to engage in free communication'" and "'may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms.'" *Id.* at *4 (quoting *Buckley*, 424 U.S. at 20-21, 25).

Applying that intermediate level of scrutiny, the Supreme Court in *Buckley* upheld the then-$1,000 contribution limit that is the subject of this litigation. 424 U.S. at 23-28; *see id.* at 29 ("We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the $1,000 contribution ceiling."). The Court held that the limits further the important governmental interests of preventing "the actuality and appearance of corruption resulting from large individual financial contributions." *Id.* at 26; *see also McConnell v. FEC*, 540 U.S. 93, 298 (2003) (Kennedy, J. concurring in the judgment in part and dissenting in part) (observing that *Buckley* recognized Congress's "interest in regulating the appearance of corruption that is 'inherent in a regime of large individual financial contributions'" (quoting *Buckley*, 424 U.S. at 27)).

The Supreme Court has reiterated these conclusions more recently in addressing the constitutionality of other provisions of FECA. *See, e.g.*, *McCutcheon v. FEC*, 134 S. Ct. 1434, 1451 (2014) (invalidating FECA's aggregate limits on contributions to candidates while emphasizing that the statute's individual, per-election limits on candidate contributions remain "undisturbed" and that those limits are "the primary means of regulating campaign contributions"); *Citizens United v. FEC*, 558 U.S. 310, 359 (2010) (noting that contribution limits "have been an accepted means to prevent *quid pro quo* corruption").

Buckley and the Supreme Court's more recent decisions reaffirming the constitutionality of the individual, per-election contribution limits plainly foreclose plaintiffs' First Amendment claims and demonstrate that plaintiffs have not identified a First Amendment question that warrants certification to en banc Court of Appeals. Their First Amendment challenge is foreclosed because the Supreme Court "long ago concluded" that such restrictions "prevent corruption and the appearance of corruption by allowing candidates to compete fairly in each stage of the political process." *Holmes*, 2014 WL 5316216, at *4.

Plaintiffs have attempted to escape the dispositive impact of the Supreme Court's holdings by labeling their claims as "novel" and "as applied." (*See, e.g.*, Pls.' Prelim. Inj. Mem. at 10; Pls.' Reply Mem. on Mot. for Prelim. Inj. at 2, 4, 8 (Docket No. 13) ("Pls.' Prelim. Inj. Reply").) But their claims are neither. Although plaintiffs characterize their challenge as a "novel" dispute about the "structure" of what they erroneously claim is a $5,200 per-election-cycle limit, they are in fact, as this Court observed, "objecting to the specific base limit on how much an individual may contribute per election" — an endeavor foreclosed by the Supreme Court's holdings directly and explicitly affirming that limit. *Holmes*, 2014 WL 5316216, at *4 n.5. "Plaintiffs' attempt to reframe the issue" by mischaracterizing FECA "falls short," *id.*, and

proves that plaintiffs' complaint does not raise a "colorable constitutional claim[],"
Khachaturian, 980 F.2d at 332. Summary judgment should thus be granted to the Commission. *Id.* at 331 (explaining that "'questions arising under 'blessed' provisions [of FECA] understandably should meet a higher threshold' of frivolousness" (quoting *Goland*, 903 F.2d at 1257)).

Indeed, plaintiffs' own complaint reveals that their characterization of their challenge as an "as applied" one is inapt. In *Doe v. Reed*, the Supreme Court explained that whether a challenge is facial or as applied depends on the relief sought by plaintiffs: "The label is not what matters. The important point is that plaintiffs' claims and the relief that would follow . . . reach beyond the particular circumstances of these plaintiffs. They must therefore satisfy our standards for a facial challenge to the extent of that reach." 561 U.S. 186, 194 (2010); *see also Edwards v. Dist. of Columbia*, 755 F.3d 996, 1001 (D.C. Cir. 2014) (explaining that "the breadth of the remedy" is what distinguishes a facial challenge from an as-applied challenge). The provisions that plaintiffs challenge here establish the individual, per-candidate, per-election limits and specify that such limits "shall apply separately with respect to each election." 52 U.S.C. §§ 30116(a)(1)(A), 30116(a)(6) (2 U.S.C. § 441a(a)(1)(A), 441a(a)(6)). Plaintiffs fail to explain how a court could enjoin enforcement of those provisions as applied only to the two individual plaintiffs.

The impropriety of plaintiffs' "as applied" label is especially clear *now*, when the particular individuals to whom plaintiffs sought to contribute are no longer candidates and plaintiffs have failed to identify any comparable above-the-limit general election contributions they wish to make in the future to a candidate facing an opponent who will have lacked a "substantial primary opponent." *See infra* p. 33. Plaintiffs' claims thus necessarily reach beyond

the particular circumstances alleged in their complaint. *See Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008) ("[A]ll [members of the Court] agree that a facial challenge must fail where the statute has a plainly legitimate sweep." (internal quotation marks omitted)).

But even if plaintiffs' claims could somehow be considered "as applied," an as-applied challenge to a law that has been facially upheld can only succeed if it raises a factual circumstance or principle of law that the court did not rely upon in determining that the statute was facially valid. *See, e.g.*, *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 157 (D.D.C. 2010) (three-judge court) ("In general, a plaintiff cannot successfully bring an as-applied challenge to a statutory provision based on the same factual and legal arguments the Supreme Court expressly considered when rejecting a facial challenge to that provision."), *aff'd*, 130 S. Ct. 3544 (2010); *McGuire v. Reilly*, 386 F.3d 45, 61 (1st Cir. 2004) (rejecting as-applied challenges that presented "the same type of fact situation that was envisioned . . . when the facial challenge was denied").

The purported facts and principles of law raised by plaintiffs' challenge do not fall outside the principles established by *Buckley* and its progeny, as this Court previously found. Their proposed general-election contributions to those candidates in amounts that were twice the legal limit implicate precisely the same corruption concerns as above-the-limit contributions made by any other contributors, including contributors who *did* make primary contributions. "Even though the constitutional questions [plaintiffs] present[] in a sense are novel because of the unusual facts, they do not fall outside the principles established in the cases upholding FECA's contribution limits." *Goland*, 903 F.2d at 1253; *see LNC*, 930 F. Supp. 2d at 166 (concluding that the majority of an as-applied challenge to FECA's contribution limits "is

impermissible because it raises issues that the Supreme Court has already addressed" and thus "is not so much an as-applied challenge as it is an argument for overruling a precedent" (internal citation and quotation marks omitted)).

Regardless of how it is labeled, plaintiffs' First Amendment challenge to FECA's per-election contribution limit is foreclosed by the Supreme Court's clear decisions upholding the limit as closely drawn to prevent actual and apparent corruption. Plaintiffs' challenge to a settled legal question should not be certified to the en banc Court of Appeals.

B. FECA's Individual, Per-Election Contribution Limits Sensibly Account for State-by-State Variations in Election Procedures

FECA's establishment of separate contribution limits for each election within an election cycle not only is closely drawn to further the government's important anticorruption interests, it is also an eminently reasonable means of serving that interest. It is, as this Court explained, "a quintessential political decision made by politicians who understand the process far better than the courts and is deserving of deference." *Holmes*, 2014 WL 5316216, at *4.

The separate contribution limits account for the lack of uniformity in federal electoral contests — including the races in different political parties for the same particular office — and tie the amount of money that a particular candidate can receive (and that the candidate's supporters may contribute) to the number of elections in which that candidate participates. Congress clearly recognized that being elected to a federal office may be the result of multiple, separate elections, including primary elections, which are, as this Court noted, "a necessary part of the election process." *Id.* at *5. "Intimately aware of the financial demands of a modern election campaign," as this Court further explained, "Congress has . . . maintained a per-person, per election contribution limitation." *Id.*

The lack of such uniformity is evident, *inter alia*, in the regular occurrence of primary runoff elections (in addition to primary and general elections) in the ten states that currently provide for runoff contests under varying circumstances. (*See generally* Declaration of Eileen J. Leamon, Mar. 13, 2015 ("Leamon Decl.") Exh. 1 (providing data regarding primary runoff elections or conventions in federal electoral contests between 2003 and 2014).[6]

In Louisiana, by contrast, no congressional primary election is held; the first election for candidates seeking federal office is the November general election. Only if no candidate wins a majority of the vote in the November election does Louisiana hold a second, "runoff," election in December of the same year. (Sadio Decl. Exh. 4 at 2 n.8; *see, e.g.*, Leamon Decl. Exh. 1 at 31 (identifying results of Louisiana congressional electoral contests featuring only a November election and others featuring a second election in December of the same year).)[7]

And in California — the state in which plaintiff Jost's preferred candidate sought election — as well as in Washington, a candidate who lacks an intraparty primary challenger could still fail to proceed to the general election because all candidates for a particular office are listed on the same primary ballot and the two candidates who receive the most votes, *regardless of party preference*, proceed to compete in the general election. *See supra* p. 3 (describing California's top-two primary system); Sadio Decl. Exh. 9; *id.* Exh. 17.)

The statutory contribution limits thus sensibly permit a candidate who must participate in a primary, runoff, and general election within a single election cycle to receive a greater number

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[6] The citations in this Brief to specific pages of the Exhibits to the Leamon Declaration are to the "Leamon Decl. Exh." page numbers, which were added to the Exhibit documents for the Court's ease of reference.

[7] In 2014, for example, no candidate won a majority of the vote in Louisiana's November 2014 election for U.S. Senate. The state thus held a second election on December 6, 2014. (Sadio Decl. Exh. 4 at 2 n.8.) In the December election, incumbent Democrat Senator Mary Landrieu lost her seat to a challenger, Republican and former Representative Bill Cassidy. (*Id.* Exh. 19.)

of contributions from a particular contributor during that election cycle than candidates who participates only in a primary and general election during that same cycle. *Holmes*, 2014 WL 5316216, at *1. Recent examples illustrate this point.

As we have explained (FEC's Opp'n to Pls.' Mot for Prelim. Inj. at 16-17 (Docket No. 12)), during the 2013-2014 election cycle in Mississippi, six-term incumbent Mississippi Senator Thad Cochran failed to receive enough votes in the Mississippi Republican Senate primary election to avoid a runoff election against his primary opponent, Chris McDaniel. (Leamon Decl. Exh. 1 at 10.) Travis Childers, on the other hand, won the Democratic primary by a sweeping margin and so avoided having to participate in a runoff. (*Id.*) Uniform per-election-cycle limits such as those plaintiffs propose would have meant Senator Cochran and challenger Childers would have been permitted to receive the same amounts from contributors over the course of the election cycle. A per-election-cycle limit would have been less suited to those circumstances than a per-election limit given that Senator Cochran, but not challenger Childers, participated in an additional election — an expensive runoff race (*see* Sadio Decl. Exhs. 24-25) — before proceeding to the general election.

FECA's separate contribution limits for each election within a particular election cycle further account for the occurrence of special elections — including special primary elections, special runoff elections, and special general elections — which are held throughout the country, in accordance with state-specific procedures, in various special circumstances including when necessary to fill a seat vacated by an incumbent who left office before completing the full term that individual was elected to serve. Over the course of the last six election cycles, from the 2003-04 cycle through the 2013-14 cycle, there have been 126 special elections, averaging more than 21 per election cycle. (*See generally* Leamon Decl. Exh 2.)

Notably, plaintiffs themselves recently used the per-election contribution limits to maximize their election-cycle contributions to South Carolina Representative Marshall Sanford. (Sadio Decl. Exh. 1 (Holmes Interrog. ¶ 5); *id.* Exh. 2 (Jost Interrog. Resp. ¶ 5).) Between March and November 2013, plaintiff Jost made contributions to Sanford for Congress, Sanford's authorized campaign committee, totaling $7,800. (*Id.* Exh. 2 (Jost Interrog. Resp. ¶ 5).) The $7,800 total consisted of $2,600 designated for each of Sanford's special runoff and special general election campaigns in 2013, and another $2,600 designated for Sanford's 2014 primary election campaign, in which Sanford competed as an unopposed incumbent. (*Id.*; Sadio Decl. Exhs. 12-14.) Plaintiff Holmes contributed the same amounts to the Sanford campaign committee in connection with each of those three elections. (Sadio Decl. Exh. 1 (Holmes Interrog. Resp. ¶ 5).)

These examples, and the data reflecting similar circumstances in numerous other electoral contests over the past dozen years (Leamon Decl. Exhs. 1 & 2), demonstrate that FECA's per-election limits operate in a manner that is well-matched to the Congressional purpose and generally better matched than the uniform per-election-cycle limits plaintiffs would prefer. Per-election limits, as this Court explained, "allow[] candidates to compete fairly in each stage of the political process." *Holmes*, 2014 WL 5316216, at *4 (citing *Buckley*, 424 U.S. at 26-27).) Indeed, plaintiffs' proposed election-cycle limits could create some of the same purported disadvantages and inequities about which plaintiffs purport to be concerned.

Rather than being preferred, the Supreme Court has indicated that a per-cycle limit on contributions to candidates is a "danger sign[]" of potential unconstitutionality as compared to limits that are set per election, precisely the *opposite* of plaintiffs' contentions here. *See Randall v. Sorrell*, 548 U.S. 230, 249 (2006) (Breyer, J., plurality op.) (expressing concerns about a state

election-cycle-based contribution limit); *see also id.* at 268 (Thomas, J., concurring) (discussing inequities created by election-cycle-based contribution limits and describing election-cycle structure as "constitutionally problematic"); *Lair v. Bullock*, 697 F.3d 1200, 1208 (9th Cir. 2012) (citing Justice Breyer's concern in *Randall* about "limits [that] are set per election cycle, rather than divided between primary and general elections" and upholding state limit partly because the challenged limits "apply to 'each election in a campaign'"); *cf. Davis v. FEC*, 554 U.S. 724, 738 (2008) (stating that the Court has "never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other").

Setting contribution limits on a per-election basis fights corruption while also taking a targeted approach regarding the extent to which the limits restrict contributors' freedom of political association and ensuring that candidates are able to "amass[] the resources necessary for effective advocacy." *Randall*, 548 U.S. at 247 (quoting *Buckley*, 424 U.S. at 21). FECA's contribution limits allow individuals to associate with a particular candidate with respect to each of the elections that that candidate participates in during a given election cycle. The limits also permit contributors to choose, as plaintiffs have done here, *not* to associate with a candidate in connection with a particular election in which that candidate participates. *Holmes*, 2014 WL 5316216, at *4 ("That plaintiffs *elected* not to exercise their right of free expression before the primary election does not render the law unconstitutional as applied." (emphasis added)).[8]

[8] Even if plaintiffs' anecdotal allegations actually supported their claims that FECA, as opposed to plaintiffs' own voluntary conduct, has restricted their freedom to associate fully with their preferred candidates — and they do not — such allegations would not demonstrate that the per-election contribution limits fail under intermediate scrutiny. *See McCutcheon*, 134 S. Ct. at 1444 (explaining that contribution limits need not pass the strict scrutiny test of using "the least restrictive means" to "promote[] a compelling interest," and that "[e]ven a significant interference with protected rights of political association may be sustained if the [government] demonstrates a sufficiently important interest and employs means closely drawn to avoid

There is thus no merit to plaintiffs' allegations that FECA's separate contribution limits for primary, general, and other types of elections create an "artificial distinction between primary and general elections." (Compl. ¶¶ 18, 26, 37.) Indeed, plaintiffs' own choice to avoid what they considered "'wasting' money" on certain primary elections illustrates the legitimacy and significance of FECA's distinction between the various types of elections within a particular election cycle. *Holmes*, 2014 WL 5316216, at *1. And FECA's per-election contribution limits fairly account for the lack of uniformity in federal electoral contests by sensibly linking the total amount of money one can contribute to a particular candidate to the number of elections in which that candidate participates.

C. The Amount of FECA's Per-Election Limits is Constitutional

Plaintiffs have maintained that they "do not contest" the *amount* of FECA's individual "base" contribution limit, yet they claimed a constitutional right to make general-election contributions to certain federal candidates in amounts that were double the per-election limit. Pls.' Prelim. Inj. Mem. at 10; Compl. ¶ 26; *Holmes*, 2014 WL 5316216, at *4 n.5 ("Plaintiffs are indeed objecting to the specific base limit on how much an individual may contribute per election.") But plaintiffs' claim is clearly contrary to *Buckley* and its progeny. As *Buckley* explained, courts lack a "scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000. Such distinctions in degree become significant only when they can be said to amount to differences in kind." 424 U.S. at 30 (internal quotation marks and citation omitted).

The Supreme Court has repeatedly reaffirmed this general rule. *See, e.g.*, *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 446 (2001) ("[T]he dollar amount of the limit need not be fine tun[ed] . . . ." (citation and internal quotation marks omitted)); *cf. Davis*, 554

unnecessary abridgment of associational freedoms" (internal quotation marks and citation omitted)).

U.S. at 737 ("When contribution limits are challenged as too restrictive, we have extended a measure of deference to the judgment of the legislative body that enacted the law." (citing, *inter alia*, *Randall* and *Buckley*)). In the lone instance where the Court invalidated an individual, base contribution limit, the Court did so largely because the state contribution limits in question were so low it appeared they would "significantly restrict the amount of funding available for challengers to run competitive campaigns." *See Randall*, 548 U.S. at 253. Plaintiffs make no such showing and their desire to avoid contributing money for certain primary contests, *Holmes*, 2014 WL 5316216, at *1, does not demonstrate the amount of FECA's per-election limits are so low that candidates lack sufficient resources to campaign.

D. Neither Congress Nor the Courts Have Recognized A First Amendment Right of Individuals to Make a $5,200 Candidate Contribution for a Single Election

The crux of plaintiffs' complaint — that they have a constitutional right to make a $5,200 contribution to a particular candidate's general-election campaign — is contrary to settled law. Indeed, the fundamental premise of their argument is false. According to plaintiffs, Congress and the Supreme Court in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), approved of a $5,200 election-cycle base limit, and because *combined* contributions up to that amount may constitutionally be donated over the course of a given election *cycle*, plaintiffs must also have a constitutional right to contribute the combined $5,200 amount in connection with a *single election* within that cycle. (Pls.' Prelim. Inj. Mem. at 13-14.) This Court has already, correctly, rejected that argument: "contrary to Plaintiffs' suggestion, neither Congress nor *McCutcheon* approved contributions of $5,200 for a single election." *Holmes*, 2014 WL 5316216, at *4. Further, neither Congress nor any court has ever suggested that a $5,200 per-election contribution would be "noncorrupting," as plaintiffs claim (Pls.' Prelim. Inj. Mem. at 13-14). On

the contrary, Congress has explicitly provided that "no person shall make contributions" to any candidate or her committee that, during the 2013-2014 election cycle, exceeded $2,600 "with respect to any election for federal office" and it has defined "election" to include as separate elections primary and general elections, as well as special elections, runoffs, and party conventions. *See supra* p. 6.[9]

Plaintiffs' imagined $5,200 election-cycle limit is further belied by the fact that Congress defined "election" to include runoffs, special elections, and party conventions, in addition to primaries and general elections. 52 U.S.C. § 30101(1) (2 U.S.C. § 431(1)). If plaintiffs were correct that Congress created a single, uniform election-cycle base limit, that limit would have to be "trifurcated" ($1733.33 per election) for candidates who must compete in one runoff election, in addition to a primary and general election, and divided by four ($1,300 per election) for candidates who must compete in a primary, general, and two runoff elections. *See supra* p. 6. Plaintiffs' theory fails to account at all for runoff and special elections and the inconsistencies that a uniform election-cycle limit would create for candidates running for similar federal offices in different states.

Further demonstrating that their claims are insubstantial, plaintiffs cannot identify support from a decision of the Supreme Court for their claimed election-cycle constitutional right. Plaintiffs' only *purported* support is the Supreme Court's *McCutcheon* opinion (*see* Pls.' Prelim. Inj. Mem. at 13-14, 20). But that case concerned FECA's *aggregate* limits on the total

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[9] Other limits in the Act show that Congress can create an election-cycle (or calendar-year) limit when it so wishes. The aggregate limits that the Supreme Court struck down in *McCutcheon* were election-cycle limits. *See* 52 U.S.C. § 30116(a)(3) (2 U.S.C. § 441a(a)(3)) ("During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even numbered year, no individual may make contribution aggregating . . . ."); *see also* 52 U.S.C. §§ 30116(a)(1)(B)-(D) (2 U.S.C. §§ 441a(a)(1)(B)-(D) (setting calendar year limits on contributions by persons to national party committees, state party committees, and other political committees).

amounts that individuals can contribute to all candidates or committees within a particular time period. And the Court there explicitly left "undisturbed" the per-election limit on individual contributions to a particular candidate for a particular election that is the subject of this lawsuit. 134 S. Ct. at 1451; *see id.* at 1442 ("For the 2013-2014 election cycle, the base limits in the Federal Election Campaign Act . . . permit an individual to contribute up to $2600 *per election* to a candidate (*$5200 total for the primary and general elections*)." (emphases added)); *id.* at 1448 (explaining that FECA's aggregate limits prevented "an individual from fully contributing to the *primary and general election campaigns* of ten or more candidates" (emphasis added)). *McCutcheon* thus does not support plaintiffs' arguments, as this Court correctly recognized. *Holmes*, 2014 WL 5316216, at *4.

E. Plaintiffs' Alleged Injuries Were Self-Imposed and Not Caused by FECA

Plaintiffs' constitutional claims are insubstantial for the additional reason that their alleged injuries have resulted not from the challenged statutory provisions but, instead, from their own voluntary choices. (*See* Sadio Decl. Exh. 1 (Holmes RFA Resp. ¶ 2); *id.* Exh. 2 (Jost RFA Resp. ¶ 1).) As this Court correctly explained, plaintiffs' alleged injuries are entirely self-inflicted:

> Plaintiffs have *not* been prevented from supporting their preferred candidates with the full $5,200 contribution authorized by law. They could have contributed $2,600 to any candidate before the primaries, but *chose* not to do so because of their belief that the money would be 'wasted in an intraparty squabble' as opposed to being used to fight the incumbent in the general election. . . . That Plaintiffs elected not to exercise their right of free expression before the primary election does not render the law unconstitutional as applied.

Holmes, 2014 WL 5316216, at *4 (quoting Pls.' Prelim. Inj. Mem. at 1).

This Court alternatively suggested that perhaps plaintiffs' real dispute is with FEC regulations that permit any *candidate* competing in a general election to transfer "funds unused

for the primary" to the candidate's general-election campaign. *Holmes*, 2014 WL 5316216, at *6 n.8 (citing 11 C.F.R. § 110.3(c)(3)). But as the Court also noted, plaintiffs have not challenged this (or any other) FEC regulation. *Id.* Nor could they in this case in which plaintiffs have invoked section 30110, a provision limited to questions concerning the "constitutionality of any provision of [FECA]." 52 U.S.C. § 30110 (2 U.S.C. § 437h).

It is also far from clear that plaintiffs Holmes and Jost would have standing to challenge the rule anyway, since the transfer provision regulates the activities of *candidates*, not contributors. Plaintiffs would thus be hard-pressed to demonstrate that they have suffered an actual, "concrete and particularized" injury that is "fairly traceable" to rules that permit candidates to use their campaign contributions in a particular manner. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

In sum, plaintiffs' First Amendment claim challenges a provision of law long ago blessed by the Supreme Court and it should not be certified to the en banc court.

IV. PLAINTIFFS' FIFTH AMENDMENT CHALLENGE IS INSUBSTANTIAL

Plaintiffs' Fifth Amendment challenge to FECA's per-election contribution limit also fails to raise any constitutional question sufficiently substantial to warrant certification under section 30110. The limit applies equally to all persons and does not deny plaintiffs or anyone else equal protection of the law.

A. Plaintiffs' Equal Protection Claim Fails Because the Per-Election Limit Does Not Create Any Classifications

The "core concern" of the Constitution's equal protection guarantee is "shield[ing] against arbitrary [government] classifications." *Engquist v. Oregon Dep't of Agric.*, 553 U.S. 591, 598 (2008) (describing scope of Fourteenth Amendment equal protection guarantee); *see Buckley*, 424 U.S. at 93 ("Equal protection analysis in the Fifth Amendment area is the same as

that under the Fourteenth Amendment.”). By contrast, statutory provisions that do not create any classifications whatsoever do not implicate equal protection.

The per-election contribution limit creates no classifications. Its limit on contributions by individuals to candidates applies explicitly to all “persons.” It limits all individuals to the same (2013-2014) $2,600 per-election limit. It does not treat any group of candidates or contributors differently from other candidates or contributors. This Court thus correctly concluded that “Plaintiffs have not been treated differently than any other contributor.” *Holmes*, 2014 WL 5316216, at *5.

Plaintiffs have conceded that the per-election limit “‘on its face’ . . . does not appear discriminatory.” (Pl’s. Mem. at 25.) And where, as here, a challenged provision contains no classification, courts have rejected equal protection claims on that basis alone. *See, e.g.*, *Broussard v. Parish of Orleans*, 318 F.3d 644, 653-54 (5th Cir. 2003) (explaining that equal protection claims of arrestees were “doom[ed]” because challenged bail fee provisions that applied to all arrestees “fail to classify”); *McCoy v. Richards*, 771 F.2d 1108, 1112 (7th Cir. 1985) (rejecting equal protection claim because the statute “contains no classification scheme”); *United States v. Jenkins*, 909 F. Supp. 2d 758, 775 (E.D. Ky. 2012) (explaining that equal protection scrutiny was unnecessary for law that “creates no classifications among citizens, but is neutral on its face”); *United States v. Williams*, No. 02-4990, 2003 WL 21384640, at *4 (N.D. Ill. June 12, 2003) (explaining that equal protection scrutiny is “not appropriate when the challenged law creates no classifications”).

Plaintiffs have not argued, and cannot plausibly contend, that a contribution limit that applies equally to all persons is an equal protection violation unless they can demonstrate that it was enacted specifically to further a discriminatory purpose. It is not enough to baldy allege, as

plaintiffs have done here, "disparate impact" (Pls.' Prelim. Inj. Mem. at 25) or "asymmetrical and discriminatory outcome[s]," (*id.* at 6-7, 17). *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977) (requiring evidence of "discriminatory intent or purpose . . . to show a violation of the Equal Protection Clause"). "The equal protection component of the Fifth Amendment prohibits only purposeful discrimination, and when a facially neutral federal statute is challenged on equal protection grounds, it is incumbent upon the challenger to prove that Congress selected or reaffirmed a particular course of action at least in part *because of*, not merely in spite of, its adverse effects upon an identifiable group." *Harris v. McRae*, 448 U.S. 297, 323 n.26 (1980) (internal quotations marks and citation omitted) (emphasis added); *Stop Reckless Economic Instability Caused by Democrats v. FEC*, No. 14-397, 2015 WL 867091, at *8 (E.D. Va. Feb. 27, 2015) ("A contribution limit violates the equal protection component of the Fifth Amendment if plaintiffs can show they were treated differently from others who were similarly situated and that the unequal treatment was the result of discriminatory animus.").

The Supreme Court in *Buckley* recognized as much when it rejected a similar argument that FECA's contribution limits invidiously discriminated between incumbents and challengers. 424 U.S. at 30-31. The Court disagreed, explaining "at the outset" that "the Act applies the same limitations on contributions to all candidates . . . . Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions." *Id.* at 31. *Buckley* stressed that it was "important . . . that the Act applies the same limitations on contributions to all candidates regardless of their present occupations, ideological views, or party affiliations." *Id.* at 31.

Plaintiffs have failed to present any evidence of discrimination against general-election challengers to candidates who did not face "significant" primary opposition or individuals seeking to make contributions to support the candidacies of such challengers. Plaintiffs have not alleged, let alone demonstrated, anything to suggest that Congress chose the per-election limit due to animus or a discriminatory purpose.

The frivolousness of their Fifth Amendment claims is further underscored by the vagueness of the shifting de facto "class" of contributors to which plaintiffs claim to have been members during the 2013-2014 election cycle (but not always, *see supra* p. 24). Plaintiffs have alternatively described their claims as pertaining to contributors that "wish to give to candidates challenging incumbents who did not face significant opposition" in their primary elections, (Compl. ¶ 39; *see also id.* ¶¶ 40, 46-47, 67), or, more broadly, pertaining to the alleged "asymmetry posed whenever a candidate who faces a primary challenge competes in the general election against a candidate who ran virtually unopposed during the primary." (Pls.' Opp'n to FEC's Mot. for Remand at 9 (D.C. Cir. Document #1531459) (internal quotation marks omitted).) Plaintiffs recently provided another iteration of their definition of what constitutes a "substantial primary opponent" (Compl. ¶ 66):

> A candidate for office who is a member of the same political party as his or her opponent, must compete in the same primary election, and is sufficiently likely to succeed that his or her candidacy would materially alter the competitive position of a candidate similarly situated to Scott Peters [or David Loebsack] during the 2014 primary.

(Sadio Decl. Exh. 1 (Holmes Interrog. Resp. ¶ 2); *id.* Exh. 2 (Jost Interrog. Resp. ¶ 2).)

Plaintiffs' attempted definition raises more questions than it answers. Plaintiffs have refused to explain how or when their proposed assessment of a candidate's sufficient *likelihood* of success such that his candidacy "would materially alter the competitive position" of his

opponent is to be determined. (*Id.* Exh. 1 (Holmes Interrog. Resp. ¶¶ 2-4); *id.* Exh. 2 (Jost Interrog. Resp. ¶¶ 2-4).) And plaintiffs utterly fail to explain their bizarre suggestion (*id.* Exh. 1 (Holmes Interrog. Resp. ¶¶ 3-4); *id.* Exh. 2 (Jost Interrog. Resp. ¶¶ 3-4)) that the FEC's promulgation of a regulation regarding whether certain communications were functionally equivalent to campaign advertisements demonstrates that the FEC has the legal authority or technical ability to make *predictions* about a particular candidate's likelihood of "success" or probability of "materially alter[ing] the competitive position" of his or her opponent in an upcoming election. Moreover, the Supreme Court criticized the previous Commission regulation to which plaintiffs refer as a "two-part, eleven-factor balancing test" that chilled speech to such an extent that the facial validity of FECA's corporate expenditure ban needed to be reconsidered. *Citizens United*, 558 U.S. at 335-36. The Constitution does not compel that the Court accept plaintiffs' attempt to put the Act's contribution limits on a similar path. Finally, each of plaintiffs' proposed definitions disregards that Scott Peters had *three* primary opponents in the 2014 California congressional primary and that the absence of an *intraparty* opponent in that primary was irrelevant under California's primary system. *See supra* p. 4. Plaintiffs have failed to even identify any classifications that the statute actually creates, let alone make credible allegations of a discriminatory purpose, and their equal protection claims are thus insubstantial.

B. The Per-Election Contribution Limit Easily Satisfies the Applicable Level of Constitutional Review

In its opinion denying plaintiffs' motion for a preliminary injunction, this Court applied an intermediate standard of review. The Court noted that in recent cases challenging restrictions on political contributions, courts had applied "closely drawn," *i.e.*, intermediate scrutiny. *Holmes*, 2014 WL 5316216, at *5 (citing cases). In those cases, unlike here, the courts considered equal protection challenges to provisions that actually created classifications on their

face. *Id.* The per-election limit challenged here, however, applies equally to every contributor and candidate. *Id.* Unlike the laws at issue in the cases mentioned above, FECA's per-election contribution limit contains no classification scheme that would be susceptible to attack under the Fifth Amendment.

In any event, even if the Act's per-election contribution limit could be deemed to create some sort of de facto "class" of contributors — *e.g.*, contributors to candidates whose general-election opponents did not face a "substantial primary opponent" (Compl. ¶ 66) — such a classification would still be subject to nothing more than the most deferential standard of review.[10] Under either the Equal Protection Clause of the Fourteenth Amendment or the Due Process Clause of the Fifth Amendment, "a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against [an] equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313-15 (1993); *see also, e.g.*, *Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2080 (2012) ("This Court has long held that a classification neither involving fundamental rights nor proceeding along suspect lines . . . cannot run afoul of the Equal Protection Clause if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." (internal

[10] Moreover, even if plaintiffs' vague description defines the de facto category of contributors plaintiffs attempt to identify, plaintiff Holmes plainly did not fall within such a category in connection with her contributions to Carl DeMaio. As explained above, it is not true that Representative Peters, who opposed and ultimately defeated DeMaio in California's 2014 general congressional election, "lacked a substantial primary opponent" in the California congressional primary. *See supra* p. 4; *see also Holmes*, 2014 WL 5316216, at *2 n.2; Sadio Decl. Exh. 1 (Holmes RFA Response ¶ 3); Sadio Decl. Exh. 9 at 2; Sadio Decl. Exh. 10 at 76.

quotation marks omitted)); *Heller v. Doe*, 509 U.S. 312, 319-20 (1993) (same); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461 (1981) (same).

The obscure category of contributors that plaintiffs posit is neither a suspect nor a quasi-suspect classification and plaintiffs have offered nothing suggesting otherwise. Indeed, whether a contributor falls within this vaguely defined class depends wholly on the contributor's own decisions about which candidates to support and when, as well as the specific circumstances of a particular electoral contest — factors over which the government has no control. Such affirmative choices by individuals clearly do not implicate the Constitution's equal protection guarantees.

Plaintiffs' claims also do not implicate a fundamental right meriting heightened review. Plaintiffs purport to seek only to "structure" certain candidate contributions in a manner that allows them to limit the scope of their association with their preferred candidates, while increasing their per-election contributions to such candidates to an amount that is double the statutory limit for a single election. But no case has recognized a "fundamental right" or "freedom" to *structure* candidate contributions in whatever manner a contributor desires, and the Supreme Court has made clear that there is no fundamental right to make contributions in whatever *amount* a contributor desires. *E.g.*, *Buckley*, 424 U.S. at 23-29; *see supra* pp. 6-8.

In any event, whether rational-basis review or intermediate scrutiny applies, the per-election contribution limits survive constitutional scrutiny, as this Court determined under the latter, more rigorous standard. *See Holmes*, 2014 WL 5316216, at *5. Just as the per-election limit does not violate the First Amendment, it passes muster under the Fifth for similar reasons. The per-election contribution limit is closely drawn, applies equally to every contributor, and

advances important governmental interests in preventing corruption and its appearance. *Id.*; *supra* pp. 17-27.

C. Variations in Candidates' Campaign Funding Result from the "Vagaries of the Election Process" and Fail to Demonstrate Any Violation of Plaintiffs' Rights to Equal Protection

As previously explained, *see supra* pp. 31-32, equal protection under the Fifth Amendment prohibits purposeful discrimination. Plaintiffs have suggested (Pls.' Prelim. Inj. Mem. at 25), however, that the per-election limit creates a "disparate impact in favor of candidates who do not face a primary challenge." Even if such allegations of "disparate impact" and "asymmetrical outcomes" (*see id.* at 11, 25; Pls.' Prelim. Inj. Reply at 11) were cognizable under equal protection, any "disparate impacts" suffered by plaintiffs are due, as this Court properly concluded, to the "vagaries of the election process," and are not a result of federal law. *Holmes*, 2014 WL 5316216, at *6.

Moreover, while plaintiffs have suggested (Pls.' Prelim. Inj. Reply at 10) that "[o]ther contributors have been permitted to make" $5,200 general-election contributions, that assertion is manifestly wrong. As this Court recognized, "[n]o individual has the power to give $5,200 solely for use in the general election." *Holmes*, 2014 WL 5316216, at *6. Plaintiffs' related assumption (Pls.' Prelim. Inj. Reply at 14) that individuals who contributed to the incumbent candidates in the California and Iowa races underlying plaintiffs' claims could have given $5,200 to those incumbent candidates "with the full and reasonable expectation that the full contribution would be used for the purpose of succeeding in the forthcoming general election" is equally unavailing. Even if plaintiffs' hypotheses regarding other contributors' expectations were relevant — they are not — plaintiffs' speculation is insufficient to provide a basis for certifying constitutional questions to the en banc Court of Appeals. "It is not for this Court to certify to the

en banc Court of Appeals an as-applied question laden with hypotheticals about the constitutionality of contribution limits under FECA, especially when the Supreme Court has already addressed parts of the question in a facial challenge." *LNC*, 930 F. Supp. 2d at 167.

Even if Peters, Loebsack, DeMaio, Miller-Meeks or any other candidate exercised *their* rights under FEC regulations to use unspent primary contributions on general-election expenses, such actions by candidates do not remotely demonstrate any violation by the government of the equal protection rights of individual contributors. As this Court explained, even if a contributor to an unopposed incumbent — or any other candidate — makes a primary contribution "*in anticipation* that it will all be used in the general election[,] [*h]ow the funds are actually spent, of course, is wholly out of the contributor's control*." *Holmes*, 2014 WL 5316216, at *6 (emphasis added). Whatever the *candidate* ultimately does with the contributions he has received, "contributors have not been treated differently." *Id.*

As this Court recognized in denying plaintiffs' preliminary-injunction motion, even if some candidates have unused primary contributions that they use in the general election, while others are do not, that is not the result of any unequal treatment of contributors by FECA. "[A] candidate who participates in an uncontested primary may go into a general election with more money than a candidate who ran in a contested primary." *Holmes*, 2014 WL 5316216, at *5. But such disparities are not a consequence of FECA's contribution limits, but rather are a result of "the vagaries of the election process." *Id.* at *6. "FECA simply makes uniform the amount a person can contribute to a candidate on a per-election basis." *Id.* at *5. "[I]nequity in campaign finances is an inherent part of elections" and does not *ipso facto* give rise to a valid Constitutional claim. *Id.* "[T]here is certainly no rule requiring that all candidates have equal funding." *Id.* (citing *Davis*, 554 U.S. at 742).

Likewise baseless is plaintiffs' contention that FECA prevented them from associating with candidates for as long a period of time as other contributors. (Compl. ¶ 67.) On the contrary, and as plaintiffs admit, Holmes and Jost *voluntarily chose* not to associate with their favored candidates for the full duration of the 2013-2014 election cycle (by declining to make any primary contributions), in an effort to ensure that their contributions could not be "'wasted in an intraparty squabble.'" *Holmes*, 2014 WL 5316216, at *1 (quoting Pls.' Prelim. Inj. Mem. at 1); Sadio Decl. Exh. 1 (Holmes RFA Resp. ¶ 2); *id.* Exh. 2 (Jost RFA Resp. ¶ 2).) Those candid admissions doom plaintiffs' equal protection claims. "The Equal Protection Clause of the Fourteenth Amendment . . . is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). But contributors who choose not to exercise their right to make contributions during a primary are not similarly situated to those who do. Plaintiffs' admission establishes the limited extent of the associational interests at stake in plaintiffs' claims here. (*See supra* pp. 29-30.)

CONCLUSION

Plaintiffs' claims are moot and for that reason alone, this case should be dismissed. But even if this Court finds that plaintiffs' claims are capable of repetition yet evading review, it should still decline to certify any questions to the Court of Appeals and instead grant summary judgment to the Commission. FECA's per-election limits on contributions by individuals to candidates have been upheld by the Supreme Court under the First and Fifth Amendments, are closely drawn to match the sufficiently important interests of preventing actual and apparent corruption, reasonably tie contributions to the number of elections in which candidates compete, and create no classifications from which a valid equal protection claim might arise. The

constitutional questions before this Court are well-settled by Supreme Court precedent and should not be certified for en banc consideration.

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Dated: March 13, 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 14-1243 (RMC) DEFENDANT FEDERAL ELECTION COMMISSION'S PROPOSED FACTS AND CONSTITUTIONAL QUESTIONS

DEFENDANT FEDERAL ELECTION COMMISSION'S
PROPOSED FINDINGS OF FACT / STATEMENT OF MATERIAL FACTS
AND CONSTITUTIONAL QUESTIONS

In accordance with the Court's February 10, 2015 Order (Docket No. 24), Defendant Federal Election Commission ("FEC" or "Commission") submits the following proposed findings of fact and constitutional questions for the Court's consideration of certification to the en banc Court of Appeals. For the reasons set forth in the Commission's Brief Opposing Certification and in Support of Summary Judgment in Favor of the Commission, which the FEC is filing concurrently with this submission, the Court should not make findings of fact or certify any constitutional questions to the Court of Appeals pursuant to 52 U.S.C. § 30110 and should instead dismiss the case as moot or grant summary judgment to the Commission. The following facts may serve as the Commission's statement of material facts as to which there is no genuine issue under LCvR 7(h)(1). If, however, the Court finds that this case or a portion of it merits certification, it should make the following findings of fact, which are "necessary" for any full en banc merits review of plaintiffs' constitutional challenge (D.C. Cir. Remand Order at 1) (Docket No. 1535282), and constitutional questions.

Where indicated, the proposed findings below are consistent with those included in the Court's Certification of Questions of Constitutionality of Federal Election Campaign Act (Docket No. 20), *Holmes v. FEC*, No. 14-1243, 2014 WL 6190937 (D.D.C. Nov. 17, 2014) ("Certification Order").

The following table identifies the declarations filed concurrently herewith:

	SHORT NAME
Declaration of Jayci Sadio, March 12, 2015, and its Exhibits	Sadio Decl.
Declaration of Eileen J. Leamon, March 13, 2015, and its Exhibits[1]	Leamon Decl.

PROPOSED FINDINGS OF FACT / STATEMENT OF MATERIAL FACTS

I. THE PARTIES

1. Plaintiffs Laura Holmes and Paul Jost are a married couple, residing in Miami, Florida. Certification Order, 2014 WL 6190937, at *2; Compl. ¶ 8; Sadio Decl. Exh. 1 (Holmes Interrog. Resp. ¶ 8); *id.* Exh. 2 (Jost Interrog. Resp. ¶ 8).[2]

2. Defendant FEC is the independent agency of the United States with exclusive jurisdiction over the administration, interpretation, and civil enforcement of FECA, 52 U.S.C. §§ 30101-30146 (formerly 2 U.S.C. §§ 431-57), and other statutes. The Commission is empowered to formulate policy with respect to FECA, *id.* § 30106(b)(1) (§ 437c(b)(1)); to make, amend, and repeal such rules and regulations necessary to carry out FECA, *id.* §§ 30107(a)(8),

[1] The citations in these Proposed Facts to specific pages of the Exhibits to the Leamon Declaration are to the "Leamon Decl. Exh." page numbers, which were added to the Exhibit documents for the Court's ease of reference.

[2] Plaintiffs have not verified the factual allegations in their complaint, technically not even for one paragraph for which they responded to an interrogatory asking them to do so because they failed to manually sign those verifications. To the extent the Commission relies on the complaint and the unsigned verification, however, plaintiffs' allegations are not disputed.

30111(a)(8), 30111(d) (§§ 437d(a)(8), 438(a)(8), 438(d)); and to civilly enforce FECA and the Commission's regulations, *id.* §§ 30106(b)(1), 30109(a)(6) (§§ 437c(b)(1), 437g(a)(6)).

II. REGULATORY FRAMEWORK

A. Statutory Contribution Limits

3. Contribution limits have been one of the principal tools for preventing political corruption in this country for nearly seventy-five years. In 1939, Senator Carl Hatch introduced, and Congress passed, S. 1871, officially titled "An Act to Prevent Pernicious Political Activities" and commonly referred to as the Hatch Act. S. Rep. No. 101-165, at *18 (1939); *U.S. Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 560 (1973); 84 Cong. Rec. 9597-9600 (1939). Congress established individual contribution limits in the 1940 amendments to the Hatch Act, Pub. L. No. 76-753, 54 Stat. 767 (1940). That legislation prohibited "any person, directly or indirectly" from making "contributions in an aggregate amount in excess of $5,000, during any calendar year" to any candidate for federal office. *Id.* § 13(a), 54 Stat. 770.

4. By 1971, when Congress began debating the initial enactment of FECA, the Hatch Act's $5,000 per-calendar-year individual contribution limit was being "routinely circumvented." 117 Cong. Rec. 43,410 (1971) (statement of Rep. Abzug).

5. A 1974 congressional report identified multiple instances of such circumvention. For example, the dairy industry had avoided then-existing reporting requirements by dividing a $2,000,000 contribution to President Nixon among hundreds of committees in different States, "which could then hold the money for the President's reelection campaign." Final Report of the Select Committee on Presidential Campaign Activities, S. Rep. No. 981, 93d Cong., 2d Sess. 615 (1974) ("*Final Report*"). Shortly thereafter, President Nixon "circumvented and interfered with" the "legitimate functions of the Agriculture Department" by reversing a decision unfavorable to

the dairy industry, and Attorney General John Mitchell (who was also President Nixon's campaign manager) halted a grand-jury investigation of the milk producers' association. *Id.* at 701, 1184, 1205, 1209; *see* Richard Reeves, *President Nixon: Alone in the White House* 309 (2001) (noting the Secretary of Agriculture's estimate that President Nixon's actions cost the government "about $100 million"). On another occasion, a presidential aide promised an ambassadorship to a particular individual in return for "a $100,000 contribution, which was to be split between 1970 Republican senatorial candidates designated by the White House and [President] Nixon's 1972 campaign." *Final Report* at 492. That arrangement was not unique. *Id.* at 501 (describing a similar arrangement with someone else); *see id.* at 493-94 (listing substantial contributions by ambassadorial appointees); *see also* David W. Adamany & George E. Agree, *Political Money: A Strategy for Campaign Financing in America* 39-41 (1975) (collecting instances of large contributors "giving and getting"); Herbert E. Alexander, *Financing Politics: Money, Elections and Political Reform* 124-26 (1976) (describing contributions that gave the appearance of quid pro quo corruption and may have raised "suspicio[ns] about . . . large campaign gifts").

6. Informed by such findings, the 1974 FECA Amendments enacted shortly after the Watergate scandal included tighter limits on the amounts that individuals, political parties, and political committees could contribute to candidates. In particular, Congress established a $1,000 per-candidate, per-election limit on individual contributions to candidates and their authorized political committees. Fed. Election Campaign Act Amendments of 1974, Pub. L. No. 93-443 § 101(b)(3), 88 Stat. 1263 (first codified at 18 U.S.C. § 608(b)(3)).

7. FECA's contribution limits apply both to direct contributions of money and to in-kind contributions of goods or services. 52 U.S.C. § 30101(8)(A) (2 U.S.C. § 431(8)(A)). The

contribution limits apply on a per-candidate, per-election basis, with “election” defined to include each of the following:

> (A) a general, special, primary, or runoff election; (B) a convention or caucus of a political party which has authority to nominate a candidate; (C) a primary election held for the selection of delegates to a national nominating convention of a political party; and (D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

52 U.S.C. § 30101(1) (2 U.S.C. § 431(1)); Certification Order, 2014 WL 6190937, at *2.

8. The Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (“BCRA”), amended FECA to raise the individual per-candidate, per-election contribution limit and index it for inflation. *See* BCRA § 307(b), 116 Stat. 102-103 (codified at 52 U.S.C. § 30116(a)(3) (2 U.S.C. § 441a(a)(3)); BCRA § 307(d), 116 Stat. 103 (codified at 52 U.S.C. § 30116(c) (2 U.S.C. § 441a(c)(1)).

9. The limit that applied to contributions made to federal candidates during the 2013-2014 election cycle, including the contributions at issue in this case, was $2,600 per candidate, per election. FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013); Certification Order, 2014 WL 6190937, at *1. The FEC recently raised the limit for the 2015-2016 election cycle to $2,700 per candidate, per election. FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 80 Fed. Reg. 5750, 5751 (Feb. 3, 2015).

10. Because FECA defines “election” to include various types of electoral contests, the total amount that one may contribute to a particular candidate during a particular election cycle depends on how many elections that candidate must participate in to successfully pursue the federal office being sought. This means that an individual who supported a candidate that

participated in one primary election and one general election during the 2013-2014 election cycle was permitted to contribute a total of $5,200 to that candidate — $2,600 for the candidate's primary-election campaign and $2,600 for the candidate's general-election campaign. Certification Order, 2014 WL 6190937, at *2.

11. In an election cycle in which a candidate competes in one or more runoffs, special elections, or a political party caucus or convention, in addition to a primary and general election, the total amount that an individual may contribute to that candidate is higher. 52 U.S.C. §§ 30101(1), 30116(a)(1)(A) (2 U.S.C. §§ 431(1), 441a(a)(1)(A)); Certification Order, 2014 WL 6190937, at *2.

12. Plaintiffs' contributions to Congressman Marshall "Mark" Sanford during the 2013-2014 election cycle illustrate the variability of the number of permitted contributions per election cycle. (*See infra* ¶¶ 13-16 and Exhibits cited therein.)

13. In 2013-14, Sanford successfully pursued the congressional seat vacated by Representative Tim Scott, who had served as the United States Representative for the 1st Congressional District of South Carolina until he was appointed to the United States Senate. (Sadio Decl. Exh. 23; Leamon Decl. Exh. 2 at 95-97, 123-24.)

14. Between March and November 2013, plaintiff Laura Holmes contributed the maximum permissible $2,600 to Sanford for each of the following three elections: (1) the special-runoff election against Curtis Bostic for appearance on the ballot of the special-general election to fill the seat vacated by Representative Scott; (2) the special-general election against Elizabeth Colbert Busch to fill the seat vacated by Representative Scott; and (3) Congressman Sanford's 2014 primary election, in which Sanford competed as an unopposed incumbent. (*Id.* Exh. 1 (Holmes Interrog. Resp. ¶ 5); Leamon Decl. Exh. 2 at 95-97, 123-24.)

15. Plaintiff Paul Jost contributed the exact same amounts during the same time period to the Sanford campaign committee in connection with each of those three elections. (Sadio Decl. Exh. 2 (Jost Interrog. Resp. ¶ 5).)

16. Congressman Sanford was reelected in 2014. No other candidate appeared on the ballot for his primary or general elections. (Sadio Decl. Exh. 14.)

B. FEC Implementing Regulations

17. FEC regulations "encourage[]" contributors to designate in writing the particular election for which an individual contribution is intended. 11 C.F.R. § 110.1(b)(2)(i); Certification Order, 2014 WL 6190937, at *2.

18. Undesignated contributions count against the donor's contribution limits for the candidate's next election; designated contributions count against the donor's contribution limits for the named election. 11 C.F.R. § 110.1(b)(2)(ii); Certification Order, 2014 WL 6190937, at *2.

19. When a candidate has net debts outstanding from a past election — including a primary election — a contributor may designate a contribution in writing for that past election. Such contributions may only be accepted for the purpose of retiring debt and only up to the extent of the debt. 11 C.F.R. §§ 110.1(b)(3)(i), (b)(5)(i)(B); Certification Order, 2014 WL 6190937, at *2.

20. If a candidate's net outstanding debts from a past election amount to less than the amount of a contribution designated for a previous election, Commission regulations permit the candidate (or his committee) to refund the contribution, redesignate it (with the donor's written authorization) for a subsequent election, or reattribute the contribution as from a different person. 11 C.F.R. §§ 110.1(b)(3)(i)(A) & (C); Certification Order, 2014 WL 6190937, at *2.

21. A primary contribution that is redesignated for use in a candidate's general election counts against the contributor's general-election limit. 11 C.F.R. § 110.1(b)(5)(iii) ("A contribution redesignated for another election shall not exceed the limitations on contributions made with respect to that election.").

22. If a candidate fails to qualify for the general election, then all general-election contributions received by that candidate must similarly be returned, redesignated, or reattributed. *Id.* § 110.1(b)(3)(i)(C).

23. Past Commission interpretations illustrate the constraints that are placed on committees with respect to primary- and general-election financing. *See infra* ¶¶ 24-27 and Exhibits cited therein.

24. In Advisory Opinion 1986-17 (Green), the Commission approved a request to raise individual contributions for the general election prior to the date of the primary election where the requestor had pledged to account separately for such general election contributions and to refund all such contributions if the candidate lost the primary election and thus would not participate in the general election. (*See* Sadio Decl. Exh. 5.)

25. The Commission explained in Advisory Opinion 1986-17 that FECA permits a committee to spend general-election contributions "prior to the primary election" where such expenditures are "exclusively for the purpose of influencing the prospective general election" and "it is necessary to make advance payments or deposits to vendors for services that will be rendered" after the candidate's general-election candidacy has been established. (*Id.* at 4.) The Commission further explained that all general-election contributions must be refunded if the candidate does not qualify for the general election. (*Id.*)

26. More recently, in Advisory Opinion 2009-15 (Bill White for Texas), the Commission responded to a series of questions regarding the designation, use, reattribution, redesignation, and potential refund of individual contributions made to an authorized committee of a candidate who intended to run for a Senate seat that was expected to be vacant in the next election cycle, but that might become vacant more immediately upon the anticipated resignation of the incumbent. (*See* Sadio Decl. Exh. 6.) Under the circumstances, any midterm vacancy would have been filled by a special election and, if necessary, a special run-off election. (*Id.* at 1-2.)

27. In Advisory Opinion 2009-15, the Commission explained that the committee could accept contributions for the anticipated special election and special runoff election, but "must use an acceptable accounting method to distinguish between the contributions received for each of the two elections, *e.g.*, by designating separate bank accounts for each election or maintaining separate books and records for each election." (*Id.* at 5 (citing 11 C.F.R. § 102.9(e)(1)).) The Commission further advised the committee that it "must not spend funds designated for the runoff election unless [the candidate] participates in the runoff." (*Id.* at 5 n.6 (citing 11 C.F.R. § 102.9(e)(3)).)

28. The Commission has also pursued enforcement actions in instances where primary-election candidates violated the rules requiring candidates that fail to qualify for a general election to refund (or redesignate or reattribute) any general-election contributions they have received. *See infra* ¶¶ 29-30 and Exhibits cited therein.

29. In *In the Matter of Jim Treffinger for Senate, Inc.*, Matter Under Review 5388, for example, the Commission, in April 2006, entered into a conciliation agreement with the Treffinger for Senate committee and its treasurer to resolve their violations of FECA and FEC

regulations based on their failure to refund, reattribute, or redesignate nearly all of the candidate's more than $200,000 in general-election contributions despite his loss of the primary election. (Sadio Decl. Exh. 7 at 4.) The committee and treasurer admitted the violations and agreed to pay a civil penalty of $57,000. (*Id.* at 5.)

30. Similarly, in *In re Wynn for Congress*, the Commission in 2010 entered into a conciliation agreement with the Wynn for Congress committee and its treasurer to resolve their violations of FECA and FEC regulations based on, *inter alia*, their failure to employ an accounting method to distinguish between primary and general-election contributions and their failure to refund the excessive contributions within sixty days of the candidate's primary-election loss. (Sadio Decl. Exh. 8 at 2-4.) The Committee admitted to the violations and agreed to pay a civil penalty of $8,000.00. (*Id.* at 4.)

31. Commission regulations permit any candidate participating in a general election that has remaining, unused primary contributions to use such unused primary contributions to pay for the candidate's general-election expenses. 11 C.F.R. § 110.3(c)(3).

32. General-election candidates are also permitted to use general-election contributions to pay outstanding primary-election debts. *Id.* § 110.1(b)(3)(iv). Candidates need not obtain contributor authorization to make such payments from their primary, general, and any other election accounts, and such payments by candidates do not change the per-election contribution limits for individual contributors. *Id.* §§ 110.1(b)(3)(iv), 110.3(c)(3); Sadio Decl. Exh. 3 at 21 (FEC Campaign Guide for Congressional Candidates and Committees).

33. An individual contribution is considered to have been "made when the contributor relinquishes control over the contribution." 11 C.F.R. § 110.1(b)(6). Generally, a recipient candidate and his or her campaign may spend contributions to the campaign however the

campaign chooses. Thus, the money can be spent on the candidate's next election campaign, transferred to another committee (within any applicable contribution limits), or used for any "other lawful purpose unless prohibited." 52 U.S.C. § 30114(a) (2 U.S.C. § 439a(a)).

III. PRIMARY AND GENERAL ELECTIONS

34. Primary elections serve the purpose of determining, in accordance with state law, which candidates are "nominated . . . for election to Federal office in a subsequent election." 11 C.F.R. § 100.2(c)(1) (defining "primary election").

35. General elections are those held to "fill a vacancy in a Federal office (*i.e.*, a special election) and which [are] intended to result in the final selection of [] single individual[s] to the office at stake." 11 C.F.R. § 100.2(b)(2) (defining "general election").

36. Nearly all fifty states in the Union use some type of primary elections in their procedures for electing individuals to serve in federal office. Eleven states use "open" primaries, in which any registered voter may vote. Eleven states use "closed" primaries, in which only voters previously registered as members of a political party may participate in the nomination process of their party. Two states use a "top two" primary model. *See infra* ¶ 41 (discussing "top two" systems in California and Washington). And twenty-four states use some "hybrid" primary model, falling somewhere between the "open" and "closed" primary types. (Sadio Decl. Exh. 15; *id.* Exh. 4 at 1-2.)

IV. VARIATIONS IN STATE ELECTION PROCEDURES

37. FECA's separate contribution limits for each election within a particular election cycle account for the lack of uniformity in federal electoral contests — including the races within different political parties for the same particular office.

38. Louisiana, for example, currently follows a unique electoral procedure in which no congressional primary election is held at all. (Sadio Decl. Exh. 4 at 2 n.8.) Only where a candidate fails to win a majority of the vote does the state hold a second election, termed a "runoff," in December of the same year. (*Id.*; *see* Leamon Decl. Exh. 1 at 31 (identifying results of Louisiana congressional electoral contests featuring only a November election and others featuring a second election in December of the same year).)

39. In 2014, for example, the first election for candidates seeking federal office was the general election held on November 4, 2014. Because no candidate won a majority of the vote in Louisiana's November 2014 election for U.S. Senate, the state held a second election on December 6, 2014. (Sadio Decl. Exhs. 18-19.) In the December election, incumbent Democrat Senator Mary Landrieu lost her seat to a challenger, Republican and former Representative Bill Cassidy. (Sadio Decl. Exh. 19.)

40. Between 2008 and 2010, Louisiana followed a different procedure that included regular primary and general elections, as well as runoff elections in instances where no candidate received a majority of the vote in the primary or general contest. (*See, e.g.*, Leamon Decl. Exh 1 at 55, 71.)

41. California — the state in which plaintiff Paul Jost's preferred candidate sought election — and Washington each hold "top two" primary elections in which all candidates, regardless of their party, compete against one another. In both California and Washington, a candidate who lacks an intraparty primary challenger may still fail to proceed to the general election because all candidates for a particular office are listed on the same primary ballot and the two candidates that receive the most votes, *regardless of party preference*, proceed to compete in the general election. Sadio Decl. Exhs. 9, 17; *see* Certification Order, 2014 WL

6190937, at *2 (describing top two system in California).

42. Ten states — Alabama, Arkansas, Georgia, Iowa, Mississippi, North Carolina, Oklahoma, South Carolina, South Dakota, and Texas — currently provide for post-primary runoff elections or conventions in federal electoral contests under varying circumstances. (Sadio Decl. Exh. 4 at 1-2.)

43. In the event of post-primary runoff elections or conventions, candidates may receive additional contributions, up to the applicable per-election limit, for their runoff election campaigns. 52 U.S.C. § 30101(1) (2 U.S.C. § 431(1)).

44. Over the course of the last six election cycles, from the 2003-2004 cycle through the 2013-2014 cycle, 95 congressional races have included a primary runoff contest in at least one of the party primaries, averaging more than fifteen primary runoff elections per cycle. *See infra* ¶¶ 45-52 and Exhibits cited therein.

45. During the 2013-2014 election cycle, fifteen congressional races in seven states included at least one primary runoff contest after the party primaries. (Leamon Decl. Exh. 1 at 1-24.)

46. In one primary runoff, six-term incumbent Mississippi Senator Thad Cochran failed to receive enough votes in the Mississippi Republican Senate primary election to avoid having to compete in an additional election — an expensive runoff race (Sadio Decl. Exhs. 24, 25) — against his primary opponent, Chris McDaniel, before proceeding to the general election. (Leamon Decl. Exh. 1 at 10, 12.) In the Mississippi Democratic Senate primary, by contrast, Travis Childers won by a sweeping margin and thus avoided having to participate in a runoff. (Leamon Decl. Exh. 1 at 10.)

47. In another example, in the 2014 primary election for Iowa's Third Congressional District, no Republican primary candidate attained the 35 percent of the vote required under Iowa law to win the primary election. (Leamon Decl. Exh.1 at 8.) The primary election was thus deemed "inconclusive" and the candidates were selected by a political party convention, IA Code § 43.52, for which a separate contribution limit applied, 52 U.S.C. § 30101(1)(B) (2 U.S.C. § 431(1)(B)). (Leamon Decl. Exh. Exh.1 at 7-8; Sadio Decl. Exh. 22.)

48. During the 2011-2012 election cycle, 21 congressional races in seven states included at least one primary runoff contest after the party primaries. (Leamon Decl. Exh. 1 at 25-42.)

49. During the 2009-2010 election cycle, 29 congressional races in nine states included at least one primary runoff contest after the party primaries. (Leamon Decl. Exh. 1 at 43-66.)

50. During the 2007-2008 election cycle, ten congressional races in six states included at least one primary runoff contest after the party primaries. (Leamon Decl. Exh. 1 at 67-.75)

51. During the 2005-2006 election cycle, eight congressional races in five states included at least one primary runoff contest after the party primaries. (Leamon Decl. Exh. 1 at 76-89.)

52. During the 2003-2004 election cycle, twelve congressional races in five states included at least one primary runoff contest after the party primaries. (Leamon Decl. Exh. 1 at 90-102.)

53. FECA's separate contribution limits for each election within a particular election cycle further account for the occurrence of special elections — including special primary

elections, special runoff elections, and special general elections — which are held, in accordance with state-specific procedures, in various special circumstances including when necessary to fill a seat vacated by an incumbent who left office before completing the full term that individual was elected to serve.

54. Over the course of the last six election cycles, from the 2003-2004 cycle through the 2013-2014 cycle, there have been 126 special elections, averaging more than 21 per cycle. *See infra* ¶¶ 55-61 and Exhibits cited therein.

55. During the 2013-2014 election cycle, twelve states held a total of 33 special elections — including special primary elections, special runoff elections, and special general elections — to fill fourteen separate federal offices in those states. (Leamon Decl. Exh. 2 at 93-126.)

56. Plaintiffs have taken advantage of the per-election contribution limits to contribute three of the maximum per-election contributions to a single candidate in one election cycle. *See supra* ¶¶ 12-15 (describing plaintiffs' respective $2,600 contributions in 2013 to then-candidate Mark Sanford in connection with three separate elections during the 2013-2014 election cycle, including the special runoff election and special general election to serve as United States Representative for the 1st Congressional District of South Carolina).

57. During the 2011-2012 election cycle, nine states held a total of seventeen special elections — including special primary elections, special runoff elections, special general elections, and special party caucuses — to fill ten separate federal offices in those states. (Leamon Decl. Exh. 2 at 76-92.)

58. During the 2009-2010 election cycle, eleven states held a total of 25 special elections — including special primary elections, special runoff elections, and special general

elections — to fill sixteen separate federal offices in those states. (Leamon Decl. Exh. 2 at 50-75.)

59. During the 2007-2008 election cycle, eleven states held a total of 27 special elections — including special primary elections, special runoff elections, and special general elections — to fill fifteen separate federal offices in those states. (Leamon Decl. Exh. 2 at 23-49.)

60. During the 2005-2006 election cycle, four states held a total of eighteen special elections — including special primary elections, special runoff elections, and special general elections — to fill thirteen separate federal offices in those states. (Leamon Decl. Exh. 2 at 8-22.)

61. During the 2003-2004 election cycle, five states held a total of six special elections — including special primary elections, special runoff elections, and special general elections — to fill five separate federal offices in those states. (Leamon Decl. Exh. 2 at 1-7.)

62. When candidates do not face an opponent listed on primary or general-election ballots, they are still subject to challenge in most states by potential write-in candidates. *See, e.g.*, Sadio Decl. Exh. 16 (describing varying procedures for write-in candidates).

63. Write-in contenders have won at least seven U.S. Congressional races and two U.S. Senate races. *See, e.g.*, *id.* (describing seven U.S. Congressional races and Strom Thurmond's U.S. Senate victory); *id.* Exh. 26 (State of Alaska's official results showing plurality of write-in votes); *id.* Exh. 27 (describing Alaska Senator Lisa Murkowski's write-in victory).

V. PLAINTIFFS' DESIRED CONTRIBUTIONS AND PROPOSED CONTRIBUTION-LIMIT SCHEME

64. In 2014, Ms. Holmes supported Carl DeMaio, a Republican candidate for California's 52nd Congressional District (CA-52).

65. Ms. Holmes chose not to make any contributions to Mr. DeMaio for the primary election. Certification Order, 2014 WL 6190937, at *3; Compl. ¶ 21; Sadio Decl. Exh. 1 (Holmes RFA Resp. ¶ 2).

66. Mr. DeMaio finished second in California's June 3, 2014 "top two" congressional primary election behind incumbent Congressman Scott Peters, a Democrat. Certification Order, 2014 WL 6190937, at *3; Compl. ¶¶ 19-20; *see* Sadio Decl. Exh. 10 at 76.

67. Under California's "top two" primary system, *see supra* ¶ 41, Congressman Peters and Mr. DeMaio opposed each other again in the general election. Sadio Decl. Exhs. 10-11; *see also id.* Exh. 1 (Holmes RFA Resp. ¶ 3).

68. Ms. Holmes contributed $2,600 to DeMaio's campaign committee for his general-election campaign on or about July 21, 2015. Certification Order, 2014 WL 6190937, at *3; Compl. ¶ 21; Sadio Decl. Exh. 1 (Holmes RFA Resp. ¶ 1).

69. Ms. Holmes wanted to contribute an additional $2,600 to Mr. DeMaio for his general-election campaign but did not do so because that contribution would have exceeded the $2,600 per-election contribution limit established in the Federal Election Campaign Act ("FECA" or "Act") for individual contributions to candidates during the 2013-2014 election cycle. Certification Order, 2014 WL 6190937, at *3; Compl. ¶ 21; *see* FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013).

70. In 2014, plaintiff Jost supported Marianette Miller-Meeks, a Republican candidate for Iowa's Second Congressional District. Certification Order, 2014 WL 6190937, at *3; Compl. ¶¶ 22-24.

71. Mr. Jost chose not to make any contributions to Dr. Miller-Meeks for the primary election. Certification Order, 2014 WL 6190937, at *3; Compl. ¶ 24; Sadio Decl. Exh. 2 (Jost RFA Resp. ¶ 1).

72. Dr. Miller-Meeks won her primary election on June 3, 2014. So did Congressman Loebsack. Sadio Decl. Exh. 21; Leamon Decl. Exh. 1 at 8; Certification Order, 2014 WL 6190937, at *3.

73. In the general election, Dr. Miller-Meeks faced incumbent Congressman David Loebsack, who had been the only candidate on the ballot in the June 3, 2014 Democratic Party primary for Iowa's Second Congressional District. Sadio Decl. Exh. 20; Certification Order, 2014 WL 6190937, at *3; Compl. ¶¶ 19-20.

74. Mr. Jost contributed $2,600 to Dr. Miller-Meeks's campaign committee for her general-election campaign in July 2014. Certification Order, 2014 WL 6190937, at *3; Compl. ¶ 24.

75. Mr. Jost wanted to contribute an additional $2,600 to Dr. Miller-Meeks for her general-election campaign but did not do so because that contribution would have exceeded FECA's $2,600 per-election contribution limit for individual contributions to candidates during the 2013-2014 election cycle. Certification Order, 2014 WL 6190937, at *3; Compl. ¶ 24; *see* FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013).

76. In this case, plaintiffs challenge FECA's contribution restriction limiting the amounts Ms. Holmes and Mr. Jost could lawfully contribute to the general election campaigns of their respective candidates — Mr. DeMaio and Dr. Miller-Meeks — to $2,600. They challenge the Act's $2,600 per-election contribution limit grounds as applied to their desires to have

contributed $5,200 (*i.e.*, excess contributions of $2,600) to their respective candidates' 2014 general-election campaigns.

77. Plaintiffs' challenge is based on the alleged "asymmetry posed whenever a candidate who faces a primary challenge competes in the general election against a candidate who ran virtually unopposed during the primary." (Sadio Decl. Exh. 1 (Holmes RFA Resp. ¶ 4); *id.* Exh. 2 (Jost RFA Resp. ¶ 3).)

78. Plaintiffs' challenge is "is not based on an incumbent/challenger distinction." (*Id.* Exh. 1 (Holmes RFA Resp. ¶ 4); *id.* Exh. 2 (Jost RFA Resp. ¶ 3).)

79. Plaintiffs seek to change FECA's separate $2,600 limits for primary, general, and other elections to a single $5,200 per-election-cycle contribution limit in instances in which the recipient candidate's opponent did not face a "substantial primary opponent." Compl. ¶ 66.

80. Neither FECA nor the FEC's regulations define or use the phrase "substantial primary opponent."

81. Plaintiffs seek to have the Court promulgate a definition of a "substantial primary opponent" as "[a] candidate for office who is a member of the same political party as his or her opponent, must compete in the same primary election, and is sufficiently likely to succeed that his or her candidacy would materially alter the competitive position of a candidate similarly situated to Scott Peters during the 2014 primary." (Sadio Decl. Exh. 1 (Holmes Interrog. Resp. ¶ 2); *id.* Exh. 2 (Jost Interrog. Resp. ¶ 2 (substituting "David Loebsack" for "Scott Peters")).)

82. Neither FECA nor the FEC's regulations involve any inquiry regarding whether a candidate is "sufficiently likely to succeed" such that "his or her candidacy would materially alter the competitive position" of another candidate, including one "similarly situated" to Congressmen Peters or Loebsack in their 2014 primary elections.

83. There is currently no context in which the FEC evaluates the substantiality of congressional candidates (either on the ballots or write-ins) or forecasts their election prospects.

84. Plaintiffs identify a class of persons that should be permitted to make "extra" contributions that is defined as follows: "Those able to contribute up to the primary and general election contribution limits to candidates running under competitive circumstances substantially similar to those Scott Peters faced during the 2014 election cycle." Sadio Decl. Exh. 1 (Holmes Interrog. Resp. ¶ 6); *id.* Exh. 2 (Jost Interrog. Resp. ¶ 6 (substituting "David Loebsack" for "Scott Peters")).)

85. Scott Peters competed directly against three candidates in the 2014 California congressional primary election. (Sadio Decl. Exh. 10; *see also id.* Exh. 1 (Holmes RFA Resp. ¶ 3).)

86. In November 2014, Scott Peters won reelection of his seat representing California's 52nd Congressional District in the United States House of Representatives. Congressman Peters defeated Carl DeMaio in the general election held on November 4, 2014. (Sadio Decl. Exh. 11 at 8.)

87. In 2014, Congressman David Loebsack won reelection of his seat representing Iowa's 2nd Congressional District in the United States House of Representatives. Congressman Loebsack defeated Marianette Miller-Meeks in the general election held on November 4, 2014. (Sadio Decl. Exh. 20.)

88. Plaintiffs do not identify or allege with particularity (a) any candidates in a general election they will support who (b) prevailed over a "substantial primary opponent" and (c) will face a candidate who did not face a "substantial primary opponent."

PROPOSED CONSTITUTIONAL QUESTIONS

1. Does FECA's provision limiting individual contributions to candidates to $2,600 on a per-election basis, 52 U.S.C. § 30101(1)(A) (2 U.S.C. § 431(1)(A)); *id.* § 30116(a)(1)(A) (§ 441a(a)(1)(A)), violate plaintiffs' First Amendment associational rights, as applied to their desires to have contributed $5,200 (two times the permitted limit) to the 2014 general election campaigns of candidates on the basis that these candidates' general-election opponents had a fundraising advantage because they did not, in plaintiffs' view, face "substantial primary opponents"?

2. Does FECA's provision limiting individual contributions to candidates to $2,600 on a per-election basis, 52 U.S.C. § 30101(1)(A) (2 U.S.C. § 431(1)(A)); *id.* § 30116(a)(1)(A) (§ 441a(a)(1)(A)), deny plaintiffs equal protection of the law under the Fifth Amendment, as applied to their desires to have contributed $5,200 (two times the permitted limit) to the 2014 general election campaigns of candidates on the basis that these candidates' general-election opponents had a fundraising advantage because they did not, in plaintiffs' view, face "substantial primary opponents"?

Respectfully submitted,

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Dated: March 13, 2015

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	)	Civ. No. 14-1243 (RMC) DECLARATION OF JAYCI A. SADIO

DECLARATION OF JAYCI A. SADIO

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

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

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

3. I make this declaration based on my personal knowledge and in support of the Commission's (1) Brief Opposing Certification and in Support of Summary Judgment in Favor of the Commission and (2) Proposed Findings of Fact / Statement of Material Facts and Constitutional Questions in the above-captioned matter.

4. As part of my duties at the Commission, I maintain records of litigation filings and materials. Attached as **Exhibit 1** is a true and correct copy of: Plaintiff Laura Holmes's

Responses to Defendant's Corrected First Set of Discovery Requests, dated March 5, 2015, which the Commission received by email on the same date.

5. Attached as **Exhibit 2** is a true and correct copy of: Plaintiff Paul Jost's Responses to Defendant's Corrected First Set of Discovery Requests, dated March 5, 2015, which the Commission received by email on the same date. Not included in this attachment is an exhibit to the discovery responses containing a credit card statement.

6. As part of my duties at the Commission, I am familiar with the Commission's publication of Campaign Guides, which provide information and explanations about federal campaign finance rules and requirements. I am also familiar with the Commission's publication of electronic versions of such Campaign Guides, including the June 2014 Campaign Guide for Congressional Candidates and Committees, on the FEC website. Attached as **Exhibit 3** is a true and correct copy of excerpts of: FEC, *Congressional Candidates and Committees* (June 2014). The attached excerpts were retrieved on March 10, 2015 from the FEC website: http://www.fec.gov/pdf/candgui.pdf.

7. As part of my duties at the Commission, I am also familiar with the Commission's publication on the FEC website of information regarding Congressional Primary Election Dates and Candidate Filing Deadlines for Ballot Access. In particular, I am familiar with the Commission's publication of the 2014 Congressional Primary Election Dates and Candidate Filing Deadlines for Ballot Access (based on data as of 7/28/2014), on the FEC website. Attached as **Exhibit 4** is a true and correct copy of: FEC, *2014 Congressional Primary Election Dates and Candidate Filing Deadlines for Ballot Access*. The attached was retrieved on March 10, 2015 from the FEC website: http://www.fec.gov/pubrec/fe2014/2014pdates.pdf.

8. As part of my duties at the Commission, I am also familiar with the Commission's publication on the FEC website of Advisory Opinions, which are official Commission responses to questions regarding the application of federal campaign finance law to specific factual situations. Attached as **Exhibit 5** is a true and correct copy of: FEC Advisory Opinion 1986-17 (Green) (June 27, 1986). The attached was retrieved on March 10, 2015 from the FEC website by entering Advisory Opinion number 1986-17 into the Commission's advisory opinion database: http://saos.nictusa.com/saos/searchao. It is publicly available on the FEC website: http://saos.fec.gov/saos/aonum.jsp?AONUM=1986-17.

9. Attached as **Exhibit 6** is a true and correct copy of: FEC Advisory Opinion 2009-15 (Bill White for Texas) (July 29, 2009). The attached was retrieved on March 10, 2015 from the FEC website by entering Advisory Opinion number 2009-15 into the Commission's advisory opinion database: http://saos.nictusa.com/saos/searchao. It is publicly available on the FEC website: http://saos.fec.gov/saos/aonum.jsp?AONUM=2009-15.

10. As part of my duties at the Commission, I am also familiar with the Commission's publication on the FEC website of completed administrative enforcement cases including the public documents from such administrative matters. Attached as **Exhibit 7** is a true and correct copy of: *In the Matter of Jim Treffinger for Senate, Inc.*, MUR 5388, Conciliation Agreement (Apr. 24, 2006). The attached was retrieved on March 10, 2015 from the FEC website: http://eqs.fec.gov/eqsdocsMUR/000051D0.pdf

11. Attached as **Exhibit 8** is a true and correct copy of: *In the matter of Wynn for Congress*, MUR 6230, Conciliation Agreement (June 10, 2010). The attached was retrieved on March 10, 2015 from the FEC website: http://eqs.fec.gov/eqsdocsMUR/10044272923.pdf.

12. As part of my duties at the Commission, I conduct research using various data sources, including Westlaw, online news publications, and other internet sources.

13. Attached as **Exhibit 9** is a true and correct copy of excerpts of: California Secretary of State, *No Party Preference Information*. The attached excerpts were retrieved on March 10, 2015 from the following website: https://www.sos.ca.gov/elections/no-party-preference.htm.

14. Attached as **Exhibit 10** is a true and correct copy of excerpts of: California Secretary of State, *Statement of Vote, June 3, 2014, Statewide Direct Primary Election*. The attached excerpts were retrieved on March 10, 2015 from the following website: http://elections.cdn.sos.ca.gov/sov/2014-primary/pdf/2014-complete-sov.pdf.

15. Attached as **Exhibit 11** is a true and correct copy of excerpts of: California Secretary of State, *Statement of Vote, November 4, 2014, General Election*. The attached excerpts were retrieved on March 10, 2015 from the following website: http://elections.cdn.sos.ca.gov/sov/2014-general/pdf/2014-complete-sov.pdf.

16. Attached as **Exhibit 12** is a true and correct copy of: South Carolina State Election Commission, *RUNOFF – U.S. House of Representatives District 1 Primary*, April 5, 2013. The attached was retrieved on March 10, 2015 from the following website: http://www.enr-scvotes.org/SC/46107/116099/en/summary.html.

17. Attached as **Exhibit 13** is a true and correct copy of: South Carolina State Election Commission, *Special Election – U.S. House of Representatives District 1*, May 10,

2013. The attached was retrieved on March 10, 2015 from the following website: http://www.enr-scvotes.org/SC/46180/116910/en/summary.html.

18. Attached as **Exhibit 14** is a true and correct copy of an excerpt of: South Carolina State Election Commission, *2014 Statewide General Election*, December 15, 2014. The attached excerpt was retrieved on March 10, 2015 from the following website: http://www.enr-scvotes.org/SC/53424/149816/en/summary.html#.

19. Attached as **Exhibit 15** is a true and correct copy of: National Conference of State Legislatures, *State Primary Election Types*, June 24, 2014. The attached was retrieved on March 10, 2015 from the following website: http://www.ncsl.org/research/elections-and-campaigns/primary-types.aspx.

20. Attached as **Exhibit 16** is a true and correct copy of: Burt Helm, *The Ins and Outs of Write-Ins*, Bloomberg Business, Nov. 1, 2004. The attached was retrieved on March 12, 2015 from the following website: http://www.bloomberg.com/bw/stories/2004-11-01/the-ins-and-outs-of-write-ins.

21. Attached as **Exhibit 17** is a true and correct copy of: Washington Secretary of State, *Elections & Voting, Top 2 Primary*. The attached was retrieved on March 10, 2015 from the following website: https://wei.sos.wa.gov/agency/osos/en/voters/Pages/top_2_primary.aspx.

22. Attached as **Exhibit 18** is a true and correct copy of: Louisiana Secretary of State, *Official Election Results, Results for Election Date: 11/4/2014*. The attached was retrieved on March 10, 2015 from the following website: http://staticresults.sos.la.gov/11042014/11042014_Congressional.html.

23. Attached as **Exhibit 19** is a true and correct copy of: Louisiana Secretary of State, *Official Election Results, Results for Election Date: 12/6/2014*. The attached was retrieved on March 10, 2015 from the following website: http://staticresults.sos.la.gov/12062014/12062014_Congressional.html.

24. Attached as **Exhibit 20** is a true and correct copy of an excerpt of: State of Iowa Winner List, *2014 General Election*. The attached excerpt was retrieved on March 10, 2015 from the following website: http://sos.iowa.gov/elections/pdf/2014/general/Winnerlist.pdf.

25. Attached as **Exhibit 21** is a true and correct copy of an excerpt of: State of Iowa Winner List, *2014 Primary Election*. The attached excerpt was retrieved on March 10, 2015 from the following website: http://sos.iowa.gov/elections/pdf/2014/primary/Winnerlist.pdf.

26. Attached as **Exhibit 22** is a true and correct copy of: William Petroski, *David Young Wins 3rd District GOP Nomination in Stunning Upset*, Des Moines Register (June 21, 2014, 8:21 PM CDT). The attached was retrieved on March 10, 2015 from the following website: http://www.desmoinesregister.com/story/news/politics/2014/06/21/iowa-young-david-congress/11216169/.

27. Attached as **Exhibit 23** is a true and correct copy of: Kim Severson, *Looking Past Sex Scandal, South Carolina Returns Ex-Governor to Congress*, N.Y. Times, May 7, 2013. The attached was retrieved on March 10, 2015 from the following website: http://www.nytimes.com/2013/05/08/us/south-carolina-election-a-referendum-on-sanford.html.

28. Attached as **Exhibit 24** is a true and correct copy of: Alexander Burns, *Thad Cochran, Chris McDaniel Barrel Toward Runoff*, Politico (last updated June 4, 2014, 4:57 p.m.).

The attached was retrieved on March 10, 2015 from the following website:
http://www.politico.com/story/2014/06/primary-elections-2014-mississippi-california-new-jersey-iowa-107388.html.

29. Attached as **Exhibit 25** is a true and correct copy of: Aaron Blake, *Thad Cochran Faces Very Tough Odds in the Runoff. Here's Why.*, Washington Post (June 4, 2014). The attached was retrieved on March 10, 2015 from the following website:
http://www.washingtonpost.com/blogs/the-fix/wp/2014/06/04/thad-cochran-faces-very-tough-odds-in-the-runoff-heres-why/.

30. Attached as **Exhibit 26** is a true and correct copy of: State of Alaska Division of Elections, *Official General Election Results, December 28, 2010*. The attached was retrieved on March 12, 2015 from the following website:
http://www.elections.alaska.gov/results/10GENR/data/results.pdf.

31. Attached as **Exhibit 27** is a true and correct copy of: Sandhya Somashekhar, *In Alaska's Senate Race, Murkowski's Write-In Bid Bears Fruit*, Wash. Post, Nov. 4, 2010. The attached was retrieved on March 12, 2015 from the following website:
http://www.washingtonpost.com/wp-dyn/content/article/2010/11/03/AR2010110308817.html.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on March 12, 2015.

Jayci A. Sadio
Paralegal Specialist
Federal Election Commission

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA HOLMES, *et al.*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
FEDERAL ELECTION COMMISSION,	)	C.A. No. 1:14-cv-01243-RMC
	)	
	)	
Defendant.	)	
	)	
	)	
	)	

PLAINTIFF LAURA HOLMES'S RESPONSES TO DEFENDANT'S CORRECTED FIRST SET OF DISCOVERY REQUESTS

TO: Lisa J. Stevenson
Deputy General Counsel – Law

Kevin Deeley
Acting Associate General Counsel

Erin Chlopak
Acting Assistant General Counsel

Benjamin R. Streeter, III
Attorney

Steve Hajjar
Attorney

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463
(202) 694-1650

In accordance with this Court's Order of February 10, 2015 (Dkt. No. 24), FED. R. CIV. P. 33 and 36, and D.C. R. CIV. P. 26.2(d) and 30.4, Plaintiff Laura Holmes, by and through undersigned counsel, responds and answers the requests for admission and interrogatories served on February 19, 2015.

REQUESTS FOR ADMISSION

1. On or around July 21, 2014, YOU CONTRIBUTED $2,600 to CARL DEMAIO. Compl. ¶ 21.

Response: ADMIT.

2. YOU chose not to CONTRIBUTE to CARL DEMAIO during the 2014 primary election race in which he ran (ending on June 3, 2014). Compl. ¶ 21.

Response: ADMIT.

3. In California's "top two" primary system (Compl. ¶ 20), CARL DEMAIO and SCOTT PETERS were opponents during the 2014 primary election race.

Response: DENY insofar as this suggests that DeMaio and Peters were the *only* two candidates at the primary stage. ADMIT insofar as both DeMaio and Peters were candidates during the 2014 primary election.

4. YOUR challenge "is not based on an incumbent/challenger distinction, but rather the asymmetry posed whenever a candidate who faces a primary challenge competes in the general election against a candidate who ran virtually unopposed during the primary." (Opp. to Mot. to Remand at 9 (D.C.

Cir. Doc. #1531459 (quoting Pls.' Reply Mem. on Mot. for Prelim. Injunction (Docket No. 13) at 11(same)).)

Response: ADMIT.

INTERROGATORIES

1. State the factual basis for YOUR claim that individuals who made CONTRIBUTIONS to SCOTT PETERS for his 2014 primary election race were "effectively" giving "money solely for the general election." Compl. ¶ 8.

Response: Scott Peters was the only member of the Democratic Party seeking election to serve as the United States Representative for the 52nd Congressional district of California during the 2014 election cycle. Monies collected and expended by Mr. Peters's campaign thus effectively furthered only his prospects of securing victory in the general election.

2. Define the phrase "substantial primary opponent." Compl. ¶ 66.

Response: A candidate for office who is a member of the same political party as his or her opponent, must compete in the same primary election, and is sufficiently likely to succeed that his or her candidacy would materially alter the competitive position of a candidate similarly situated to Scott Peters during the 2014 primary.

3. State when the determination of whether there is a "substantial primary opponent" (Compl. ¶ 66) is made.

Response: If Plaintiffs prevail, Defendant will bear the burden of answering this question. Defendant is tasked with promulgating rules and regulations to implement federal campaign finance laws—including adopting decisions of the judiciary vindicating as-applied challenges to those laws. For example, Defendant implemented the Supreme Court's as-applied ruling in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007). 72 Fed. Reg. 72899 ("The Federal Election Commission is revising its rules governing electioneering communications. These revisions implement the Supreme Court's decision in *FEC* v. *Wisconsin Right to Life, Inc.,* which held that the prohibition on the use of corporate and labor organization funds for electioneering communications is unconstitutional as applied to certain types of electioneering communications").

4. State who determines whether there is a "substantial primary opponent." Compl. ¶ 66.

Response: If Plaintiffs prevail, Defendant will bear the burden of answering this question. Defendant is tasked with promulgating rules and regulations to implement federal campaign finance laws—including adopting decisions of the judiciary vindicating as-applied challenges to those laws. For example, Defendant implemented the Supreme Court's as-applied ruling in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007). 72 Fed. Reg. 72899 ("The Federal Election Commission is revising its rules governing electioneering communications. These

revisions implement the Supreme Court's decision in *FEC* v. *Wisconsin Right to Life, Inc.,* which held that the prohibition on the use of corporate and labor organization funds for electioneering communications is unconstitutional as applied to certain types of electioneering communications”).

5. State the amounts YOU CONTRIBUTED to MARSHALL SANFORD between January 1, 2013 and December 31, 2014, and identify the election associated with each CONTRIBUTION.

Response: Plaintiff notes that the responsive information is within the Defendant’s custody, and plainly stated in Representative Sanford’s filings with the Commission. *See, e.g.,* FED. R. CIV. P. 26(b)(2)(C)(i). In good faith, however, Plaintiff responds.

$2,600 on March 21, 2013 for the 2013 runoff election

$2,600 on April 5, 2013 for the 2013 special general election

$2,600 on November 22, 2013 for the 2014 primary election

$150 on May 7, 2014 for the 2014 general election

$1,300 on December 26, 2014 for the 2016 primary election

6. Define the class of persons that is permitted to make “‘extra’ contributions” to CANDIDATES. Compl. ¶ 71.

Response: Those able to contribute up to the primary and general election contribution limits to candidates running under competitive circumstances substantially similar to those Scott Peters faced during the 2014 election cycle.

7. For each request for admission not admitted, state the reason or reasons the request was not admitted.

Response: Not applicable.

8. Verify the statements about YOU in paragraph 8 of the complaint.

Response: The statements in paragraph 8 of my complaint are true and correct.

By: Laura Holmes
c/o Allen Dickerson, Attorney

Served via email this 5th day of March, 2015,

/s/ Allen Dickerson
Allen Dickerson
CENTER FOR COMPETITIVE POLITICS
124 S. West Street, Suite 201
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Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA HOLMES, *et al.*	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
FEDERAL ELECTION COMMISSION,	)	C.A. No. 1:14-cv-01243-RMC
	)	
	)	
Defendant.	)	
	)	
	)	
	)	

PLAINTIFF PAUL JOST'S RESPONSES TO DEFENDANT'S CORRECTED FIRST SET OF DISCOVERY REQUESTS

TO: Lisa J. Stevenson
Deputy General Counsel – Law

Kevin Deeley
Acting Associate General Counsel

Erin Chlopak
Acting Assistant General Counsel

Benjamin R. Streeter, III
Attorney

Steve Hajjar
Attorney

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463
(202) 694-1650

In accordance with this Court's Order of February 10, 2015 (Dkt. No. 24), FED. R. CIV. P. 33, 34 and 36, and D.C. R. CIV. P. 26.2(d) and 30.4, Plaintiff Paul Jost, by and through undersigned counsel, responds and answers the document requests, requests for admission, and interrogatories served on February 19, 2015.

DOCUMENT REQUESTS

1. Documents sufficient to show that, as of July 21, 2014, YOU had "already" CONTRIBUTED $2,600 to MARIANNETTE MILLER-MEEKS "for the general election." Compl. ¶ 24.

Response: Such documents are attached to these Responses as Exhibit A.

REQUESTS FOR ADMISSION

1. YOU chose not to CONTRIBUTE to MARIANNETTE MILLER-MEEKS during the 2014 primary election race in which she ran (ending on June 3, 2014). Compl. ¶ 24.

Response: ADMIT.

2. YOU made no CONTRIBUTIONS, in 2014 OR at any other time, to MARIANNETTE MILLER-MEEKS.

Response: DENY.

3. YOUR challenge "is not based on an incumbent/challenger distinction, but rather the asymmetry posed whenever a candidate who faces a primary challenge competes in the general election against a candidate who ran

virtually unopposed during the primary." (Opp. to Mot. to Remand at 9 (D.C. Cir. Doc. #1531459 (quoting Pls.' Reply Mem. on Mot. for Prelim. Injunction (Docket No. 13) at 11(same)).)

Response: ADMIT.

INTERROGATORIES

1. State the factual basis for YOUR claim that individuals who made CONTRIBUTIONS to DAVID LOEBSACK for his 2014 primary election race were "effectively" giving "money solely for the general election." Compl. ¶ 8.

Response: David Loebsack was the only member of the Democratic Party seeking election as the United States Representative for the 2nd Congressional district of Iowa. Thus, he was unopposed in the primary election, and was the only Democratic candidate on the ballot during both the primary and general elections in 2014. Monies collected and expended by Mr. Loebsack's campaign thus effectively furthered only his prospects of securing victory in the general election.

2. Define the phrase "substantial primary opponent." Compl. ¶ 66.

Response: A candidate for office who is a member of the same political party as his or her opponent, must compete in the same primary election, and is sufficiently likely to succeed that his or her candidacy would materially alter the competitive position of a candidate similarly situated to David Loebsack during the 2014 primary.

3. State when the determination of whether there is a "substantial primary opponent" (Compl. ¶ 66) is made.

Response: If Plaintiffs prevail, Defendant will bear the burden of answering this question. Defendant is tasked with promulgating rules and regulations to implement federal campaign finance laws—including adopting decisions of the judiciary vindicating as-applied challenges to those laws. For example, Defendant implemented the Supreme Court's as-applied ruling in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007). 72 Fed. Reg. 72899 ("The Federal Election Commission is revising its rules governing electioneering communications. These revisions implement the Supreme Court's decision in *FEC* v. *Wisconsin Right to Life, Inc.,* which held that the prohibition on the use of corporate and labor organization funds for electioneering communications is unconstitutional as applied to certain types of electioneering communications").

4. State who determines whether there is a "substantial primary opponent." Compl. ¶ 66.

Response: If Plaintiffs prevail, Defendant will bear the burden of answering this question. Defendant is tasked with promulgating rules and regulations to implement federal campaign finance laws—including adopting decisions of the judiciary vindicating as-applied challenges to those laws. For example, Defendant implemented the Supreme Court's as-applied ruling in *FEC v. Wisconsin Right to*

Life, Inc., 551 U.S. 449 (2007). 72 Fed. Reg. 72899 ("The Federal Election Commission is revising its rules governing electioneering communications. These revisions implement the Supreme Court's decision in *FEC* v. *Wisconsin Right to Life, Inc.,* which held that the prohibition on the use of corporate and labor organization funds for electioneering communications is unconstitutional as applied to certain types of electioneering communications").

5. State the amounts YOU CONTRIBUTED to MARSHALL SANFORD between January 1, 2013 and December 31, 2014, and identify the election associated with each CONTRIBUTION.

Response: Plaintiff notes that the responsive information is within the Defendant's custody, and plainly stated in Representative Sanford's filings with the Commission. *See, e.g*,. FED. R. CIV. P. 26(b)(2)(C)(i). In good faith, however, Plaintiff responds.

$2,600 on March 21, 2013 for the 2013 runoff election

$2,600 on April 5, 2013 for the 2013 special general election

$2,600 on November 22, 2013 for the 2014 primary election

$1,300 on December 26, 2014 for the 2016 primary election

6. Define the class of persons that is permitted to make "'extra' contributions" to CANDIDATES. Compl. ¶ 71.

Response: Those able to contribute up to the primary and general election contribution limits to candidates running under competitive circumstances substantially similar to those David Loebsack faced during the 2014 election cycle.

7. For each request for admission not admitted, state the reason or reasons the request was not admitted.

Response: The documents attached as Exhibit A are sufficient to demonstrate that I contributed to Dr. Miller-Meeks during the year 2014.

8. Verify the statements about YOU in paragraph 8 of the complaint.

Response: The statements in paragraph 8 of my complaint are true and correct.

By: Paul Jost
c/o Allen Dickerson, Attorney

Respectfully submitted this 5th day of March, 2015,

/s/ Allen Dickerson
Allen Dickerson
CENTER FOR COMPETITIVE POLITICS
124 S. West Street, Suite 201
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Tel: (703) 894-6800
Fax: (703) 894-6811

Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	)))))))))))	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 3

Congressional Candidates and Committees

June 2014

Federal Election Commission Campaign Guide

Corporate/Labor/Membership Organization PACs

All separate segregated funds (also called political action committees or PACs) established, financed, maintained or controlled by the same corporation or labor organization are affiliated. For example:

- PACs established by a parent corporation and its subsidiaries are affiliated.
- PACs established by a national or international union and its local unions are affiliated.
- PACs established by a federation of national or international unions and the federation's state and local central bodies are affiliated.
- PACs established by an incorporated membership organization and its related state and local entities are affiliated.

100.5(g)(2) and (3); 110.3(a)(1)(ii) and (2).

When committees are not automatically affiliated under the conditions described above, the Commission may nevertheless conclude that two or more committees are affiliated based on factors listed in the regulations. 100.5(g)(4)(ii)(A)-(J) and 110.3(a)(3)(ii)(A)-(J). The Commission makes these decisions, through advisory opinions, on a case-by-case basis. For examples, see AOs 2009-18, 2006-12, 2005-03, 2004-32, 2002-11 and 2001-07 (plus opinions cited within those AOs).

Authorized Committees

An authorized committee, however, can be affiliated only with another authorized committee of the same candidate. 100.5(g)(5) and 110.3(a)(1)(i). Note that, by definition, an unauthorized committee sponsored by an officeholder (i.e., a "leadership PAC") is not considered to be affiliated with any authorized committees sponsored by the same individual. 100.5(e)(6) and (g)(5).

2. HOW LIMITS WORK

The limits on contributions to candidates apply separately to each federal election in which the candidate participates. A primary election, general election, runoff election and special election are each considered a separate election with a separate limit.[3] 100.2. (A special election may itself involve separate primary, general and/or runoff elections, each with a separate contribution limit.)[4] In some cases, a party caucus or convention is considered a primary election, as explained below.

Party Caucus or Convention

A party caucus or convention constitutes an election only if it has the authority under relevant state law to select a nominee for federal office. (Notable examples of these types of conventions are those held in Connecticut, Utah and Virginia.) Otherwise, there is no separate limit for a caucus or convention; it is considered part of the primary process. When the caucus or convention does constitute a primary election, reports must be filed for the convention as they would for the primary. 100.2(c)(1) and (e). See also, for example, AOs 1992-25, 1986-21 and 1986-17. See Chapter 12 for information on filing reports.

Candidates Who Lose in the Primary

A candidate is entitled to an election limit only if he or she seeks office in that election. Thus, a candidate who loses the primary (or otherwise does not participate in the general election) does not have a separate limit for the general. If a candidate accepts contributions for the general election before the primary is held and loses the primary (or does not otherwise participate in the general election), the candidate's principal campaign committee must refund, redesignate or reattribute the general election contributions within 60 days of the primary or the date that the candidate publicly withdraws from the primary race.[5] 110.1(b)(3) and 110.2(b)(5). See also in this chapter, Section 4, "Designated and Undesignated Contributions" and Section 8, "Contributions to Retire Debts."

3 Presidential campaigns should note that all Presidential primary elections held during a calendar year are considered one election for the purposes of the contribution limits. 110.1(j)(1).

4 In AO 2009-15, the Commission ruled that an authorized committee may accept contributions that may be used in a special or emergency election or runoff, even though an election has not been scheduled and may not occur.

5 In AO 2008-04, the Commission ruled that the authorized committee of a Presidential candidate receiving primary matching funds may issue refunds or obtain redesignations to his or her Senate campaign for contributions made in connection with the general election.

Independent and Non-Major Party Candidates

Even when independent and non-major party candidates are not involved in an actual primary, they are entitled to a primary limit. They may choose one of the following dates to be their "primary" date, and, until that date, they may collect contributions that count towards the contributor's primary limits.

- The last day on which, under state law, a candidate may qualify for a position on the general election ballot; or
- The date of the last major primary election, caucus or convention in that state.

Non-major party candidates may also choose the date of the nomination by their party as their primary date. 100.2(c)(4).

Primary vs. General Election

Campaigns must adopt an accounting system to distinguish between contributions made for the primary election and those made for the general election, as discussed in Chapter 10, Section 1, "Fundraising." 102.9(e). [6] Nevertheless, the campaign of a candidate running in the general election may spend unused primary contributions for general election expenses. The contributions would continue to apply toward the contributors' limits for the primary. 110.3(c)(3). The campaign of a candidate running in the general election may use general election contributions for primary election debts; the contributions would still count against the contributor's general election limits. 110.1(b)(3)(iv). As noted above, should the candidate lose the primary, contributions accepted for the general must be refunded, redesignated or reattributed within 60 days and may not be used to repay primary election debt. AO 1986-17. Therefore, candidates should ensure they have enough cash on hand to make those refunds if needed.

6 In AO 2007-03, the Commission ruled that a Presidential candidate could solicit and receive private contributions for the 2008 Presidential general election without losing eligibility to receive public funding if the candidate received his party's nomination for President, provided that the campaign (1) deposited and maintained all private contributions designated for the general election in a separate account; (2) refrained from using these contributions for any purpose; and (3) refunded the private contributions in full if the candidate ultimately decided to receive public funds.

Unopposed Candidates; Elections Not Held

A candidate is entitled to a separate contribution limit even if:

- The candidate is unopposed in an election;
- A primary or general election is not held because the candidate is unopposed;[7] or
- The general election is not held because the candidate received a majority of votes in the previous election.

The date on which the election would have been held is considered the date of the election. 110.1(j)(2) and (3). The campaign must file pre-election reports and, in the case of a general election, a post-election report. AO 1986-21. See also Chapter 12, Section 3, "When to Report."

Recounts

A federal campaign may establish a recount fund either as a separate bank account of the candidate's authorized committee or as a separate entity. Although they are not considered contributions under the *Act*, any funds solicited, received, directed, transferred or spent in connection with a recount are subject to the amount limitations, source prohibitions and reporting requirements of the *Act*. See 52 U.S.C. §30125(e). This means that the normal contribution limits, reporting requirements and source restrictions apply. The Commission has addressed the use of funds raised for recount purposes in AO 2010-14 (permitting the use of such funds before an election for certain recount-related purposes) and AO 2010-18 (permitting the redesignation of excess recount funds to a state party committee's federal account). Committees must disclose funds received for a recount as "Other Receipts" and funds spent as "Other Disbursements." For more information and reporting instructions, see AO 2006-24 and Chapter 13, "Completing FEC Reports."

7 A primary election that is not held because the candidate was nominated by a caucus or convention with authority to nominate is not a separate election with a separate contribution limit. 110.1(j)(4).

3. CONTRIBUTIONS TO UNAUTHORIZED COMMITTEES

If a contributor makes a contribution to a committee not authorized by any candidate and knows that a substantial portion of the contribution will be contributed to or spent on behalf of a particular candidate, the contribution counts against the contributor's per-election limit with respect to that candidate. 110.1(h).

4. DESIGNATED AND UNDESIGNATED CONTRIBUTIONS

The Commission strongly recommends that campaigns encourage contributors to designate their contributions for specific elections. Designated contributions ensure that the contributor's intent is conveyed to the candidate's campaign. In the case of contributions from political committees, written designations also promote consistency in reporting and thereby avoid the possible appearance of excessive contributions on reports.

Effect of Designating vs. Not Designating

Designated contributions count against the donor's contribution limits for the election that is named. Undesignated contributions count against the donor's contribution limits for the candidate's next election. 110.1(b)(2).
For example:

- An undesignated contribution made[8] after the candidate has won the primary, but before the general election, applies toward the contribution limit for the general election.
- In the case of the candidate who has lost the primary, an undesignated contribution made after the primary automatically applies toward the limit for the next election in which the candidate runs for federal office.
- If the candidate does not plan to run for federal office in the future, the committee may:
  - Presumptively redesignate the contribution to retire any primary debts they may have. 110.1(b)(5)(ii)(C); see "Remedying Excessive Contributions" below for proper procedure; or
  - Request written redesignation from the contributor to retire debts from a previous election cycle.[9]

Otherwise, the committee must return or refund the contribution.

For additional information on presumptive redesignation, see Section 7 of this chapter, "Remedying an Excessive Contribution."

How Contributions are Designated

Contributors designate contributions by indicating in writing the specific election to which they intend a contribution to apply. 110.1(b)(2)(i). Contributors may make this written designation on the check (or other signed written instrument) or in a signed statement accompanying the contribution. 110.1(b)(4). A designation also occurs when the contributor signs a form supplied by the candidate. 110.1(b)(4); see also AO 1990-30.

Campaign Must Retain Designations

The campaign must retain copies of contribution designations for three years. If the designation appears on the check (or other written instrument), the campaign must retain a full-size photocopy. 102.9(c) and (f); 110.1(l)(1).

5. DATE CONTRIBUTION IS MADE vs. DATE OF RECEIPT

The date a contribution is made by the contributor and the date the contribution is received by the campaign are significant for purposes of the contribution limits. It is important to understand the distinction.

8 See Section 5 for an explanation of when a contribution is "made."

9 Note that if a contribution designated to retire the debt of a previous campaign exceeds the amount of the debt, the contribution must be returned, refunded, redesignated or reattributed. Contributions can be designated for debt retirement only if debt exists and if the contributor has not already met the contribution limit for that election. 110.1(b)(3)(i).

Date Contribution is Made

The date a contribution is made is the date the contributor relinquishes control over it. 110.1(b)(6). For example:

- A hand-delivered contribution is considered made on the date it is delivered by the contributor to the campaign. 110.1(b)(6).
- A mailed contribution is made on the date of the postmark. 110.1(b)(6). Note that if a campaign wishes to rely on a postmark as evidence of the date a contribution was made, it must retain the envelope or a copy of it. 110.1(l)(4).
- An in-kind contribution is made on the date that the goods or services are provided by the contributor. See AOs 2004-36 and 1996-29.
- A contribution made via the Internet is considered made on the date the contributor electronically confirms making the transaction. AO 1995-09.
- An earmarked contribution is considered made during the election cycle in which the contribution is actually made, regardless of the year in which the election is held. See AOs 2008-08 and 2006-30 (footnote 5). (Note that the conduit must forward this information to the campaign.) See Appendix A for more information.

Date Contribution is Received

The date of receipt is the date the campaign (or a person acting on the campaign's behalf) actually receives the contribution. 102.8(a). This is the date used by the campaign for reporting purposes, but it also affects the application of the net debts outstanding rule (discussed in Section 8 of this chapter).

Contributions Charged on Credit Cards

When the committee receives contributions through credit card charges, the date of receipt is the date on which the committee receives the contributor's signed authorization to charge the contribution. The treasurer should retain a copy of the authorization form in the committee's records. See AOs 1995-09 and 1990-04.

In-Kind Contributions

The date of receipt for an in-kind contribution is the date the goods or services are provided to the committee, even if the contributor pays the bill for the goods or services after they are provided. See 110.1(b)(6).

Effect of Dates on Undesignated Contributions

The date an undesignated contribution is made determines which election limit it counts against. The date of receipt, however, does not affect the application of the contribution limits. An undesignated contribution made on or before Election Day counts against the donor's limit for that election, even if the date of receipt is after Election Day and even if the campaign has no net debts outstanding. On the other hand, an undesignated contribution made after an election counts against the donor's limit for the candidate's next election. 110.1(b)(2)(ii).

Effect of Dates on Designated Contributions

Both the date a contribution is made and the date of receipt affect the application of the net debts outstanding rule to a designated contribution. The date the contribution is made determines whether the rule will apply, while the date of receipt governs whether the contribution is acceptable under the rule. For example, a contribution designated for the primary and made before that election will not be subject to the net debts outstanding rule, even if the campaign receives the contribution after the primary. By contrast, a contribution designated for—but made after—the primary is acceptable only to the extent the campaign has net debts outstanding for the primary on the date of receipt. 110.1(b)(3)(i) and (iii). See Section 8 of this chapter.

Date of Deposit

While all contributions must be deposited within 10 days, the date of deposit is not used for reporting or contribution limit purposes.

6. JOINT CONTRIBUTIONS

A joint contribution is a contribution that is made by more than one person using a single check or other written instrument. Although each individual has a separate contribution limit, joint contributors may combine their contribution limits by contributing a joint contribution (for example, a check for $5,200 for a candidate's primary election) as long as both sign the check (or an attached statement), as explained below. 110.1(k).

Each Contributor Must Sign the Check

When making a joint contribution, each contributor must sign the check (or other written instrument) or a statement that accompanies the contribution. 110.1(k)(1). Note that if the check or an accompanying statement of attribution is not signed by each contributor, the entire contribution will be attributed only to the party who signed the check. 104.8(c). However, under certain circumstances the committee may presumptively reattribute the excessive portion of a contribution. See "Reattribution" below.

Exception: Partnerships and LLCs

Contributions from partnerships and certain LLCs are not considered joint contributions, but do trigger special attribution requirements; see Appendix B.

Attribution

If the check or statement does not indicate how much should be attributed to each donor, the recipient committee must attribute the contribution in equal portions. 110.1(k)(1) and (2). For example, if a committee receives a $1,000 joint contribution signed by two individuals but with no written attribution, the committee must attribute a $500 contribution to each donor.

A campaign may request that a contribution be reattributed, as explained below.

7. REMEDYING AN EXCESSIVE CONTRIBUTION

When a committee receives an excessive contribution—one which exceeds the contributor's limit or the campaign's net debts outstanding for an election—the committee may remedy the violation by refunding the excessive amount or by seeking a redesignation or reattribution of it within 60 days. Step-by-step procedures for obtaining a reattribution or redesignation are explained below.

Redesignation

By Contributor

With a redesignation, the contributor instructs the committee to use the excessive portion of a contribution for an election other than the one for which the funds were originally given. For example, the contributor may redesignate the excessive portion of a contribution made for the primary election so that it counts against his or her limit with respect to the general election (provided the contributor has not already contributed the maximum for the general election).

When requesting a redesignation, the committee must inform the contributor that he or she may, alternatively, request a refund of the excessive amount. 110.1(b)(5).

Presumptive Redesignation by Committee

Under certain circumstances, the committee may make a presumptive redesignation of an excessive contribution. When an individual or a non-multicandidate committee makes an excessive contribution to a candidate's authorized committee, the campaign may presumptively redesignate the excessive portion to the general election if the contribution:

- Is made before that candidate's primary election;
- Is not designated in writing for a particular election;
- Would be excessive if treated as a primary election contribution; and
- As redesignated, does not cause the contributor to exceed any other contribution limit. 110.1(b)(5)(ii)(B)(1)-(4).

Also, the excessive portion of an undesignated contribution made after the primary, but before the general election, may be automatically applied to the primary if the campaign's net debts outstanding from the primary equal or exceed the amount redesignated. 110.1(b)(5)(ii)(C). See Section 8 in this chapter.

The committee is required to notify the contributor in writing of the presumptive redesignation within 60 days of the treasurer's receipt of the contribution, and must offer the contributor the option to receive a refund instead. 110.1(b)(5)(ii)(C).

It is important to note that presumptive redesignations may be made only within the same election cycle. Also, presumptive redesignation is not an option when the contributor is a multicandidate committee.

Reattribution

By Contributor

With a reattribution, the contributor instructs the committee in writing to attribute the excessive portion of a joint contribution to another individual. For example, if the committee receives an excessive contribution drawn on a joint checking account, but signed by only one account holder, the committee may seek a reattribution signed by each contributor of the excessive amount to the other account holder. 110.1(k)(3). (A joint contribution may also be reattributed so that a different amount is attributed to each contributor.[10]) Note that a joint contribution must represent the personal funds of each contributor because contributions made in the name of another are prohibited. See 110.4(b).

When requesting reattributions, the committee must also inform contributors that they may, alternatively, ask for a refund of the excessive portions of their contributions. 110.1(k)(3).

Presumptive Reattribution by Committee

When a committee receives an excessive contribution made via a written instrument with more than one individual's name imprinted on it, but only one signature, the committee may attribute the permissible portion to the signer. The committee may make a presumptive reattribution of the excessive portion to the other individual whose name is imprinted on the written instrument, without obtaining a second signature, so long as the reattribution does not cause the contributor to exceed any other contribution limit. 110.1(k)(3)(ii)(B)(1).

The committee is required to notify the contributors in writing of the presumptive reattribution within 60 days of the treasurer's receipt of the contribution, and must offer the contributors the option to receive a refund if it was not intended to be a joint contribution. 110.1(k)(3)(ii)(B)(2)-(3).

When to Request Redesignations and Reattributions

In many circumstances, the committee will be able to presumptively redesignate or reattribute contributions. For all other circumstances, contributions can be redesignated or reattributed only by the individual contributor.

A committee may ask a contributor to redesignate and/or reattribute a contribution (within 60 days of the treasurer's receipt), for example, when the committee receives:

- A designated or undesignated contribution that exceeds the donor's limit. 110.1(b)(5)(i)(A) and (C).
- A designated or undesignated contribution for an election in which the candidate is not running. For example, a contribution that was designated for the general but was received before the primary may be redesignated for a future primary if the candidate loses the primary or otherwise does not run in the general election. See 102.9(e); see also AOs 1996-29, 1992-15 and 1986-17.
- A contribution that is designated for, but made after, an election and that exceeds the campaign's net debts outstanding for that election. 110.1(b)(3)(i) and (5)(i)(B).
- An undesignated contribution (which normally applies to the candidate's upcoming election) that the committee wants to use to retire debts of a previous election. Note that, if it is redesignated, the contribution then counts against the donor's contribution limits for that previous election. 110.1(b)(5)(i)(D).

10 See the Explanation and Justification published with the final rule, 52 Fed. Reg. 760, 765-766 (January 9, 1987), available online at http://go.usa.gov/8hR5.

Procedures for Obtaining Redesignations and Reattributions from Contributors

The committee treasurer is the person ultimately responsible for complying with the procedures outlined below. 103.3(a) and (b).

Step 1: Deposit Contribution

A committee must deposit contributions within 10 days of the treasurer's receipt. (If a contribution is not deposited, it must be returned to the contributor within 10 days of receipt.) 103.3(a).

Step 2: Determine Whether Excessive

The committee must determine whether a contribution exceeds the donor's limit or the campaign's net debts outstanding. The Commission encourages committees to make this determination within 30 days of receiving the contribution. This allows a committee sufficient time to request and receive a redesignation and/or reattribution within the 60-day limit, as explained below.

Step 3: Be Prepared to Make Refund

When a committee deposits contributions that may exceed the limits or net debts outstanding for an election, the committee must not spend the funds because they may have to be refunded. To ensure that the committee will be able to refund the contribution in full, the committee may either maintain sufficient funds in its regular campaign depository or establish a separate account used solely for the deposit of possibly illegal contributions. 103.3(b)(4). Furthermore, the committee must keep a written record noting the reason a contribution may be excessive and must include this information when reporting the receipt of the contribution. 103.3(b)(5).

Step 4: Request Redesignation and/or Reattribution

When requesting a redesignation, the committee asks the contributor to provide a written, signed redesignation of the contribution for another election. The request must also state that the donor may receive a refund of the excessive portion of the contribution if he or she does not wish to redesignate it. 110.1(b)(5)(ii)(A).[11]

When requesting a reattribution, the committee asks the contributor whether the contribution was intended to be a joint contribution from more than one person. Alternatively, if the original contribution was a joint contribution, the committee requests that contributors adjust the amount attributable to each.[12] In either case, the committee should inform contributors that they must each sign the reattribution. The request must notify each contributor that, instead of reattributing the contribution, he or she may seek a refund of the portion of the contribution that exceeds the limits or the campaign's net debts outstanding. 110.1(k)(3)(ii)(A).

Step 5: Redesignation/Reattribution Made or Make Refund within 60 Days

Within 60 days after the date of the committee's receipt of the contribution either:

- The contributor must provide the committee with a redesignation or reattribution; or
- The committee must refund the excessive portion of the contribution.

103.3(b)(3).

A contribution is properly redesignated if, within the 60-day period, the contributor provides the committee with a written, signed statement redesignating the contribution for a different election. 110.1(b)(5)(ii)(B).

A contribution is properly reattributed if, within the 60-day period, the contributors provide the committee with a written statement reattributing the contribution. The statement must be signed by all contributors and must indicate the amount attributable to each donor. (If the contributors do not specify how to divide the contribution, the committee must attribute the contribution equally among the contributors.) 110.1(k)(2) and (3)(ii)(B).

11 Redesignations may be made electronically provided that the method offers a sufficient degree of assurance of the contributor's identity and intent to redesignate, and the committee retains a record of the redesignation in a manner consistent with the recordkeeping requirements in 110.1(l). For more information, see the FEC's Interpretive Rule on Electronic Redesignations (76 FR 16233 (March 23, 2011)) at http://go.usa.gov/8hRH.

12 See the Explanation and Justification published with the final rule, 52 Fed. Reg. 760, 766 (January 9, 1987), available online at http://go.usa.gov/8hn4.

Step 6: Keep Records and Report

The committee must keep documentation for each reattribution and redesignation to verify that it was received within the 60-day time limit. Documentation for a reattribution or a redesignation must include one of the following:

- A copy of the postmarked envelope bearing the contributor's name, return address or other identifying code;
- A copy of the signed statement reattributing or redesignating the contribution with a date stamp showing the date of the committee's receipt; or
- A copy of the written redesignation or reattribution dated by the contributor.

110.1(l)(6).

The documentation relating to a reattribution or redesignation must be retained for three years. 102.9(c).

8. CONTRIBUTIONS TO RETIRE DEBTS

If a committee has net debts outstanding after an election is over, a campaign may accept contributions after the election to retire the debts provided that:

- The contribution is designated for that election (since an undesignated contribution made after an election counts toward the limit for the candidate's upcoming election, unless the campaign requests its redesignation);
- The contribution does not exceed the contributor's limit for the designated election; and
- The campaign has net debts outstanding for the designated election on the day it receives the contribution.

110.1(b)(3)(i) and (iii).

How to Calculate Net Debts Outstanding

A campaign's net debts outstanding consist of unpaid debts incurred with respect to the particular election minus cash on hand plus the total amounts owed to the campaign in the form of credits, refunds of deposits, returns and receivables or a commercially reasonable estimate of the collectible amount, and loans exceeding $250,000 from the candidate's personal funds.[13] 110.1(b)(3)(ii).

Unpaid Debts

Unpaid debts include the following:

- All outstanding debts and obligations;
- The estimated cost of raising funds to liquidate the debts; and
- If the campaign is terminating, estimated winding down costs (for example, office rental, staff salaries and office supplies).

110.1(b)(3)(ii).

Cash on Hand

Cash on hand consists of the resources available to pay the campaign's total debts, including currency, deposited funds, traveler's checks, certificates of deposit, treasury bills and any other investments valued at fair market value. 110.1(b)(3)(ii)(A).

For the purpose of calculating net debts outstanding for the primary, cash on hand need not include contributions designated for the general. 110.1(b)(3)(iv).

Adjustment to Net Debts Total

A campaign first calculates its net debts outstanding as of the day of the election. Thereafter, the campaign continually recalculates its total net debts outstanding as additional funds are received for, or spent on, the election for which the debt remains. 110.1(b)(3)(ii) and (iii).

Contributions Exceeding Net Debts

If, on the same day, a campaign receives several contributions that, together, exceed the amount needed to retire its debts, the campaign may:

- Accept a proportionate amount of each contribution and either refund the remaining amount or ask contributors to redesignate the excessive portions for another election; or

13 For an illustration of how the net debts outstanding calculation is performed, see the Explanation and Justification published with the final rule, 52 Fed. Reg. 762 (January 9, 1987), available online at http://go.usa.gov/8hnk.

- Accept some contributions in full and either return or refund the others or seek redesignations or reattributions for them. (See "Redesignations" and "Reattributions" in Section 7 above.)

110.1(b)(3).

9. CONTRIBUTIONS FROM PARTNERSHIPS

Partnerships are permitted to make contributions according to special rules. 110.1(e) and (k)(1). For further details, see Appendix B.

10. CONTRIBUTIONS FROM LIMITED LIABILITY COMPANIES

Corporation v. Partnership

For purposes of contribution limitations and prohibitions, a limited liability company (LLC) is treated as either a corporation or a partnership.
An LLC is treated as a corporation if:

- It has chosen to file, under Internal Revenue Service (IRS) rules, as a corporation; or
- It has publicly traded shares. 110.1(g)(3).

An LLC is treated as a partnership if:

- It has chosen to file, under IRS rules, as a partnership; or
- It has made no choice, under IRS rules, as to whether it is a corporation or a partnership. 110.1(g)(2).

If an LLC is treated as a corporation, it is prohibited from making contributions to candidate committees, but it can establish an SSF (see Chapter 5 for general information on the corporate prohibition). It may also give money to IEOPCs. If it is considered a partnership, it is subject to the contribution limits for partnerships outlined in Appendix B. 110.1(g).

Single Member LLC

If a single member LLC has not chosen corporate tax treatment, it may make contributions; the contributions will be attributed to the single member, not the LLC. 110.1(g)(4).

Notifying Recipient Committee

An LLC must, at the time it makes a contribution, notify the recipient committee:

- That it is eligible to make the contribution; and
- How the contribution is to be attributed among members.

This requirement will prevent the recipient committee from inadvertently accepting an illegal contribution. 110.1(g)(5).

11. CONTRIBUTIONS FROM MINORS

An individual who is under 18 years old may make contributions to candidates and political committees, subject to the limit of $2,600 per election, if:

- The decision to contribute is made knowingly and voluntarily by the minor;
- The funds, goods or services contributed are owned or controlled by the minor, proceeds from a trust for which he or she is a beneficiary or funds withdrawn by the minor from a financial account opened and maintained in his or her name; and
- The contribution is not made using funds given to the minor as a gift for the purpose of making the contribution, and is not in any way controlled by another individual. 110.19.

12. CANDIDATE'S PERSONAL FUNDS

When candidates use their personal funds for campaign purposes, they are making contributions to their campaigns. Unlike other contributions, these candidate contributions are not subject to any limits. 110.10; AOs 1991-09, 1990-09, 1985-33 and 1984-60. They must, however, be reported (as discussed below).

Contributions from members of the candidate's family are subject to the same limits that apply to any other individual. For example, a candidate's parent or spouse may not contribute more than $2,600, per election, to the candidate.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 4

2014 CONGRESSIONAL PRIMARY ELECTION DATES AND CANDIDATE FILING DEADLINES FOR BALLOT ACCESS

(Data as of 7/28/2014)

Note: Dates Subject to Change / **S** Indicates Senate Election / General Election Date 11/04/2014

STATE		CONGRESSIONAL PRIMARY DATE	CONGRESSIONAL RUNOFF DATE	FILING DEADLINE FOR PRIMARY BALLOT ACCESS	INDEPENDENT [1] FILING DEADLINE FOR GENERAL ELECTION
Alabama	S	6/3	7/15	2/7	6/3
Alaska	S	8/19		6/2	8/19 (Independent)
American Samoa		n/a		n/a	9/2
Arizona		8/26		5/28 5pm	5/28 5pm
Arkansas	S	5/20	6/10	3/3 Noon	3/3 Noon
California		6/3		3/7	n/a
Colorado	S	6/24		3/31	7/10 (Independent) 3/31 (Third/Minor)
Connecticut		8/12 [2]		6/10 4pm	8/6 4pm (Independent) 9/3 (Third/Minor_
Delaware	S	9/9 [3]		7/8 Noon	7/15 (Independent)
D.C.		4/1		1/2	8/6
Florida		8/26		5/2	3/31
Georgia	S	5/20	7/22	3/7	6/27
Guam		8/30		7/1	7/1
Hawaii	S	8/9 [4]		6/3	6/3
Idaho	S	5/20		3/14	3/14
Illinois	S	3/18		12/2	6/23
Indiana		5/6 [5]		2/7 Noon	7/15 Noon
Iowa	S	6/3 [6]		3/14	8/15
Kansas	S	8/5 [7]		6/2 Noon	8/4 Noon
Kentucky	S	5/20		1/28 4pm	8/12 4pm
Louisiana	S	n/a [8]		8/22 [6]	8/22
Maine	S	6/10		3/17	6/2 (Independent)
Maryland		6/24 [9]		2/25 9pm	8/4 5pm
Massachusetts	S	9/9		5/6	7/29
Michigan	S	8/5 [10]		4/22	7/17
Minnesota	S	8/12		6/3	6/3
Mississippi	S	6/3	6/24	3/1	3/1
Missouri		8/5		3/25	7/28
Montana	S	6/3		3/10	5/27
Nebraska	S	5/13		2/18 (Incumbents) 3/3 (All Others)	9/2
Nevada		6/10		3/14	2/6 (Independent) 4/11 (Third/Minor)
New Hampshire	S	9/9		6/13	8/6
New Jersey	S	6/3		3/31	6/3
New Mexico	S	6/3		3/11	6/24
New York		6/24		4/10	8/5
North Carolina	S	5/6	7/15	2/28 Noon	6/27 Noon (Independent)
North Dakota		6/10		4/7 4pm	9/2 4pm
Northern Mariana Islands		n/a		n/a	8/4

2014 CONGRESSIONAL PRIMARY ELECTION DATES AND CANDIDATE FILING DEADLINES FOR BALLOT ACCESS

(Data as of 7/28/2014)

Note: Dates Subject to Change / **S** Indicates Senate Election / General Election Date 11/04/2014

STATE		CONGRESSIONAL PRIMARY DATE	CONGRESSIONAL RUNOFF DATE	FILING DEADLINE FOR PRIMARY BALLOT ACCESS	INDEPENDENT [1] FILING DEADLINE FOR GENERAL ELECTION
Ohio		5/6		2/5 4pm	5/5 4pm (Independent)
Oklahoma	**S**	6/24	8/26	4/11	4/11
Oregon	**S**	5/20 [11]		3/11	8/26
Pennsylvania		5/20		3/11	8/1
Puerto Rico		n/a [12]			
Rhode Island	**S**	9/9		6/25	7/11 4pm
South Carolina	**S**	6/10 [13]	6/24	3/30	7/15 (Independent)
South Dakota	**S**	6/3	8/12	3/25	3/25 (Third/Minor) 4/29 (Independent)
Tennessee	**S**	8/7		4/3 Noon	4/3 Noon
Texas	**S**	3/4 [14]	5/27	12/9	12/9 (Third/Minor) 6/26 (Independent)
Utah		6/24 [15]		3/20	3/20
Vermont		8/26		6/12	6/12
Virginia	**S**	6/10 [16]		3/27 5pm	6/10
Virgin Islands		8/2		5/13	10/5
Washington		8/5		5/16	n/a
West Virginia	**S**	5/13 [17]		1/25	8/1
Wisconsin		8/12		6/2	6/2
Wyoming	**S**	8/19		5/30	8/25 (Independent)

Notes:

1. The column Independent Filing Deadline shows the date for the filing of petitions by independent or third/minor party candidates. This is a general reference date for use by the public and voters. Candidates and others seeking specific information should contact the states for other deadlines that may need to be met. For example, the petitions may have to be checked by officials prior to this date. A declaration of candidacy may be due before the petitions are due. New parties may have different deadlines.
2. In Connecticut, conventions are held by the Democratic and Republican Parties prior to the primary. For U.S. Congress, the Democratic Party convention date is 5/14/14, and the Republican Party convention date is 5/16/14.
3. In Delaware, the Libertarian Party convention date is 3/8/14 and the Independent Party of Delaware convention date is 7/26/14.
4. In Hawaii, the U.S. Senate election is for an Unexpired Term.
5. In Indiana, the Libertarian Party convention date is 4/26/14.
6. In Iowa's 3rd Congressional District, a runoff convention was held by the Republican Party on 6/21/14.
7. In Kansas, the Libertarian Party convention date is 4/26/14.
8. In Louisiana, a Congressional primary election is not held. The election for candidates seeking Federal office is the General Election scheduled for 11/4/14. If necessary, a Runoff Election will be held on 12/06/14. The filing deadline for ballot access is 8/22/14.
9. In Maryland, the Libertarian Party convention date is 4/05/14 and the Green Party's party-organized primary date is 5/31/14.
10. In Michigan, the Libertarian Party convention date is 5/17/14, the Green Party convention date is 6/8/14, the U.S. Taxpayers Party convention date is 6/28/14 and the Natural Law Party convention date is 7/30/14.
11. In Oregon, the Constitution Party convention date is 5/24/14 and the Pacific Green Party convention date is 6/7/14. The Libertarian Party's party-organized primary date is 6/6/14 and the Independent Party's party-organized primary date is 7/19/14. The Working Families Party nominating caucus dates are 7/9/14 (Congressional District 2), 7/10/14 (Congressional District 5), 7/14/14 (Congressional District 4) and 7/22/14 (Congressional Districts 1 and 3).
12. In Puerto Rico, the general election for Resident Commissioner to the U.S. House of Representatives is held every four years, coinciding with the U.S. Presidential election.
13. In South Carolina, the American Party convention date is 5/10/14, the Green Party convention date is 5/3/14, the Labor Party convention date is 8/2/14, and the Libertarian Party convention date is 5/10/14. Also, South Carolina has two U.S. Senate seats on the ballot in 2014. One is for an Unexpired Term.
14. In Texas, the Green and Libertarian Parties may nominate by convention. The convention dates are 3/15/14 for single county U.S. House Districts 2, 3, 7, 16, 18, 20, 29 and 30; 3/22/14 for multi-county U.S. House Districts 1, 4-6, 8-15, 17, 19, 21-28, 31-36. State conventions for U.S. Senate nominations: 4/12/14.
15. In Utah, conventions are held by the Democratic, Republican, Constitution and Libertarian Parties prior to the primary. The Democratic, Republican and Libertarian Party conventions are scheduled for 4/26/14. The Constitution Party convention date is 5/3/14.
16. In Virginia, political parties may choose to nominate by convention rather than by primary election. The Democratic Party has scheduled conventions on 6/7/14 (District 1), 5/31/14 (District 5), 5/17/14 (District 6), 5/10/14 (District 9) and caucuses on 5/29/2014 (District 4) and 6/10/14 (District 10). The Republican Party has scheduled a convention on 6/7/2014 to select its U.S. Senate nominee. For U.S. House Districts, Republican conventions will be held on 5/3/14 (District 3), 4/26/14 (District 8) and 5/10/14 (District 11). A Republican Party canvass will be held on 4/26/14 for District 10.
17. In West Virginia, the Libertarian Party convention date is 3/8/14 and the Mountain Party convention date is 7/19/14.

2014 CONGRESSIONAL PRIMARY ELECTION DATES IN CHRONOLOGICAL ORDER

(Data as of 7/28/2014)

Note: Dates Subject to Change / **S** Indicates Senate Election / General Election Date 11/04/2014

	STATE	CONGRESSIONAL PRIMARY DATE	CONGRESSIONAL RUNOFF DATE
S	Texas	3/4 [1]	5/27
S	Illinois	3/18	
	D.C.	4/1	
	Indiana	5/6 [1]	
S	North Carolina	5/6	7/15
	Ohio	5/6	
S	Nebraska	5/13	
S	West Virginia	5/13	
S	Arkansas	5/20	6/10
S	Georgia	5/20	7/22
S	Idaho	5/20	
S	Kentucky	5/20	
S	Oregon	5/20 [1]	
	Pennsylvania	5/20	
S	Alabama	6/3	7/15
	California	6/3	
S	Iowa	6/3	
S	Mississippi	6/3	6/24
S	Montana	6/3	
S	New Jersey	6/3	
S	New Mexico	6/3	
S	South Dakota	6/3	8/12
S	Maine	6/10	
	Nevada	6/10	
	North Dakota	6/10	
S	South Carolina	6/10 [1]	6/24
S	Virginia	6/10 [1]	
S	Colorado	6/24	
	Maryland	6/24 [1]	
	New York	6/24	
S	Oklahoma	6/24	8/26
	Utah	6/24 [1]	
	Virgin Islands	8/2	
S	Kansas	8/5 [1]	
S	Michigan	8/5 [1]	
	Missouri	8/5	
	Washington	8/5	
S	Tennessee	8/7	
S	Hawaii	8/9	
	Connecticut	8/12 [1]	
S	Minnesota	8/12	
	Wisconsin	8/12	

2014 CONGRESSIONAL PRIMARY ELECTION DATES IN CHRONOLOGICAL ORDER

(Data as of 7/28/2014)

Note: Dates Subject to Change / **S** Indicates Senate Election / General Election Date 11/04/2014

	STATE	CONGRESSIONAL PRIMARY DATE	CONGRESSIONAL RUNOFF DATE
S	Alaska	8/19	
S	Wyoming	8/19	
	Arizona	8/26	
	Florida	8/26	
	Vermont	8/26	
	Guam	8/30	
S	Delaware	9/9	
S	Massachusetts	9/9	
S	New Hampshire	9/9	
S	Rhode Island	9/9	

Notes:

1. In Connecticut and Utah, conventions are held by the political parties prior to the primary. In Virginia, political parties may choose to nominate by convention rather than by primary election. In other states, such as Delaware, Indiana, Kansas, Maryland, Michigan, Oregon, South Carolina, Texas and West Virginia, minor parties may hold conventions to nominate candidates.

Sources: State Election Offices, Statutes and State Parties

Compiled by: Public Disclosure Division, Office of Communications, Federal Election Commission
800/424-9530 (option 2), or 202/694-1120

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	)	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 5

FEDERAL ELECTION COMMISSION
Washington, DC 20463

June 27, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 1986-17

Stephen Gillers
New York University School of Law
40 Washington Square South
New York, NY 10012

Dear Mr. Gillers:

This responds to your letter dated May 15, 1986, on behalf of Mark Green, requesting an advisory opinion concerning application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to (1) the party designation of a candidate for nomination and (2) the expenditure of general election contributions.

Mark Green has filed with the Commission a Statement of Candidacy as a candidate for the Democratic Party's nomination for the United States Senate from New York in 1986. He has also filed with the Commission a Statement of Organization for his principal campaign committee, "Friends of Mark Green." In its reports through the first quarter of 1986 the Committee has itemized all contributions it has received and has reported them as primary election contributions.

I. Party Designation

The New York primary election will be held on Tuesday, September 9, 1986. New York election law provides that between the fourteenth and fifteenth Tuesday preceding the primary election, the state committee of a political party shall meet and designate "a candidate for nomination" for any office to be filled by the voters of the entire state. New York Elec. Law 6-104(1). The person receiving the majority vote of the state committee, under a weighted voting system, becomes the party's designated candidate for nomination. All other persons who receive at least 25 percent of the vote on any ballot at this meeting may make a written demand that their names also appear on the ballot as candidates for nomination. Id. at 6-104(2) and (4). The state committee files with the state board of elections the names of all persons designated by the state

committee as candidates for nomination and all persons receiving at least 25 percent of the vote on any ballot and the office for which they receive such votes. Id. at §6-104(7).

Under New York law enrolled members of a political party may also file petitions that designate other candidates for nomination. Id. at §6-104(5) and 6-118. State law also permits enrolled members of a political party to petition for an opportunity to write in a candidate for nomination. Id. at §6-164. Where the nomination of a party for an office is contested, the person receiving the most votes in the primary election for that office becomes the party's nominee. Id. at §6-160(1). Where a party's nomination for an office is uncontested, the person designated for nomination will be deemed nominated without balloting. Id. at §6-160(2). In such case the primary election ballot will not contain a space for voting for such office unless a petition for an opportunity to write in a candidate has been filed. Id. at §7-102 and 7-114(1)(d).

You ask whether the designation of a candidate for nomination by the state committee of a political party under New York law is an "election" under the Act to which separate contribution limitations will apply.[1]

The Act places limitations on the aggregate amount of contributions that any person or any multicandidate political committee may make to a candidate with respect to any election for Federal office. 2 U.S.C. 441a(a)(1) and (2). These limitations apply separately with respect to each election. 2 U.S.C. 441a(a)(6); 11 CFR 110.1(j) and 110.2(d). The Act and regulations define "election" to include a general election, a primary election, and "a convention or caucus of a political party which has authority to nominate a candidate." 2 U.S.C. 431(1); 11 CFR 100.2. The Commission has previously stated that the question whether a particular event is an election, or a convention or caucus which has authority to nominate a candidate, is determined by state law. See generally Advisory Opinion 1984-16.

The provisions of New York's election law paraphrased above demonstrate that the state committee does not have authority to nominate a candidate but only to designate a candidate "for nomination." In this respect, the state committee's designation is an alternative means by which a person becomes a candidate for nomination with respect to the primary election and is, thus, a part of the primary election process. Where an office is uncontested and no petition for an opportunity to ballot has been filed, the primary election ballot will not list that office. Instead, the person designated as a candidate for nomination will be deemed nominated without balloting. Nevertheless, the certificate of nomination will issue after the date of the primary election. See 50 NY Jur.2d Elections 370 (1985). Thus, under New York election law, the state committee's designation of a candidate for nomination does not qualify as a "convention or caucus of a

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[1] In your request you invoked the provisions of 2 U.S.C. 437f(a)(2) and 11 CFR 112.4(b), which direct the Commission to render an advisory opinion within 20 days if it receives a request on behalf of a candidate within 60 days of a Federal election and if the request presents a specific transaction or activity with respect to that election. In your case, however, the substantive question you ask poses the same issue that is presented by your request for the 20-day procedure: whether the state committee's designation of a candidate for nomination is an "election" under the Act. Since the Commission concludes that the designation by the state committee is not an "election" under the Act, your request does not qualify for the 20-day procedure.

political party which has authority to nominate a candidate." Accordingly, it is not an "election" under the Act to which separate contribution limitations will apply. This result is also indicated in Advisory Opinion 1982-47.

II. General Election Contributions

According to your request, Mr. Green[2] contemplates receiving contributions for the general election prior to the date of the primary election. You further state that such contributions will be separately accounted for pursuant to 11 CFR 102.9(e) and that these contributions will be refunded if Mr. Green does not become a candidate with respect to the general election. The Commission infers from your request that the contributors of these designated general election contributions will have already made their aggregate allowable contribution with respect to the primary election.

You ask whether Mr. Green may make expenditures of such general election contributions before he becomes a candidate with respect to the general election.[3]

As outlined above, the Act's limitations on contributions made to a candidate with respect to any election for Federal office apply separately with respect to each election. 2 U.S.C. 441a(a)(1), (2), and (6). Under Commission regulations, contributions made to Mr. Green or his principal or authorized campaign committees prior to the September 9, 1986, primary election will be considered made with respect to the general election on November 4, 1986, only if they are designated in writing by the contributor for such general election. See 11 CFR 110.1(a)(2). Commission regulations also provide that a candidate or his committee must separately account for contributions received prior to the primary election that are designated for the general election. See 11 CFR 102.9(e). In past advisory opinions, the Commission has further explained that contributions designated for a particular election such as a runoff or general election, may be accepted but become refundable to the contributors if the candidate does not participate in that election. See Advisory Opinions 1986-12, 1983-39, 1982-49, and 1980-122.[4] The Commission has also recognized that a contributor may in certain circumstances redesignate in writing a contribution (previously designated for a particular election) to another election provided that in doing so the contributor does not exceed his or her aggregate contribution limitation with respect to the election for which the contribution is redesignated. See Advisory Opinions 1986-12, 1984-32, and 1983-39.

In Advisory Opinion 1980-122, a candidate who lost the primary election had received contributions designated for the general election from contributors who had made their aggregate allowable contribution to the candidate with respect to the primary election. The Commission

[2] In this opinion, your references to Mr. Green also encompass Mr. Green's principal campaign committee, since Mr. Green is deemed to be an agent of his committee for the purposes of receiving contributions and making disbursements. 2 U.S.C. 432(e)(2); 11 CFR 101.2.

[3] In a telephone communication with an attorney in the Office of General Counsel, you indicated that the Committee plans to use these general election contributions for activities to influence the primary election as well as for activities related to a potential general election candidacy.

[4] Commission regulations permit unlimited transfers of funds between the primary and general election campaigns of a candidate of funds unused for the primary election. 11 CFR 110.3(a)(2)(iii). This regulation, however, applies only in the case where an individual participates as a candidate in both the primary and general elections.

stated that the candidate could not use these general election contributions to pay outstanding primary election debts because doing so would result in a violation of the Act's contribution limitations. Instead, the Commission concluded that these general election contributions must be refunded because a separate contribution limitation was not available to these contributors since the candidate did not participate in the general election. The Commission has followed this position in several advisory opinions. See, e.g., Advisory opinions 1986-12 and 1983-39.

In Advisory Opinion 1982-49, the campaign committee of a candidate who received the nomination of the party convention (which qualified under the Act as an election) contracted with a firm for services with respect to a possible primary election. The contract called for the firm to contact independent voters in Connecticut to encourage them to register as Republicans in order to participate in the Republican Party's primary election. Thus, these services were related solely to the possible primary election and would not have influenced the convention. The committee made payments to the firm, including nonrefundable payments, prior to and after the convention from its convention account. The committee had also received, and separately accounted for, contributions designated for the possible primary election from contributors who had made their aggregate allowable contribution with respect to both the convention and the general election.

The Commission concluded that the committee could not use these primary election contributions to defray the expenses it had incurred and paid with respect to the possible primary election. It stated that since there was a determination under state law not to bold the primary election, there was no separate contribution limitation available to these contributors with respect to that election. Instead, the Commission said that these primary election contributions must be refunded to the contributors to the extent that the contributors had made their aggregate allowable contribution with respect to the convention and general election.

Nevertheless, the Commission concludes that the Act does not prohibit your committee from using contributions designated for the general election to make expenditures, prior to the primary election, exclusively for the purpose of influencing the prospective general election in those limited circumstances where it is necessary to make advance payments or deposits to vendors for services that will be rendered, or goods that will be provided, to your committee after you have established your candidacy with respect to the general election. This limited, permissible use of such general election contributions does not include the expenditure of such contributions for activities that influence the primary election or nominating process or expenditure allocations for goods or services to be used in both the primary and general elections. See 2 U.S.C. 441a(f); Advisory Opinion 1980-122.

Furthermore, the Commission concludes that if you do not establish your candidacy with respect to the general election, your committee must refund within a reasonable time contributions designated for the general election, whether or not your committee has made any expenditure from these contributions, since a separate contribution limitation will not be available to these contributors with respect to the general election. See 11 CFR 103.3(b); Advisory Opinion 1986-12. Your committee should make a full refund to those contributors who have made their aggregate allowable contribution to you with respect to the primary election.

Finally, the Commission notes that portions of Advisory Opinion 1982-49 may suggest that contributions designated for a particular election may not be expended until it is established that the candidate will participate in that election. To the extent that Advisory Opinion 1982-49 may be so interpreted as to preclude expenditures of general election contributions in the limited circumstances permitted in this opinion, Advisory Opinion 1982-49 is superseded.

This response constitutes an advisory opinion concerning application of the Act, or regulations prescribed by the Commission, to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f.

Sincerely yours,

(signed)

Joan D. Aikens
Chairman for the
Federal Election Commission

Enclosures (AOs 1986-12, 1984-32, 1984-16, 1983-39, 1982-49, 1982-47, and 1980-122)

Commissioner Harris voted against approval of this opinion and will file a dissenting opinion at a later date.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civ. No. 14-1243 (RMC)
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 6

FEDERAL ELECTION COMMISSION
Washington, DC 20463

July 29, 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2009-15

Barry Hunsaker, Treasurer
Bill White for Texas
P.O. Box 131197
Houston, TX 77219 - 1197

Dear Mr. Hunsaker:

We are responding to your advisory opinion request, on behalf of Bill White for Texas (the "White Committee"), concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to the raising and acceptance of contributions for a special election that may not occur. The Commission concludes that the White Committee may accept contributions for the Senatorial primary and general elections to be held in 2012 in Texas, and may currently accept contributions for a special or emergency election or runoff in 2009 or 2010 that has not been scheduled and may not occur.

Background

The facts presented in this advisory opinion are based on your letter received on June 12, 2009, and on reports filed with the Commission.

Bill White is currently the mayor of Houston, Texas. The White Committee is Mayor White's principal campaign committee for election to the United States Senate from Texas. The White Committee registered with the Commission on December 12, 2008. On December 15, 2008, Mayor White filed a Statement of Candidacy with respect to the 2012 Senate race. If a special or emergency election is called before 2012 to fill a vacancy in the Senate seat, Mayor White intends to be a candidate in that election.

Currently, Senator Kay Bailey Hutchison holds the Senate seat that will be contested in the 2012 primary and general elections. However, Senator Hutchison has

stated publicly that she will not be a candidate for re-election in 2012,[1] and she has formed a committee under Texas law to raise funds to run for Governor of Texas in the 2010 March primary and November general elections. Senator Hutchison has discussed the possibility of resigning from the Senate during the course of her gubernatorial campaign.[2]

Under the Texas Election Code (the “Election Code”), if Senator Hutchison resigns from the Senate before her term expires, a “special election” to fill that seat may be scheduled for November 3, 2009, May 8, 2010, or November 2, 2010, depending on the timing of the resignation. Election Code §§210.023 and 3.003. It is also possible that the Governor may schedule an “emergency election” on another date to fill the vacancy if the Governor determines that an emergency exists. Election Code §41.0011. The Governor has considerable discretion in deciding whether to call such an election, and it is not currently possible to predict whether he would do so.[3]

A special election to fill a U.S. Senate seat would not be conducted as a party primary, but as an election in which candidates from all parties appear on the same ballot, with party affiliation indicated. Election Code §203.003. If no candidate receives a majority, that election is followed by a runoff election between the two candidates receiving the most votes in the first election.

Regularly scheduled party primary and general elections for the Senate seat will be held in 2012. If no candidate receives a majority in the party primary, a runoff will be held. It is thus conceivable that Mayor White could be a candidate in up to five elections for the same U.S. Senate seat between now and November 2012: a special election in 2009 or 2010, a runoff for that election, the 2012 Democratic party primary, a primary runoff, and a general election in November 2012.

Questions Presented[4]

1. *If a contributor makes an undesignated contribution to the White Committee of $2,400 or less, and a special Senate election is subsequently scheduled after that contribution is made but before the March 2012 Senate primary election, would that undesignated contribution be available to the White Committee to use for the special Senate election?*

2. *May the White Committee accept a contribution of up to $4,800 from an individual before a special Senate election is scheduled if the contributor (i) designates up to $2,400 for a special Senate election if one is held, or for the 2012 primary election*

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[1] Gamboa, Suzanne, “Texas senator won't run for re-election,” *USA Today*, October 16, 2007.
[2] *Id.*
[3] The term “special election” is used throughout the remainder of this advisory opinion to refer to either a special or emergency election.
[4] These questions use the $2,400 per person per election contribution limit in place for the 2009-2010 election cycle. That amount may be adjusted for inflation in the 2011-2012 election cycle. *See generally*, 2 U.S.C. 441a(b).

if there is no special Senate election; and (ii) designates up to $2,400 for either a runoff election following the special Senate election if a runoff is held, or to the 2012 general election if there is no such runoff?

3. With respect to a contribution that exceeds $2,400 and that is made before any special election is scheduled:

(a) Is the contribution properly designated if the contributor uses a form stating that "Federal Election Law allows individuals to donate up to $4,800; $2,400 for the first election and $2,400 for any subsequent election" and there is no other designation language provided?

(b) Is the contribution designated to the 2012 primary and/or 2012 general election pursuant to a form described in question 3(a) properly redesignated to the special and/or runoff election if the White Committee provides the contributor a form letter, such as the one attached as Appendix D in the Request, stating that the White Committee is designating $2,400 for "the first election" and the remaining amount for "the second election in which Mayor White participates"?

(c) If the notice of redesignation described in question 3(b) relating to a special election and possible runoff election is not effective as to a special election and possible runoff election, will the notice of redesignation nevertheless be effective as to the primary and general elections of 2012?

(d) If the notice of redesignation is effective as to the 2012 primary and general elections, may the White Committee use the contribution for a special election and, if one is required, a runoff election if special election is called before the 2012 primary election occurs?

4. If the White Committee raises money for a special election, and for a runoff following a special election, and the special election or runoff does not occur, what may the Committee do with the money?

5. How should the White Committee report designated contributions if the answer to Question 2 is yes, and redesignated contributions if the answer to Question 3 is yes?

Legal Analysis and Conclusions

1. If a contributor makes an undesignated contribution to the White Committee of $2,400 or less, and a special Senate election is subsequently scheduled after that contribution is made but before the March 2012 Senate primary election, would that undesignated contribution be available to the White Committee to use for the special Senate election?

Yes, an undesignated contribution of up to $2,400 would be available to the White Committee to use for the Senate special election that is called after the contribution is made.

Contributions by a person other than a multicandidate committee to a Federal candidate's authorized committees are limited to $2,400 "with respect to any election." 11 CFR 110.1(b); 2 U.S.C. 441a(a)(1)(A) and 441a(c). Commission regulations state that "with respect to any election" means: (1) in the case of a contribution designated in writing by the contributor for a particular election, the election so designated; and (2) in the case of a contribution not designated in writing by the contributor, the next election for the Federal office after the contribution is made. 11 CFR 110.1(b)(2). Under the circumstances described, a special election that has been called would be the next Federal election after the undesignated contribution is made. Therefore, the undesignated contribution may be used for that election (but is subject to the reporting requirements set forth in the answer to question 5).

2. May the White Committee accept a contribution of up to $4,800 from an individual before a special Senate election is scheduled if the contributor (i) designates up to $2,400 for a special Senate election if one is held, or for the 2012 primary election if there is no special Senate election; and (ii) designates up to $2,400 for either a runoff election following the special Senate election if a runoff is held, or to the 2012 general election if there is no such runoff?

Yes, contributions may be designated in the alternative, under the circumstances as set forth in question 2. The White Committee may accept up to $2,400 from an individual contributor for the 2012 primary or, in the alternative, a special election that has not yet been scheduled. The White Committee may also accept up to $2,400 from that same individual contributor for the general election in 2012 or, in the alternative, for a runoff for a not-yet-declared special election.

Commission regulations provide for the designation of a contribution for "a particular election." *See* 11 CFR 110.1(b)(2), (3), and (4). Such a designated contribution must not cause the contributor to exceed the contribution limits at 2 U.S.C. 441a(a)(1) with respect to the particular election, and contributions designated for an election that has already occurred may only be accepted to the extent such contributions do not exceed the committee's net debts outstanding. *See* 11 CFR 110.1(b)(1) and (3)(i). Thus, for an authorized committee to accept a designated contribution of $4,800, which is $2,400 in excess of the per election limit, the contributor must clearly state in writing that $2,400 is designated for one particular election and $2,400 is designated for another particular election, either on the check (or other negotiable instrument) or in a writing accompanying the contribution.

The Commission concludes that designations for the special election and for the runoff would qualify as references to "a particular election." Although the designations present these particular elections in the alternative (*i.e.*, (1) the special election if held before 2012 and, if not so held, the 2012 primary; or (2) the special election runoff if

held before 2012 and, if not so held, the 2012 general election), the specific use of the contribution will be clear to both the Committee and the contributor based on circumstances that will be a matter of public record: that the Governor would have to call a special election following the resignation of Senator Hutchinson.

Moreover, the likelihood of the occurrence of a special election is sufficiently real in this situation. Based on statements from Senator Hutchison and her agents, Mayor White is presented with a strong possibility that Senator Hutchison will resign before the gubernatorial primary or gubernatorial general election as well as a certainty that she will resign by the end of 2010 if she is elected Governor.[5]

Thus, the White Committee may use the described designations to accept up to $2,400 for the special election and up to $2,400 for the runoff to that election. The White Committee must use an acceptable accounting method to distinguish between the contributions received for each of the two elections, *e.g.*, by designating separate bank accounts for each election or maintaining separate books and records for each election. 11 CFR 102.9(e)(1).[6]

The designations described in question 2 would be treated as designations for the special election or the runoff to that election at the point that Senator Hutchison announces her resignation and Mayor White becomes a candidate in a special election called by the Governor. At that point, the contributions can no longer be considered to be designated for the 2012 regularly scheduled elections. After the end of any pre-2012 elections (special or runoff) in which Mayor White actually participates as a candidate, the White Committee may use unused surplus funds (as determined by use of a reasonable accounting method under 11 CFR 110.3(c)(4)) for the 2012 primary election.

3. *With respect to a contribution that exceeds $2,400 and that is made before any special election is scheduled:*

> *(a) Is the contribution properly designated if the contributor uses a form stating that "Federal Election Law allows individuals to donate up to $4,800; $2,400 for the first election and $2,400 for any subsequent election" and there is no other designation language provided?*

Yes, any such contribution is properly designated. If at the time the contribution is made Senator Hutchison has not resigned, no special or runoff election has been called, and the possibility of a special or runoff election is not even mentioned in the forms, current contributors who use the form described in question 3(a) must conclude that the "first election" referenced in the forms means the 2012 primary, and the "second

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[5] *See* Advisory Opinion 2006-22 (Wallace) (where the Commission concluded that an individual raising and spending funds for his candidacy was considered a Federal candidate even at a time when the question of whether the relevant special nominating process would be held was subject to court rulings that had not yet been made).

[6] The Committee must not spend funds designated for the runoff election unless Mayor White participates in the runoff as a candidate. *See* 11 CFR 102.9(e)(3).

election" means the 2012 general election. Accordingly, barring any further instruction from a contributor, the first $2,400 contributed would be designated for the 2012 primary election. Any remaining amount up to $2,400 would likewise be considered designated for the 2012 general election. *See* 11 CFR 110.1(b)(2) and (4).

> *(b) Is the contribution designated to the 2012 primary and/or 2012 general election pursuant to a form described in question 3(a) properly redesignated to the special and/or runoff election if the White Committee provides the contributor a form letter, such as the one attached as Appendix D in the Request, stating that the White Committee is designating $2,400 for "the first election" and the remaining amount for "the second election in which [Mayor White] participates"?*

No, any contributions designated for the 2012 primary and/or general election are not properly redesignated to the special and/or runoff election by the form letter described in question 3(b). Once a contribution is designated to a particular election, it cannot be presumptively redesignated to another election, which is what the form letter attached as Appendix D in the Request purports to do. *See* 11 CFR 110.1(b)(5)(ii)(B)(*2*) and (C)(*2*). Thus, in order to use funds received in response to the wording of the form described in question 3(a) for a 2009 or 2010 special election or runoff, the White Committee must first obtain written redesignations from the contributors for the special election or runoff in accordance with 11 CFR 110.1(b)(5)(ii)(A)(*1*) and (*2*).[7]

> *(c) If the notice of redesignation described in question 3(b) relating to a special election and possible runoff election is not effective, will the notice of redesignation nevertheless be effective as to the primary and general elections of 2012?*

Given that the Commission has already concluded in answering question 3(a) above that the language in the forms would result in the proper designation of the contributions for the 2012 primary and general elections, this question is moot. The White Committee would not need to redesignate contributions that already are properly designated. If the Request is asking whether the White Committee may use the notice of redesignation described in question 3(b), such as the one attached as Appendix D in the Request, to redesignate contributions that already are designated, the answer remains the same as the answer to question 3(b). Contributions that already are designated must be redesignated by obtaining a writing from the contributor; simply issuing a notice to the contributor, such as the one attached as Appendix D, will not suffice. *See* 11 CFR 110.1(b)(5)(ii)(A)(*1*) and (*2*).

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[7] Although Commission regulations only specifically address redesignation of excessive contributions, nothing in the Commission's regulations is intended to suggest that political committees may not seek redesignation of contributions that are *within* the contribution limitations and restrictions. *See* 11 CFR 110.1(b)(5)(i)(A)-(D).

If, on the other hand, the Request is asking whether undesignated contributions that exceed the per-election contribution limit may be presumptively redesignated between the 2012 primary and general elections, then the answer is contingent on whether a special and/or runoff election are called, since the redesignation language contained in the notice attached as Appendix D of the Request is contingent on that fact. In the event the special and runoff elections are not called, the form letter would constitute an effective presumptive redesignation pursuant to 11 CFR 110.1(b)(5)(ii)(B) and (C), since the letter states that the White Committee is designating a certain amount to the primary election (in the event a special election is not called) and a certain amount to the general election (in the event a runoff election does not occur).

(d) If the notice of redesignation is effective as to the 2012 primary and general elections, may the White Committee use the contribution for a special election and, if one is required, a runoff election if special election is called before the 2012 primary election occurs?

If the White Committee wishes to use contributions that have been designated for the 2012 primary and general elections for a 2009 or 2010 special election or runoff once the special election is called, the White Committee must first obtain written contributor redesignations for the special election or runoff in accordance with 11 CFR 110.1(b)(5)(ii)(A)(*1*) and (*2*).

4. If the White Committee raises money for a special election, and for a runoff following a special election, and the special election or runoff does not occur, what may the Committee do with the money?

If the White Committee raises money for a special election, and the special election does not occur, contributions designated for the special election must be refunded to the contributor within sixty days of the last date that a special election may be scheduled under Texas law, unless the White Committee receives a written redesignation or combined redesignation and reattribution. 11 CFR 110.1(b)(3)(i)(C); *see* Advisory Opinion 1992-15 (Russo) (concluding that the 60-day period begins to run on the date that the committee "has actual notice of the need to obtain redesignations . . . or refund the contribution[s]").

Similarly, although the Committee may accept contributions designated for the runoff once it is apparent that a special election will occur, it may not use those contributions unless Mayor White participates in the runoff as a candidate. *See* Advisory Opinion 1982-49 (Weicker) (recognizing that accepting contributions for an election at a time before the necessity of such an election is determined is analogous to accepting general election contributions before the primary election). Contributions designated for an election that does not occur, or in which a person is not a candidate (for example, where a candidate has lost the primary and is hence not running in the general election), must be refunded, redesignated for another election in which the candidate has participated or is participating in accordance with 11 CFR 110.1(b)(5), or redesignated and reattributed to another contributor in accordance with 11 CFR 110.1(k)(3). *See*

11 CFR 102.9(e)(3), 110.1(b)(3)(i), and 103.3(b)(3), and Advisory Opinions 1992-25 (Owens), 1986-17 (Green), and 1982-49 (Weicker). Thus, if Mayor White loses the special election, or if any candidate receives a majority in the special election (and therefore there is no special runoff election), contributions designated for the special election runoff must be refunded to the contributor within sixty days of the special election unless the White Committee receives a written redesignation or combined redesignation and reattribution. 11 CFR 110.1(b)(3)(i)(C).

5. How should the White Committee report designated contributions if the answer to Question 2 is yes, and redesignated contributions if the answer to Question 3 is yes?

In reporting contributions accompanied by the written statements described in question 2 that are received before a special election is scheduled, the White Committee must check a box on Schedule A indicating either a "Primary" contribution or a "General" contribution for the 2012 elections and include a memo text stating either (1) "Designated for special or emergency election if scheduled before 2012" or (2) "Designated for special or emergency election runoff if scheduled before 2012." Such reporting reflects the use of the contributions as they are intended by the contributor at the time the contribution is made. If Senator Hutchison announces her resignation, and Mayor White becomes a candidate in a special election called by the Governor, the White Committee must inform the Commission that the contributions are considered to be designated for the special election or the runoff election. Normally, when the designation of a contribution has been changed, the political committee must disclose the redesignation on the report covering the period in which it received the redesignation, including a memo entry for each contribution that indicates when the Committee received a new designation from the contributor. *See* 11 CFR 104.8(d); *see also Instructions for FEC Form 3 and Related Schedules*, p. 9. Under the circumstances presented, where the White Committee is attempting to deal with uncertainty as to the proper way to designate contributions in an unusual electoral situation, the Commission considers it to be sufficient for the White Committee to file amended reports, simply indicating the proper designations of the contributions. The Commission recommends that to avoid any confusion, the White Committee include memo text specifically referencing this advisory opinion.

Further, the Commission must also be informed of any changes to the potential use of undesignated contributions received pursuant to question 1. The White Committee should similarly file amended reports for these contributions once a special election is called.

Contributions received using the forms described in question 3 must be reported as contributions designated for the 2012 primary election or 2012 general election.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a

conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions and case law. All cited advisory opinions are available on the Commission's website at http://saos.nictusa.com/saos/searchao.

On behalf of the Commission,

(signed)
Steven T. Walther
Chairman

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 7

2006 MAR 27 A 11:04
FEC OFFICE OF GENERAL COUNSEL

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3
4 In the Matter of)
5) MUR 5388
6 Jim Treffinger for Senate, Inc.)
7 Robert A. Mathers, as treasurer)
8

9 **CONCILIATION AGREEMENT**

10
11 This matter was initiated by the Federal Election Commission ("the Commission"),
12 pursuant to information ascertained in the normal course of carrying out its supervisory
13 responsibilities and by a Complaint filed with the Commission by Jay Hochberg. The
14 Commission found reason to believe that Jim Treffinger for Senate, Inc. and Robert A. Mathers,
15 as treasurer ("Respondents"), knowingly and willfully violated 2 U.S.C. § 441a(f).

16 NOW, THEREFORE, the Commission and the Respondents, having participated in
17 informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree
18 as follows:

19 I. The Commission has jurisdiction over the Respondents and the subject matter of
20 this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C.
21 § 437g(a)(4)(A)(i) and 11 C.F.R. § 111.18(d).

22 II. Respondents have had a reasonable opportunity to demonstrate that no action
23 should be taken in this matter.

24 III. Respondents enter voluntarily into this agreement with the Commission.

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1 IV. The pertinent facts in this matter are as follows:

2 1. James Treffinger was a candidate for the U.S. Senate in New Jersey in the
3 June 6, 2000 Republican primary election. Jim Treffinger for Senate, Inc. ("the Committee") is a
4 political committee within the meaning of 2 U.S.C. § 431(4) and is the authorized principal
5 campaign committee for Mr. Treffinger's 2000 and 2002 Senatorial campaigns.

6 2. Robert A. Mathers became the treasurer of the Committee in March 2002.

7 3. The Federal Election Campaign Act of 1971, as amended ("the Act"),
8 provides that no person may make a contribution to a candidate for federal office, or his
9 authorized political committees, in excess of $1,000 per election.[1] 2 U.S.C. § 441a(a)(1)(A).
10 The Act also makes it unlawful for candidates and political committees to knowingly accept any
11 contribution in violation of section 441a. *See* 2 U.S.C. § 441a(f).

12 4. The treasurer of a political committee has the responsibility for determining
13 the legality of any contributions received by the committee. 11 C.F.R. §§ 103.3(b)(3),
14 110.1(b)(3), 110.2(b)(3). In the case of excessive contributions, the treasurer has sixty days from
15 the date of receipt to reattribute, redesignate, or refund the contribution to cure the illegality.
16 11 C.F.R. § 102.9(e); AO 1992-15; AO 1988-41.

17 5. In an election cycle, the Act treats primary and general elections as two
18 separate elections. 2 U.S.C. § 431(1)(A); 11 C.F.R. § 110.1(b)(2).

19

20

[1] The activity in this matter is governed by the Federal Election Campaign Act of 1971, as amended ("the Act"), and the regulations in effect during the pertinent time period, which precedes the amendments made by the Bipartisan Campaign Reform Act of 2002 ("BCRA"). All references to the Act and regulations in this Conciliation Agreement exclude the changes made by or subsequent to BCRA.

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1 6. While it is permissible to accept contributions for the general election prior to
2 the primary election, the Committee must employ an acceptable accounting method to
3 distinguish between primary and general election contributions. 2 U.S.C. § 441a(a)(6); 11 C.F.R.
4 § 102.9(e); AO 1992-15; AO 1980-122; AO 1988-41.
5 7. Prior to the 2000 Republican primary election for the U.S. Senate in New
6 Jersey, Respondents received $227,080 in contributions designated for the 2000 general election.
7 On June 6, 2000, Mr. Treffinger lost the primary election.
8 8. Respondents failed to use acceptable accounting methods as required by
9 11 C.F.R. § 102.9(e) and used $50,000 of the money designated for the 2000 general election for
10 activities associated with the primary election, making the contributions excessive and in
11 violation of 2 U.S.C. § 441a(a).
12 9. Additionally, since Mr. Treffinger did not participate in the 2000 general
13 election, the general election contributions became excessive and Respondents were required to
14 obtain reattribution of the contributions to another contributor in accordance with 11 C.F.R.
15 § 110.1(k)(3), to obtain redesignation of the contributions to another election in accordance with
16 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5), or to refund the contributions within sixty days of the
17 June 6, 2000 primary election. 2 U.S.C. § 441a(f); 11 C.F.R. § 102.9(e); AO 1992-15; AO 1988-
18 41; *see also* 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3), 103.3(b)(3).
19 10. Respondents, however, failed to disclose any refunds, reattributions, or
20 redesignations of these excessive contributions in any report filed within sixty days after the
21 primary date. To date, Respondents have refunded only nine of these excessive contributions
22 totaling $6,400.

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1 11. Respondents also received $10,550 in excessive 2000 primary election
2 contributions. The contributions originated from thirteen individuals who had already met their
3 $1,000 contribution limits for the 2000 primary election. Respondents had sixty days from the
4 date of receipt to reattribute, redesignate, or refund the excessive primary election contributions.
5 12. Respondents, however, failed to disclose any refunds, reattributions, or
6 redesignations of these excessive contributions in any report filed within sixty days of receipt of
7 the contributions. To date, Respondents have refunded only $1,250 of these excessive
8 contributions.
9 13. Twice during 2002, the Commission's Reports Analysis Division ("RAD")
10 provided Respondents with detailed information on the excessive 2000 contributions. RAD
11 notified Respondents of their obligation to refund the outstanding contributions.
12 14. Respondents failed to refund the remaining excessive 2000 contributions.
13 15. On July 25, 2003, the Commission issued Advisory Opinion 2003-17 ("the
14 AO"). In the AO the Commission noted that the Committee had accepted contributions for both
15 the 2000 and 2002 general elections, and warned that to the extent funds were needed for the
16 purpose of refunding those contributions, no funds could be used to pay legal expenses related to
17 Mr. Treffinger's criminal defense.
18 16. At the time the AO was issued, Respondents' refund obligation already
19 exceeded the Committee's cash on hand. Nevertheless, beginning in August 2003, Respondents
20 made six payments to law firms that represented Mr. Treffinger in his May 2003 court
21 appearance and October 2003 criminal sentencing. Thus, contrary to the explicit language of the

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1 AO, Respondents used the funds needed to meet the refund obligation to pay Mr. Treffinger's
2 legal fees.
3 V. Respondents violated 2 U.S.C. § 441a(f) by accepting $237,630 in excessive
4 contributions. Respondents will cease and desist from violating 2 U.S.C. § 441a(f).
5 VI. Respondents will pay a civil penalty to the Federal Election Commission in the
6 amount of Fifty-Seven Thousand Dollars ($57,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).
7 VII. Respondents shall report as debt on Schedule D of their periodic disclosure
8 reports filed with the Commission pursuant to 2 U.S.C. § 434 each unrefunded excessive
9 contribution at issue in this matter. None of the respondent Committee's future receipts, if any,
10 may be disbursed for any purpose other than refunding the excessive contributions until the entire
11 amount of excessive contributions has been refunded.
12 VIII. The Commission, on request of anyone filing a complaint under 2 U.S.C.
13 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance
14 with this agreement. If the Commission believes that this agreement or any requirement thereof
15 has been violated, it may institute a civil action for relief in the United States District Court for
16 the District of Columbia.
17 IX. This agreement shall become effective as of the date that all parties hereto have
18 executed same and the Commission has approved the entire agreement.
19 X. Respondents shall have no more than 30 days from the date this agreement
20 becomes effective to comply with and implement the requirements contained in this agreement
21 and to so notify the Commission.

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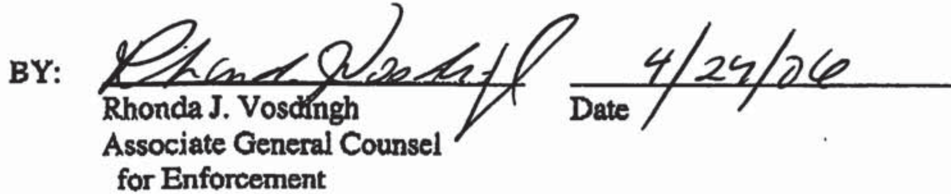
1 XI. This Conciliation Agreement constitutes the entire agreement between the parties
2 on the matters raised herein, and no other statement, promise, or agreement, either written or
3 oral, made by either party or by agents of either party that is not contained in this written
4 agreement shall be enforceable.
5
6
7 FOR THE COMMISSION:

8 Lawrence H. Norton
9 General Counsel
10
11
12

13 BY: _______________ Date 4/24/06
14 Rhonda J. Vosdingh
15 Associate General Counsel
16 for Enforcement
17
18
19 FOR THE RESPONDENTS:
20
21

22 _______________ 3/22/06
23 Robert A. Mathers Date
24 Treasurer
25

26044134696

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civ. No. 14-1243 (RMC)
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 8

FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 14 2010

Scott E. Thomas
Dickstein Shapiro LLP
1825 Eye Street NW
Washington, DC 20006-5403

10044272924

RE: MUR 6230
Wynn for Congress and
Curt Clifton, in his official capacity
as treasurer

Dear Mr. Thomas:

On May 25, 2010, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of a violation of U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"), and 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i) of the Commission's regulations. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the initial payment of $5,000 (Five Thousand Dollars) of the civil penalty is due within 24 hours of final execution of the conciliation agreement. The remainder will be paid in six (6) installments of $500 (Five Hundred Dollars) each, starting on the last business day of the month following the month this agreement is executed and continuing on the last business day of the six (6) succeeding months. If you have any questions, please contact me at (202) 694-1624.

Sincerely,

Joshua B. Smith
Attorney

Enclosure:
Conciliation Agreement

RECEIVED
FEDERAL ELECTION
COMMISSION

2010 MAR 12 PM 5:39

OFFICE OF GENERAL
COUNSEL

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
) MUR 6230
Wynn for Congress and)
Curt Clifton, in his official capacity as treasurer)

10044272925

CONCILIATION AGREEMENT

This matter was initiated by the Federal Election Commission, ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Wynn for Congress and Curt Clifton, in his official capacity as treasurer, ("Respondents") violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended ("the Act") and 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i) of the Commission's regulations.

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Wynn for Congress is the principal campaign committee for Albert Wynn's 2008 Congressional race. Wynn for Congress is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Curt Clifton has been the treasurer of Wynn for Congress since October 15, 2008. During the relevant period of the 2008 campaign, Gregory Holloway was the treasurer.

3. Albert Wynn lost the primary election on February 12, 2008.

4. At the time this activity occurred, the Act prohibited persons from making contributions to any candidate and his authorized political committee with respect to any election for federal office which, in the aggregate, exceed $2,300. 2 U.S.C. § 441a(a)(1)(A).

5. The Act prohibits any multicandidate political committee from making contributions to any candidate and his authorized political committee with respect to any election for federal office which, in the aggregate, exceed $5,000. 2 U.S.C. § 441a(a)(2)(A).

6. The Act prohibits any candidate or political committee from knowingly accepting any contributions that exceed the limits established by 2 U.S.C. § 441a. 2 U.S.C. § 441a(f).

7. A committee may accept contributions that are designated for use in connection with the general election prior to the date of the primary election if the committee employs an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. 11 C.F.R. § 102.9(e)(1).

8. An authorized committee's records must demonstrate that, prior to the primary election, recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. 11 C.F.R. § 102.9(e)(2).

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9. If a candidate is not a candidate in the general election, a committee shall return, refund to the contributors, redesignate in accordance with 11 C.F.R. § 110.1(b)(5), or reattribute in accordance with 11 C.F.R. § 110.1(k)(3), any contributions designated for the general election within 60 days of the primary election. 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i), AO 1992-15.

10. If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits. AO 2007-03.

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11. Respondent's Amended 2008 campaign reports disclosed to the Commission that it accepted $115,100 in contributions designated for the 2008 general election, before the primary election on February 12, 2008, consisting of $41,600 from twenty-two individuals and $73,500 from twenty-four PACs.

12. Respondents did not employ an accounting method to distinguish between contributions received for the primary election and contributions received for the general election, and they used general election funds to pay for primary election costs.

13. Respondents could not redesignate the general election contributions to the 2008 primary election because all of the general election contributors had already contributed the maximum amount allowable for the primary election.

14. Respondents could not reattribute the general election contributions because reattribution would not remedy the Respondents' acceptance of contributions designated for an election in which Wynn was not participating.

15. Respondents did not refund the general election contributions within 60 days of the primary election, and have not done so to date.

V. Respondents committed the following violations:

1. Respondents violated 2 U.S.C. § 441a(f) by accepting $115,100 in general election contributions from individuals and multicandidate committees that had already contributed the maximum amount allowable for the 2008 primary election, which became excessive as of the date the candidate lost the primary.

2. Respondents violated 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), and 110.2(b)(3)(i) by failing to refund or return $115,100 in excessive contributions.

VI. Respondents will take the following actions:

1. In ordinary circumstances, the Commission would seek a substantially higher civil penalty based on the violations outlined in this agreement. However, the Commission is taking into account the fact that the Committee is defunct, has no cash on hand according to the evidence available, and has a limited ability to raise any additional funds. Respondents will pay a civil penalty to the Federal Election Commission in the amount of Eight Thousand Dollars ($8,000), pursuant to 2 U.S.C. § 437g(a)(5)(A), divided as follows:

(a) An initial payment of $5,000 within 24 hours of final execution of this agreement;

(b) The remainder will be paid in six (6) installments of Five Hundred Dollars each, starting on the last business day of the month following the month this agreement is executed and continuing on the last business day of the six (6) succeeding months.

2. Respondents will convey a copy of the agreement to former Congressman Wynn, who has verified to Respondents that, in the event he ever decides to run for federal office again, he will cause his authorized committee to set aside an additional $12,000 in campaign proceeds and pay that amount as an additional civil penalty relating to the matter herein, as well

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as refund to the contributors, or in the alternative, disgorge to the U.S. Treasury, the $115,100 in excessive contributions identified herein as received in violation of 2 U.S.C. § 441a(a).

3. Respondents will cease and desist from violating 2 U.S.C. § 441a(f), 11 C.F.R. §§ 102.9(c)(3), 110.1(h)(3)(i), and 110.2(b)(3)(i).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Except as otherwise provided, Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

10044272929

FOR THE COMMISSION:

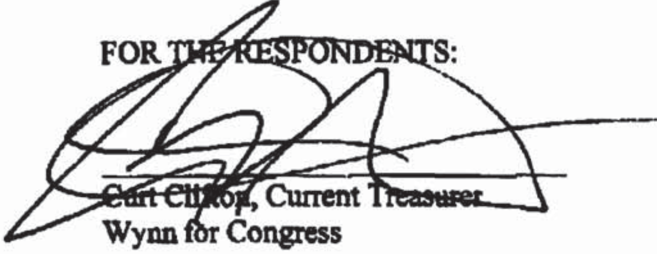
Thomasenia P. Duncan
General Counsel

BY:
Ann Marie Terzaken
Associate General Counsel

6/10/10
Date

For Enforcement

FOR THE RESPONDENTS:



Curt Clifton, Current Treasurer
Wynn for Congress

03/12/2010
Date

10044272930

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 9

No Party Preference Information

Voting in Presidential Primary Elections

Each political party has the option of allowing people who register to vote without stating a political party preference ("no party preference" voters - formerly known as "decline-to-state" voters) to vote in their presidential primary election. A political party must notify the Secretary of State's office whether or not they will allow no party preference voters to vote in their presidential primary election 135 days before the election.

If a no party preference voter wishes to vote in the presidential primary election of a political party who has notified the Secretary of State that they will allow no party preference voters to vote in their party's primary, a no party preference voter would simply ask their **county elections office** or ask a poll worker at their polling place for a ballot for that political party. A voter may not request more than one party's ballot.

If a no party preference voter does not request such a ballot, they will be given a nonpartisan ballot, containing only the names of candidates for voter-nominated offices and local nonpartisan offices and measures to be voted upon at that presidential primary election.

History Behind California's Primary Election System

Closed Primary System

A "closed" primary system governed California's primary elections until 1996. In a closed primary, only persons who are registered members of a political party may vote the ballot of that political party.

Open Primary System

The provisions of the "closed" primary system were amended by the adoption of Proposition 198, an initiative statute approved by the voters at the March 26, 1996, Primary Election. Proposition 198 changed the closed primary system to what is known as a "blanket" or "open" primary, in which all registered voters may vote for any candidate, regardless of political affiliation and without a declaration of political faith or allegiance. On June 26, 2000, the United States Supreme Court issued a decision in *California Democratic Party, et. al. v. Jones*, stating that California's "open" primary system, established by Proposition 198, was unconstitutional because it violated a political party's First Amendment right of association. Therefore, the Supreme Court overturned Proposition 198.

Modified Closed Primary System for Presidential Elections

California's current "modified" closed primary system for Presidential elections was chaptered on September 29, 2000 and took effect on January 1, 2001. Senate Bill 28 (Ch. 898, Stats. 2000) implemented a "modified" closed primary system that permitted voters who had declined to provide a political party preference (formerly known as

"decline to state" voters) to participate in a primary election if authorized by an individual party's rules and duly noticed by the Secretary of State.

Top Two Candidates Open Primary Act and Voter-Nominated Offices

The Top Two Candidates Open Primary Act, which took effect January 1, 2011, requires that all candidates for a voter-nominated office be listed on the same ballot. Previously known as partisan offices, voter-nominated offices are state legislative offices, U.S. congressional offices, and state constitutional offices. Only the two candidates receiving the most votes—regardless of party preference—move on to the general election regardless of vote totals.

Write-in candidates for voter-nominated offices can only run in the primary election. However, a write-in candidate can only move on to the general election if the candidate is one of the top two vote-getters in the primary election.

Additionally, there is no independent nomination process for a general election. California's new open primary system does not apply to candidates running for U.S. President, county central committee, or local offices.

Party-Nominated/Partisan Offices

Under the California Constitution, political parties may formally nominate candidates for party-nominated/partisan offices at the primary election. A candidate so nominated will then represent that party as its official candidate for the office in question at the ensuing general election and the ballot will reflect an official designation to that effect. The top votegetter for each party at the primary election is entitled to participate in the general election. Parties also elect officers of official party committees at a partisan primary.

No voter may vote in the primary election of any political party other than the party he or she has disclosed a preference for upon registering to vote. However, a political party may authorize a person who has declined to disclose a party preference to vote in that party's primary election.

Voter-Nominated Offices

Under the California constitution, political parties are not entitled to formally nominate candidates for voter-nominated offices at the primary election. A candidate nominated for a voter-nominated office at the primary election is the nominee of the people and not the official nominee of any party at the following general election. A candidate for nomination or election to a voter-nominated office shall have his or her party preference, or lack of party preference, reflected on the primary and general election ballot, but the party preference designation is selected solely by the candidate and is shown for the information of the voters only. It does not constitute or imply an endorsement of the candidate by the party designated, or affiliation between the party and candidate, and no candidate nominated by the qualified voters for any voter-nominated office shall be deemed to be the officially nominated candidate of any political party. The parties may list the candidates for voter-nominated offices who have received the official endorsement of the party in the sample ballot.

All voters may vote for any candidate for a voter-nominated office, provided they meet the other qualifications required to vote for that office. The top two votegetters at the primary election advance to the general election for

the voter-nominated office, even if both candidates have specified the same party preference designation. No party is entitled to have a candidate with its party preference designation participate in the general election unless such candidate is one of the two highest votegetters at the primary election.

Nonpartisan Offices

Under the California Constitution, political parties are not entitled to nominate candidates for nonpartisan offices at the primary election, and a candidate nominated for a nonpartisan office at the primary election is not the official nominee of any party for the office in question at the ensuing general election. A candidate for nomination or election to a nonpartisan office may not designate his or her party preference, or lack of party preference, on the primary and general election ballot. The top two votegetters at the primary election advance to the general election for the nonpartisan office.

History of Political Parties That Have Adopted Party Rules Regarding No Party Preference Voters

|

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 10

Statement of Vote

June 3, 2014, Statewide Direct Primary Election

California Secretary of State Debra Bowen

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ABOUT THIS STATEMENT OF VOTE

The Statement of Vote reports the county-by-county votes cast for each candidate and measure on the ballot. In a statewide contest such as Governor, the vote is reported by all 58 counties and listed in alphabetical order with the statewide total at the bottom. Candidates are listed in order by party, with the two major parties first (i.e., Democratic, Republican, American Independent, Green, Libertarian, and Peace and Freedom). Write-in candidates are listed last. For example:

	Akinyemi Agbede DEM	Edmund G. "Jerry" Brown DEM	Glenn Champ REP	Tim Donnelly REP	Richard William Aguirre REP	Andrew Blount REP	Neel Kashkari REP
Alameda	1,537	153,638	2,040	14,475	784	3,891	11,881
Percent	0.8%	76.0%	1.0%	7.2%	0.4%	1.9%	5.9%
State Totals	37,024	2,354,769	79,066	643,236	35,125	89,749	839, 767
Percent	0.9%	54.3%	1.8%	14.8%	0.8%	2.1%	19.4%

Legislative and congressional district contests are similarly reported, indicating the counties that comprise the district. For example:

6th Congressional District

	Doris Matsui* DEM	Joseph McCray Sr. REP
Sacramento	58,826	20,567
Yolo	3,814	1,898
District Totals	62,640	22,465
Percent	73.6%	26.4%

Ballot measures are reported by county in alphabetical order. For example:

	Proposition 41 Veterans Housing & Homeless Bond Act of 2014		Proposition 42 Public Records. Open Meetings. Reimbursements.	
	Yes	No	Yes	No
Alameda	140,879	57,406	126, 343	63,544
Percent	71.0%	29.0%	66.5%	33.5%
Alpine	301	180	202	192
Percent	62.6%	37.4%	51.3%	48.7%
State Totals	2,708,933	1,434,060	2,467,357	1,522,406
Percent	65.4%	34.6%	61.8%	38.2%

United States Representative

49th Congressional District

	Noboru Isagawa DEM	Dave Peiser DEM	Darrell Issa* REP	Johnny Moore DEM (W/I)
Orange	1,858	4,649	15,162	0
San Diego	7,029	21,297	41,396	16
District Totals	8,887	25,946	56,558	16
Percent	9.7%	28.4%	61.9%	0.0%

50th Congressional District

	James H. Kimber DEM	Duncan Hunter* REP	Michael Benoit LIB
Riverside	1,684	4,612	322
San Diego	19,868	57,759	4,312
District Totals	21,552	62,371	4,634
Percent	24.3%	70.4%	5.2%

51st Congressional District

	Juan Vargas* DEM	Stephen Meade REP	Ernest Griffes REP (W/I)
Imperial	10,833	5,323	109
San Diego	24,979	11,080	75
District Totals	35,812	16,403	184
Percent	68.3%	31.3%	0.4%

52nd Congressional District

	Scott Peters* DEM	Carl DeMaio REP	Kirk Jorgensen REP	Fred J. Simon Jr. REP
San Diego	53,926	44,954	23,588	5,040
District Totals	53,926	44,954	23,588	5,040
Percent	42.3%	35.3%	18.5%	4.0%

* Incumbent

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 11

Statement of Vote

November 4, 2014, General Election

California Secretary of State Debra Bowen

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ABOUT THIS STATEMENT OF VOTE

The Statement of Vote reports the county-by-county votes cast for each candidate and measure on the ballot. In a statewide contest such as Governor, the vote is reported by all 58 counties and listed in alphabetical order with the statewide total at the bottom. Candidates are listed in alphabetical order by party, with the two major parties first (i.e., Democratic, Republican, American Independent, Americans Elect, Green, Libertarian, and Peace and Freedom). For example:

	Edmund G. "Jerry" Brown* DEM	Neel Kashkari REP
Alameda	293,081	63,593
Percent	82.2%	17.8%
State Totals	4,388,368	2,929,213
Percent	60.0%	40.0%

Legislative and congressional district contests are similarly reported, indicating the counties that comprise the district. For example:

6th Congressional District

	Doris Matsui* DEM	Joseph McCray Sr. REP
Sacramento	90,992	33,294
Yolo	6,016	3,154
District Totals	97,008	36,448
Percent	72.7%	27.3%

State ballot measures are reported by county in alphabetical order. For example:

	Proposition 1 Funding Water Quality, Supply, Treatment, Storage		Proposition 2 State Budget Stabilization Account		Proposition 45 Healthcare Insurance Rate Changes		Proposition 46 Doctor Drug Testing, Medical Negligence	
	Yes	**No**	**Yes**	**No**	**Yes**	**No**	**Yes**	**No**
Alameda	244,683	98,700	243,511	94,073	184,451	160,153	125,880	221,153
Percent	71.3%	28.7%	72.1%	27.9%	53.5%	46.5%	36.3%	63.7%
State Totals	4,771,350	2,336,676	4,831,045	2,158,004	2,917,882	4,184,416	2,376,817	4,774,364
Percent	67.1%	32.9%	69.1%	30.9%	41.1%	58.9%	33.2%	66.8%

STATEMENT OF VOTE SUMMARY PAGES

United States Representative District 41	Votes	Percent
Mark Takano*, DEM	46,948	56.6%
Steve Adams, REP	35,936	43.4%

United States Representative District 42	Votes	Percent
Tim Sheridan, DEM	38,850	34.3%
Ken Calvert*, REP	74,540	65.7%

United States Representative District 43	Votes	Percent
Maxine Waters*, DEM	69,681	71%
John Wood, Jr., REP	28,521	29%

United States Representative District 44	Votes	Percent
Janice Hahn*, DEM	59,670	86.7%
Adam Shbeita, PF	9,192	13.3%

United States Representative District 45	Votes	Percent
Drew E. Leavens, DEM	56,819	34.9%
Mimi Walters, REP	106,083	65.1%

United States Representative District 46	Votes	Percent
Loretta Sanchez*, DEM	49,738	59.7%
Adam Nick, REP	33,577	40.3%

United States Representative District 47	Votes	Percent
Alan Lowenthal*, DEM	69,091	56%
Andy Whallon, REP	54,309	44%

United States Representative District 48	Votes	Percent
Suzanne Joyce Savary, DEM	62,713	35.9%
Dana Rohrabacher*, REP	112,082	64.1%

United States Representative District 49	Votes	Percent
Dave Peiser, DEM	64,981	39.8%
Darrell Issa*, REP	98,161	60.2%

United States Representative District 50	Votes	Percent
James H. Kimber, DEM	45,302	28.8%
Duncan Hunter*, REP	111,997	71.2%

United States Representative District 51	Votes	Percent
Juan Vargas*, DEM	56,373	68.8%
Stephen Meade, REP	25,577	31.2%

United States Representative District 52	Votes	Percent
Scott Peters*, DEM	98,826	51.6%
Carl DeMaio, REP	92,746	48.4%

United States Representative District 53	Votes	Percent
Susan A. Davis*, DEM	87,104	58.8%
Larry A. Wilske, REP	60,940	41.2%

State Senate District 2	Votes	Percent
Mike McGuire, DEM	188,142	70%
Lawrence R. Wiesner, REP	80,778	30%

State Senate District 4	Votes	Percent
CJ Jawahar, DEM	79,457	36.3%
Jim Nielsen*, REP	139,199	63.7%

State Senate District 6	Votes	Percent
Roger Dickinson, DEM	82,938	46.2%
Richard Pan, DEM	96,688	53.8%

State Senate District 8	Votes	Percent
Paulina Miranda, DEM	73,417	33.5%
Tom Berryhill*, REP	145,587	66.5%

State Senate District 10	Votes	Percent
Bob Wieckowski, DEM	111,162	68%
Peter Kuo, REP	52,302	32%

State Senate District 12	Votes	Percent
Shawn K. Bagley, DEM	49,039	39.5%
Anthony Cannella*, REP	74,988	60.5%

State Senate District 14	Votes	Percent
Luis Chavez, DEM	46,035	45.9%
Andy Vidak*, REP	54,251	54.1%

State Senate District 16	Votes	Percent
Ruth Musser-Lopez, DEM	45,812	27.2%
Jean Fuller*, REP	122,700	72.8%

State Senate District 18	Votes	Percent
Bob Hertzberg, DEM	79,495	70.2%
Ricardo Antonio Benitez, REP	33,794	29.8%

State Senate District 20	Votes	Percent
Connie M. Leyva, DEM	56,943	62.4%
Matthew Munson, REP	34,256	37.6%

State Senate District 22	Votes	Percent
Ed Hernandez*, DEM	63,570	64.8%
Marc Rodriguez, REP	34,468	35.2%

State Senate District 24	Votes	Percent
Peter Choi, DEM	29,848	34.2%
Kevin De Leon*, DEM	57,412	65.8%

State Senate District 26	Votes	Percent
Ben Allen, DEM	122,901	60.3%
Sandra Fluke, DEM	80,781	39.7%

*Incumbent

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	)))))))))))	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 12

Statewide Results

RUNOFF - U.S. House of Representatives District 1 Primary RSS

Last updated 4/5/2013 10:16:57 AM EDT

Results by County

Registered Voters:	453,632	**Counties Completely Reported:**	5 of 5
Ballots Cast:	46,387		
Voter Turnout:	10.23 %		

OFFICIAL RESULTS

Precinct-level results by county and contest are located under the "Results by County" tab above.

Search Contests
(1 of 1)

Go To Page 1 ▼ **Contest Per Page** 5 ▼

U.S. House of Representatives, District 1 - REP (Vote For 1)

5 of 5 Counties Reporting

	Percent	Votes
Curtis Bostic (REP)	43.41%	20,044
Mark Sanford (REP)	56.59%	26,127
{2}		46,171

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 13

Statewide Results

Results by County

Special Election - U.S. House of Representatives District 1 RSS

Last updated 5/10/2013 2:06:08 PM EDT

Registered Voters:	455,702
Ballots Cast:	144,053
Voter Turnout:	31.61 %
Counties Completely Reported:	5 of 5

OFFICIAL RESULTS

Precinct-level results by county and contest are located under the "Results by County" tab above.

Search Contests
(1 of 1)

Go To Page 1 ▼ **Contest Per Page** 5 ▼

U.S. House of Representatives, District 1 (Vote For 1)

5 of 5 Counties Reporting

	Percent	**Votes**
Mark Sanford (REP)	54.03%	77,600
{2}		
Elizabeth Colbert Busch (DEM)	41.87%	60,146
Elizabeth Colbert Busch (WFM)	3.35%	4,815
Eugene Platt (GRN)	0.48%	690
Write-In (NON)	0.27%	384
		143,635

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	)))))))))))	Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 14

Statewide Results

2014 Statewide General Election RSS

Last updated 12/15/2014 2:48:22 PM EST

Results by County

Registered Voters:	2,881,052
Ballots Cast:	1,261,611
Voter Turnout:	43.79 %

Counties Partially Reported:	0 of 46
Counties Completely Reported:	46 of 46

OFFICIAL RESULTS

Precinct-level results by county and contest are located under the "Results by County" tab above.

Search Contests
(172 of 172)

<< Previous | Next >>

Go To Page 3 ▼ Contest Per Page 5 ▼

U.S. Senate (Unexpired Term) (Vote For 1)

46 of 46 Counties Reporting

	Percent	Votes
Joyce Dickerson (DEM)	37.09%	459,583
Tim Scott (REP)	61.12%	757,215
{2}		
Jill Bossi (AMR)	1.75%	21,652
Write-In (NON)	0.04%	532
	1,238,982	

U.S. House of Representatives, District 1 (Vote For 1)

5 of 5 Counties Reporting

	Percent	Votes
Mark Sanford (REP)	93.41%	119,392
{2}		
Write-In (NON)	6.59%	8,423
	127,815	

U.S. House of Representatives, District 2 (Vote For 1)

5 of 5 Counties Reporting

	Percent	Votes
Phil Black (DEM)	35.28%	68,719
Harold Geddings III (LAB)	2.13%	4,158
Joe Wilson (REP)	62.45%	121,649
{2}		
Write-In (NON)	0.14%	282
	194,808	

U.S. House of Representatives, District 3 (Vote For 1)

11 of 11 Counties Reporting

	Percent	Votes

		Percent	Votes
Barbara Jo Mullis (DEM)		28.77%	47,181
Jeff Duncan (REP)	{2}	71.18%	116,741
Write-In (NON)		0.05%	87
		164,009	

U.S. House of Representatives, District 4 (Vote For 1)

2 of 2 Counties Reporting

		Percent	Votes
Curtis E McLaughlin Jr (LIB)		14.74%	21,969
Trey Gowdy (REP)	{2}	84.84%	126,452
WRITE-IN (NON)		0.42%	628
		149,049	

<< Previous | **Next >>**

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 15

STATE PRIMARY ELECTION TYPES

6/24/2014

The manner in which party primary elections are conducted varies widely from state to state. Most primaries can be categorized as either open, closed or top-two. In other states, the primary type does not fall neatly into a category, but may represent a hybrid of these types.

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Top-Two Primaries
Hybrid Primaries
Recent Changes
Additional Resources

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NCSL Elections Team, 303-364-7700

Open Primaries

Eleven states operate open primaries, which permit any registered voter to cast a vote in a primary, regardless of his or her political affiliation. This means that a Democrat could "cross over" and cast a vote in the Republican primary, or vice versa, and an unaffiliated voter can choose either major party's primary.

Proponents say that this system gives voters maximum flexibility because they can cross party lines. Opponents counter that this system dilutes a political party's ability to nominate its own candidate without interference from non-members.

OPEN PRIMARY STATES

	States	
Alabama	Michigan	North Dakota
Arkansas	Minnesota	Vermont
Georgia	Missouri	Wisconsin
Hawaii	Montana	

Closed Primaries

Eleven states operate closed primary elections or caucuses. In either case, only voters who are registered as members of a political party prior to the primary date may participate in the nomination process for its candidates.

Proponents say that closed systems contribute to a strong party organization. Opponents note that independent or unaffiliated voters are excluded from the process.

CLOSED PRIMARY STATES

	States	
Delaware	Maine	New York
Florida	Nevada	Pennsylvania
Kansas	New Jersey	Wyoming
Kentucky	New Mexico	

Top-Two Primaries

In top-two primaries all candidates, regardless of party affiliation, are listed on one ballot. Voters choose their favorite candidate, and the top two vote-getters become the candidates in the general election. The top-two model is not used for presidential primaries in any state. In Nebraska, it is used only for the state's nonpartisan legislature and for some statewide races. In California, Louisiana and Washington, the top-two primary is used for state and Congressional races.

Proponents say that top-two primaries give independent voters an equal voice and may help elect more moderate candidates from the major parties. Opponents argue that it can reduce ballot access for third party candidates and lessen voter choice in that two Democrats or two Republicans could be the only candidates in the general election.

TOP-TWO PRIMARY STATES

States

NAVIGATE

Home
About State Legislatures
Agriculture and Rural Development
Civil and Criminal Justice
Education
Elections and Campaigns
- Campaign Finance
- Election Administration
- Initiative and Referendum
- StateVote Election Results and Analysis

Energy
Environment and Natural Resources
Ethics
Financial Services and Commerce
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Health
Human Services
Immigration
International
Labor and Employment
Military and Veterans Affairs
Redistricting
State-Tribal Institute
Telecommunications and Information Technology
Transportation

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California	Nebraska (for nonpartisan legislative races only)
Louisiana	Washington

Hybrid

Many states use primary election systems that fall somewhere in between "open" and "closed." Procedures are unique from state to state, and how to categorize these primaries is a judgment call. Some states allow voters to cross party lines to vote. Depending on the state, choosing a ballot may actually be a form of registration in the party. States in this category also vary according to how they treat unaffiliated voters. They may or may not be permitted to vote in party primaries. In some states, such as Alaska, political parties may decide for themselves whether to permit voters who are unaffiliated or are members of another party to participate in their primary. The parties may not necessarily all choose the same approach in a given state. For instance, in 2008 and 2010, the Alaska Democratic party allowed any registered voter, regardless of party affiliation, to participate in its primary, while the Republican party limited participation in its primary to its own members.

HYBRID PRIMARY STATES

	States	
Alaska	Maryland	Rhode Island
Arizona	Massachusetts	South Carolina
Colorado	Mississippi	South Dakota
Connecticut	New Hampshire	Tennessee
Idaho	North Carolina	Texas
Illinois	Ohio	Utah
Indiana	Oklahoma	Virginia
Iowa	Oregon	West Virginia

Recent Changes

In 2011, Idaho did away with its open primary. Before 2011, Idaho did not have party registration, and each voter could choose which party's primary to vote in. In 2012, voters will be required to declare a party affiliation in order to receive that party's ballot in the primary election. Voters who choose to remain unaffiliated will be offered a primary ballot with only non-partisan races. Parties may choose whether to allow unaffiliated voters and members of other parties to participate in future primary elections, and a voter's choice to do so will affiliate the voter with that party.

Additional Resources

Article from NCSL's elections newsletter, *The Canvass*: A Primer on Primaries

NCSL Member Toolbox

Members Resources
- Get Involved With NCSL
- Jobs Clearinghouse
- Legislative Careers
- NCSL Staff Directories
- Staff Directories
- StateConnect Directory

Policy & Research Resources
- Bill Information Service
- Legislative Websites
- NCSL Bookstore
- State Legislatures Magazine

Meeting Resources
- Calendar
- Online Registration

Press Room
- Media Contact
- NCSL in the News
- Press Releases

Denver
7700 East First Place
Denver, CO 80230
Tel: 303-364-7700 | Fax: 303-364-7800

Washington
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Washington, D.C. 20001
Tel: 202-624-5400 | Fax: 202-737-1069

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 16

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Help! I can't access my account.

The Ins and Outs of Write-Ins

November 01, 2004

By Burt Helm Couldn't make up your mind for John Kerry or George Bush? Ralph Nader not your bag? Then the only way you can pick the candidate you want is to write him or her in. Many states make such an effort for Presidential races difficult -- and six states ban White House write-in votes altogether.

Regardless of which state you live in, voting for a write-in contender is much more complicated than scribbling whatever name you please on the dotted line at the bottom of the ballot. Thirty-five states require that a write-in candidate must submit some form of affidavit and, sometimes, a filing fee at least one month before the election. In North Carolina, these candidates must circulate a petition. Then their names are posted on a list at the polling place, though not on the official ballot. All other write-in votes are tossed.

DESIGN TROUBLE. For third-party candidates who want to demonstrate that their platform has won some support, the widely varying registration rules create problems. And nobody has had a tougher time than Nader. The Presidential hopeful, who initially planned to be on the ballot in all 50 states, has ended up on only 35 and has relied on write-in

registration for 13 more.

Nader ran into trouble with the write-in regulations in Ohio, where he was kicked off the official ballot after the write-in submission deadline. That means any Ohio votes for him will be thrown away. "They basically screwed us," says Kevin Zeese, a Nader spokesperson.

Once an office-seeker is registered as a write-in, their voters will run into more trouble. States with punch-style "chad" ballots, usually don't provide a space for such candidate, but instead require that votes be written inside the secrecy envelope. The punch-style Illinois absentee ballot comes folded over a Styrofoam block, and the write-in space is on the foam side, hidden from view. That can confuse voters, third-party advocates argue.

CONSTANT CANDIDATE. Some write-in contenders just don't care. Deborah Elaine Allen of Houston is a registered write-in candidate in Texas, where registration is free and requires only the signatures of people willing to represent her in the electoral college. What's her platform? "There's no policy. I just walked right around the neighborhood and got 34 [signatures]," she says. Allen says she has run for office since 1981 and has been a write-in candidate for city councillor, county commissioner, and judge.

In most states, registered write-in candidates like Nader and Allen at least get the joy of seeing their piddling results the next day. But in Oregon, the computerized tabulation system won't calculate any specific write-in results unless it appears the contender has enough support to win.

And five states -- Hawaii, Nevada, South Dakota, Oklahoma, and South Carolina -- don't allow any Presidential write-ins, and never have. Louisiana, the sixth no-write-in state, got rid of them in 1975 after it adopted a system in which anyone could get on the regular ballot, regardless of party affiliation. "The Supreme Court upheld Louisiana's ban on write-ins in 1992" says Richard Winger, of Ballot Access News, a San Francisco-based group that works to make ballots nonpartisan.

However, despite the legal precedent, "we've actually expanded write-ins in many states," Winger says. More states than ever allow write-ins for federal elections, and as voting becomes fully electronic, "the write-in voter has the fun of using a computer keyboard, making it look official" and easy to tabulate.

THURMOND'S OPENING. But don't write off the write-in as simply the domain of fringe and hobbyist politicians or jokesters who vote for cartoon characters and sports stars. According to Winger, write-in votes serve an important purpose when a shock late in the election occurs -- like the death or indictment of a candidate. Then parties will scramble to field someone else.

In the last 100 years, write-in contenders have won at least seven U.S. congressional races. The most famous one is probably Strom Thurmond, who won by write-in in 1954 after the well-entrenched incumbent suddenly passed away.

In a tense Presidential election, write-in votes get in the way more than anything. Polling places are prepared, though. In states where voters fill in bubbles or complete arrows with a pencil, optical scanning machines are preprogrammed to automatically "kick out" write-ins from the computer's running tabulation, says Joe Kanefield, Arizona's election director. The machine then literally spits the write-in ballots into a pile on the floor. County representatives sort through the pile later.

NO JOKE. Unregistered write-ins have to be thrown out manually. "My friends used to write me in for county attorney, and I used to think it was funny," says Kanefield, letting his chuckle stop short. "[That was] until I got into the election administration. It takes time to process those."

The person who has to sort your vote for Boston Red Sox center fielder Johnny Damon from the pile will undoubtedly find it less amusing than you do. Helm is a reporter for BusinessWeek Online in New York

Video: Anglo Sees $3.9B of Commodity-Driven Write Downs
Video: Write Off A-Rod and Greece: Gamco's Ward

From The Web

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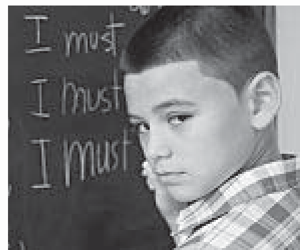

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civ. No. 14-1243 (RMC)
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 17

Top 2 Primary

Washington is the first state in the country to establish a Top 2 Primary election system, rather than a party nominating system. A Top 2 Primary narrows the number of candidates to two. The two candidates who receive the most votes in the Primary advance to the General Election, regardless of their party preference.

Candidates

Each candidate for partisan office may state a political party that he or she prefers. A candidate's party preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate.

Voters

In each race, you may vote for any candidate listed on the ballot. The two candidates who receive the most votes in the Primary advance to the General Election, regardless of their party preference. Washington voters do not declare party affiliation as part of voter registration.

Political parties

Political parties do not have a guaranteed spot on the General Election ballot. The two candidates who advance to the General Election may prefer the same party, different parties, or not state a party preference. Parties are free to conduct their nominating procedures according to their own rules, at their own conventions, caucuses or meetings. This frees parties to develop their own criteria for nominations, endorsements, and other public declarations of support.

For more information see History of Washington State Primary Systems and Top 2 Litigation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Plaintiffs,	)	
v.	)	Civ. No. 14-1243 (RMC)
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 18

Louisiana Secretary of State

Official Election Results
Results for Election Date: 11/4/2014

U. S. Senator All 4018 precincts reporting Click here for Results by Parish		
Wayne Ables (D)	0.77%	11323
"Bill" Cassidy (R)	40.97%	603048
Thomas Clements (R)	0.96%	14173
Mary L. Landrieu (D)	42.08%	619402
"Rob" Maness (R)	13.76%	202556
Brannon Lee McMorris (L)	0.89%	13034
Vallian Senegal (D)	0.26%	3835
William P. Waymire, Jr. (D)	0.32%	4673
U. S. Representative -- 1st Congressional District All 552 precincts reporting Click here for Results by Parish		
Lee A. Dugas (D)	8.72%	21286
M. V. "Vinny" Mendoza (D)	10.15%	24761
Jeffry "Jeff" Sanford (L)	3.57%	8707
Steve Scalise (R)	77.56%	189250
U. S. Representative -- 2nd Congressional District All 682 precincts reporting Click here for Results by Parish		
David Brooks (N)	7.37%	16327
Samuel Davenport (L)	6.88%	15237
Gary Landrieu (D)	17.06%	37805
Cedric Richmond (D)	68.69%	152201
U. S. Representative -- 3rd Congressional District All 597 precincts reporting Click here for Results by Parish		
Bryan Barrilleaux (R)	9.34%	22059
Charles W. Boustany, Jr. (R)	78.67%	185867
Russell Richard (N)	12.00%	28342
U. S. Representative -- 4th Congressional District		

All 767 precincts reporting Click here for Results by Parish		
John Fleming (R)	73.43%	152683
Randall Lord (L)	26.57%	55236

U. S. Representative -- 5th Congressional District

All 845 precincts reporting

Click here for Results by Parish

Candidate	Percent	Votes
Ralph Lee Abraham (R)	23.16%	55489
Eliot S. Barron (G)	0.69%	1655
Harris Brown (R)	4.13%	9890
"Zach" Dasher (R)	22.39%	53628
Clyde C. Holloway (R)	7.46%	17877
"Jamie" Mayo (D)	28.22%	67611
Vance M. McAllister (R)	11.11%	26606
Charles Saucier (L)	0.92%	2201
"Ed" Tarpley (R)	1.92%	4594

U. S. Representative -- 6th Congressional District

All 575 precincts reporting

Click here for Results by Parish

Candidate	Percent	Votes
Robert Lamar "Bob" Bell (R)	2.00%	5182
"Dan" Claitor (R)	10.26%	26524
Norman "Norm" Clark (R)	0.71%	1848
Rufus Holt Craig, Jr. (L)	1.38%	3561
Paul Dietzel II (R)	13.55%	35024
Edwin Edwards (D)	30.12%	77866
Garret Graves (R)	27.36%	70715
Richard Lieberman (D)	2.83%	7309
Craig McCulloch (R)	2.25%	5815
"Trey" Thomas (R)	0.56%	1447
Lenar Whitney (R)	7.41%	19151
Peter Williams (D)	1.56%	4037

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
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v.	)	
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 19

Louisiana Secretary of State

Official Election Results
Results for Election Date: 12/6/2014

U. S. Senator All 4018 precincts reporting Click here for Results by Parish		
"Bill" Cassidy (R)	55.93%	712379
Mary L. Landrieu (D)	44.07%	561210

U. S. Representative -- 5th Congressional District All 845 precincts reporting Click here for Results by Parish		
Ralph Lee Abraham (R)	64.22%	134616
"Jamie" Mayo (D)	35.78%	75006

U. S. Representative -- 6th Congressional District All 575 precincts reporting Click here for Results by Parish		
Edwin Edwards (D)	37.57%	83781
Garret Graves (R)	62.43%	139209

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs,	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION, Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 20

State of Iowa Winner List
2014 General Election

Race	Winner	Race	Winner
U.S. Senator	Joni Ernst, Republican Party	State Senator Dist. 23	Herman C. Quirmbach, Democratic Party
U.S. Rep. Dist. 1	Rod Blum, Republican Party	State Senator Dist. 25	Bill Dix, Republican Party
U.S. Rep. Dist. 2	Dave Loebsack, Democratic Party	State Senator Dist. 27	Amanda Ragan, Democratic Party
U.S. Rep. Dist. 3	David Young, Republican Party	State Senator Dist. 29	Tod R. Bowman, Democratic Party
U.S. Rep. Dist. 4	Steve King, Republican Party	State Senator Dist. 31	Bill Dotzler, Democratic Party
Governor/ Lt. Governor	Terry E. Branstad/ Kim Reynolds, Republican Party	State Senator Dist. 33	Robert M. Hogg, Democratic Party
Secretary of State	Paul D. Pate, Republican Party	State Senator Dist. 35	Wally E. Horn, Democratic Party
Auditor of State	Mary Mosiman, Republican Party	State Senator Dist. 37	Robert E. Dvorsky, Democratic Party
Treasurer of State	Michael L. Fitzgerald, Democratic Party	State Senator Dist. 39	Kevin Kinney, Democratic Party
Secretary of Agriculture	Bill Northey, Republican Party	State Senator Dist. 41	Mark Chelgren, Republican Party
Attorney General	Tom Miller, Democratic Party	State Senator Dist. 43	Joe Bolkcom, Democratic Party
State Senator Dist. 1	David Johnson, Republican Party	State Senator Dist. 45	Joe M. Seng, Democratic Party
State Senator Dist. 3	Bill Anderson, Republican Party	State Senator Dist. 47	Roby Smith, Republican Party
State Senator Dist. 5	Tim Kraayenbrink, Republican Party	State Senator Dist. 49	Rita Hart, Democratic Party
State Senator Dist. 7	Rick Bertrand, Republican Party	State Rep. Dist. 1	John H. Wills, Republican Party
State Senator Dist. 9	Jason Schultz, Republican Party	State Rep. Dist. 2	Megan Hess, Republican Party
State Senator Dist. 11	Tom Shipley, Republican Party	State Rep. Dist. 3	Dan Huseman, Republican Party
State Senator Dist. 13	Julian B. Garrett, Republican Party	State Rep. Dist. 4	Dwayne Alons, Republican Party
State Senator Dist. 15	Chaz Allen, Democratic Party	State Rep. Dist. 5	Chuck Soderberg, Republican Party
State Senator Dist. 17	Tony Bisignano, Democratic Party	State Rep. Dist. 6	Ron Jorgensen, Republican Party
State Senator Dist. 19	Jack Whitver, Republican Party	State Rep. Dist. 7	Tedd Gassman, Republican Party
State Senator Dist. 21	Matt McCoy, Democratic Party	State Rep. Dist. 8	Terry Baxter, Republican Party

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 21

State of Iowa Winner List

2014 Primary Election

Race	Winner
U.S. Senator - Rep	Joni Ernst
U.S. Senator - Dem	Bruce Braley
U.S. Rep. Dist. 1 - Rep	Rod Blum
U.S. Rep. Dist. 1 - Dem	Pat Murphy
U.S. Rep. Dist. 2 - Rep	Mariannette Miller-Meeks
U.S. Rep. Dist. 2 - Dem	Dave Loebsack
U.S. Rep. Dist. 3 - Dem	Staci Appel
U.S. Rep. Dist. 4 - Rep	Steve King
U.S. Rep. Dist. 4 - Dem	Jim Mowrer
Governor - Rep	Terry E. Branstad
Governor - Dem	Jack Hatch
Secretary of State - Rep	Paul D. Pate
Secretary of State - Dem	Brad Anderson
Auditor of State - Rep	Mary Mosiman
Auditor of State - Dem	Jonathan Neiderbach
Treasurer of State - Dem	Michael L. Fitzgerald
Secretary of Agriculture - Rep	Bill Northey
Secretary of Agriculture - Dem	Sherrie Taha
Attorney General - Dem	Tom Miller
State Senator Dist. 1 - Rep	David Johnson
State Senator Dist. 3 - Rep	Bill Anderson
State Senator Dist. 5 - Rep	Tim Kraayenbrink
State Senator Dist. 5 - Dem	Daryl Beall
State Senator Dist. 7 - Rep	Rick Bertrand
State Senator Dist. 7 - Dem	Jim France
State Senator Dist. 9 - Rep	Jason Schultz
State Senator Dist. 11 - Rep	Tom Shipley
State Senator Dist. 13 - Rep	Julian B. Garrett
State Senator Dist. 13 - Dem	Pam Deichmann
State Senator Dist. 15 - Rep	Crystal Bruntz
State Senator Dist. 15 - Dem	Chaz Allen
State Senator Dist. 17 - Dem	Tony Bisignano
State Senator Dist. 19 - Rep	Jack Whitver
State Senator Dist. 21 - Dem	Matt McCoy
State Senator Dist. 23 - Rep	Jeremy Davis
State Senator Dist. 23 - Dem	Herman C. Quirmbach
State Senator Dist. 25 - Rep	Bill Dix
State Senator Dist. 27 - Rep	Shawn Dietz
State Senator Dist. 27 - Dem	Amanda Ragan
State Senator Dist. 29 - Rep	James R. Budde
State Senator Dist. 29 - Dem	Tod R. Bowman
State Senator Dist. 31 - Dem	Bill Dotzler

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civ. No. 14-1243 (RMC)
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 22

David Young wins 3rd District GOP nomination in stunning upset

David Young addresses Republican delegates who nominated him to face Staci Appel in the contest for Iowa's 3rd Congressional District seat.

William Petroski, bpetrosk@dmreg.com *8:21 p.m. CDT June 21, 2014*

(Photo: Special to the Register)

David Young, a former chief of staff to U.S. Sen. Chuck Grassley, won a stunning upset victory Saturday to capture the Iowa Republican Party's nomination in what is expected to be a nationally watched race to succeed U.S. Rep. Tom Latham.

Young's win came on the fifth ballot at a convention of 3rd Congressional District delegates at Des Moines Christian School in Urbandale. The day had begun with six candidates vying for the nomination, but the final ballot came down to a decision between Young and state Sen. Brad Zaun of Urbandale.

Zaun had led on the first four ballots and had been in first place in a June 3 primary among six candidates, but he couldn't get enough votes from rural county delegates to secure the nomination. As the balloting proceeded and other candidates dropped out, Young's candidacy gained in strength.

"I am trusted, tried and true in my conservative thought," Young said. "I am asking for your vote."

The final ballot had Young with 276 delegate votes, or 55.5 percent, to Zaun's 221 votes, or 45.5 percent

Young will be opposed on the November general election ballot by former state Sen. Staci Appel of Ackworth, the Democratic party's nominee

Saturday's decision marks the end of a lengthy battle among the six Republican candidates, who had been vying for the party's nomination since Latham stunned fellow Republicans by announcing in December he wouldn't seek reelection and would leave after 20 years in Congress.

The convention was required under Iowa law after no candidate managed to win 35 percent of the vote in a district-wide primary on June 3.

Joe Grandanette , a physical education teacher from Des Moines was the first of six candidates dropped from the ballot because of a low vote count, while Robert Cramer, a bridge construction executive from Grimes, pulled out after the second ballot after it became clear he couldn't win.

Secretary of State Matt Schultze of Truro was dropped after the third ballot and threw his support to Young, and Monte Shaw, a renewable fuels executive from West Des Moines, was dropped after the fourth ballot.

The race is a priority for their national parties as Republicans seek to maintain their majority in the U.S. House of Representatives and as Democrats try to regain control. The 3rd District is considered a swing district with Republicans representing 34 percent of registered voters, Democrats representing 33 percent, and 33 percent citing no party.

The Rothenberg Political Report and the Cook Political Report – which monitor congressional races nationwide - both rate the Iowa 3rd District contest as a toss-up.

Democrats contend they have an advantage – at least financially – as the head-to-head matchup begins in earnest.

In reports filed on June 1 with the Federal Election Commission, none of the six Republicans who sought their party's nomination had more than $63,000 in cash , while Appel in mid-May reported $466,000 in cash and no debts.

Democrats will contend the Republican nominee has been pushed too far to the right to win the support of GOP activists. All of the Republican candidates have taken stances in support of gun rights, opposing legalized abortion and same-sex marriage, and for cutting taxes and federal spending.

Meanwhile, Republicans are already calling Appel , a supporter of abortion rights and same-sex marriage, an "ultra-liberal" who loves to spend taxpayer money and raise taxes.

Latham's announcement last December that he planned to leave Congress at the end of his term touched off a scramble within the Iowa GOP to succeed him that has left some analysts wondering if the party will be able to heal its divisions by the fall campaign. However, Republican leaders say they are optimistic about their chances up and down their ticket this fall and believe party unity will be maintained.

Meanwhile, Appel, who was defeated in 2010 after one term in the Iowa Senate, has been running for Congress since last July after initially wavering back and forth on the idea. Several other Democrats were mentioned as possible candidates– including state Sen. Matt McCoy of Des Moines and former Iowa First Lady Christie Vilsack - but none decided to enter the race. Her campaign has been endorsed by Emily's List, which works to get pro-choice Democratic women elected to office. Her supporters note that no woman has ever been elected to Congress from Iowa.

Outgoing Congressman Latham had remained neutral during the GOP's nominating contest. Latham had moved from Ames to Clive for the 2012 election, defeating Democratic Rep. Leonard Boswell after Iowa's delegation in the U.S. House shrunk from five to four members following redistricting forced by the 2010 census.

The last time Iowa Republicans had a nominating convention to select a candidate for Congress was in 2002, when Steve King, a Republican from northwest Iowa, won his party's nomination. He has since been elected to Congress six times and is currently representing Iowa's 4th District.

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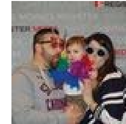
March 7, 2015, 10:15 p.m.



100 photos: Register photo booth at Kidsfest, Friday (/picture-
(/picture-gallery/news/local/2015/03/10/100-photos-register-photo-booth-at-kidsfest-friday/24554275/)
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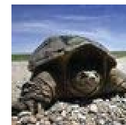
March 10, 2015, 2:01 p.m.



Demand for meat threatens Iowa's wild turtles (/story/life/2015/03/09/iowa-turtles-overharvest/24672843/)
(/story/life/2015/03/09/iowa-turtles-overharvest/24672843/)
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
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FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 23

The New York The New York Times | http://nyti.ms/16SGWbT

U.S.

Looking Past Sex Scandal, South Carolina Returns Ex-Governor to Congress

By KIM SEVERSON MAY 7, 2013

MOUNT PLEASANT, S.C. — As political rehabilitations go, few can match what happened to Mark Sanford on Tuesday night.

Mr. Sanford, the former South Carolina governor once so tarnished by a spectacular lie about an affair that few expected him to recover, is now headed to Congress.

About 55 percent of voters in South Carolina's First Congressional District forgave the man who turned "hiking the Appalachian Trail" into a euphemism for infidelity, giving him a nearly 10-percentage-point win over his Democratic opponent, Elizabeth Colbert Busch.

In his victory speech, Mr. Sanford promised to be a "messenger to Washington, D.C." Then, after introducing one of his sons and his fiancée, Mariá Belén Chapur, who had just flown in from Argentina, he spoke of the redemption he had found on the campaign trail.

"I am an imperfect man saved by God's grace," he said.

For voters, his hawkish views on federal spending, his experience and his promise to fight President Obama outweighed any personal transgressions.

"He took a couple of years to reflect, and now he just wants to get back to work," said Tom Lewis, 47, a Sanford voter who considers himself a libertarian. "They've just got to reel it in in Washington."

Still, even until the last moments of voting, it appeared that Ms. Colbert Busch, a political neophyte, stood a solid chance of becoming the first Democrat this conservative coastal district would send to the House in more

than 30 years.

Not only did she have nearly $1 million in financing from the national Democratic Party and fund-raisers hosted by her famous brother, the comedian Stephen Colbert, but she also had the support of women who might have otherwise voted Republican.

"I'm still not sure I know exactly what she believes in, but integrity matters more than anything to me," said Suzanne McCord, 53, a conservative who had never before voted for a Democrat but found Mr. Sanford's behavior too distasteful to forgive with her vote.

In the end, however, government spending beat out a messy personal life.

"I've got a lot of problems with Sanford, believe me," said Jennifer Kavanagh, 42, a real estate agent. "I'd have preferred to have another Republican, but I just don't agree with the way Democrats are spending."

The race, soaked in personal drama that many have found similar to — and even more engaging than — reality television, received enormous media attention.

In 2009, Mr. Sanford had appeared to commit professional suicide by covering up a trip to Argentina to pursue the woman he would later call his soul mate with a story about hiking the Appalachian Trail.

His wife, Jenny Sanford, divorced him, and he faced impeachment before limping through the end of his term in 2011.

Mr. Sanford's political comeback could have been crafted only by a veteran, as Mr. Sanford is. He has never lost an election, and from 1995 to 2001, he held the House seat he just won, back then riding a wave of Republican power led by Newt Gingrich and articulated by the party's Contract With America.

The seat opened up in December when Gov. Nikki R. Haley appointed Representative Tim Scott, a favorite of the Tea Party, to replace Jim DeMint in the Senate. Mr. DeMint had stepped down to run the Heritage Foundation.

Mr. Sanford, who will have to run again in 2014 to keep the seat, easily

won in a crowded primary field in March. Still, it was never clear that he could overcome his transgressions, even though the district is populated with country club Republicans and more conservative Tea Party voters.

And then there was his opponent, a sympathetic woman roughly the age of Jenny Sanford with a famous brother, a compelling personal story as a single mother and a long track record as an executive in the maritime industry.

She was popular among the more centrist residents of Charleston County, which had supported President Obama twice but handed the victory to Mr. Sanford by less than two percentage points.

"We gave it a heck of a fight," she said in her concession speech.

Throughout the campaign, she tried to invoke the word "trust" with regularity, but remained vague on issues and scant on public appearances that were not heavily orchestrated.

In April, leaked court documents revealed that Mr. Sanford's ex-wife claimed that he had been in her house watching the Super Bowl with one of their sons in violation of the divorce agreement. (The two will head back to court on Thursday to resolve the issue.)

The National Republican Congressional Committee pulled its support of Mr. Sanford while national Democratic organizations poured money into Ms. Colbert Busch's campaign.

On Sunday, Ms. Colbert Busch received a key endorsement from The Post and Courier of Charleston, the largest newspaper in the area. Several Republican women stepped firmly into her camp, including members of Congress.

But Mr. Sanford turned the race into a battle against Washington Democratic power brokers, especially the former House speaker Nancy Pelosi.

Tuesday's vote proved that his approach worked.

Mr. Sanford received support from local Republicans, including Governor Haley, although some of it was tepid. Senator Lindsey Graham, a fellow Republican, had been more vocal, portraying the race as a statement

against President Obama.

Mr. Sanford received, but declined, an endorsement and the offer of financial support from Larry Flynt, the pornography advocate, who called Mr. Sanford “America’s great sex pioneer.”

But in the end, people here cared less about sex and more about government spending.

“We are not trying to elect the ‘how is your conscience’ candidate,” said Charm Altman, president of the South Carolina Federation of Republican Women. “We are trying to elect someone who can govern.”

Brad Mallett, 45, a local coffee roaster who was at Mr. Sanford’s packed victory party, put it more simply: “Everyone deserves a second chance.”

A version of this article appears in print on May 8, 2013, on page A14 of the New York edition with the headline: Looking Past Sex Scandal, South Carolina Returns Ex-Governor to Congress.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs,	)	Civ. No. 14-1243 (RMC)
v.	)	
FEDERAL ELECTION COMMISSION, Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 24

POLITICO

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GOP dissenters: Iran letter could backfire

The Outsider

Excited for Jeb and Hillary? Just Wait for

Clinton to address email controversy

Fostering a bold culture

10 Things No One Ever Told You That Happened

Thad Cochran, Chris McDaniel barrel toward runoff

By ALEXANDER BURNS | 6/3/14 6:00 PM EDT Updated: 6/4/14 4:57 PM EDT

Mississippi Sen. Thad Cochran appeared to fall short of claiming the GOP nomination for a seventh term Tuesday, sending the longtime incumbent and his tea party challenger stumbling into a costly runoff election and scrambling the general election landscape in one of the nation's most conservative states.

Already a savagely personal race, the duel between Cochran and activist state Sen. Chris McDaniel could now drag on until the next vote on June 24 and present national Republicans with a dilemma: Whether to continue supporting the senator and tearing down McDaniel at the potential cost of damaging the party's eventual nominee.

Outside groups have already spent more than $8 million in the Republican Senate primary, an extraordinary sum in a small state that rarely hosts competitive federal elections. Cochran and his allies have assailed McDaniel as a bumbling snake-oil salesman and finger-in-the wind opportunist who's out of touch with Mississippi's priorities. McDaniel and his campaign have attacked Cochran's record of voting for federal spending, accused him of being soft on President Barack Obama and raised not-so-veiled questions about the senator's age.

(**Full 2014 election results (http://www.politico.com/2014-election/results/map/senate/)**)

All that may continue for weeks to come, with no easy way out for a national GOP that worked strenuously to bolster Cochran against his sharp-elbowed challenger.

With 98 percent of precincts reporting, McDaniel held less than a 1-percentage-point lead over Cochran, the second-longest serving Republican in the U.S. Senate. Neither candidate has won the simple majority needed to avert a second round of voting: At midnight, McDaniel had 49.6 percent of the vote to Cochran's 48.8 percent, a difference of about 2,500 votes out of more than 300,000 cast.

An obscure third candidate, Thomas Carey, had 1.6 percent — probably just enough to prolong the political plight of Republicans in the state and nationally by three more weeks.

The primary was balanced on a knife's edge in the run-up to June 3, as outside groups continued to plow hundreds of thousands of dollars into ads supporting both candidates. The Republican National Senatorial Committee rushed additional field staff to the state to fill gaps in Cochran's turnout operation.

(**Driving the Day: Primary preview (http://www.politico.com/driving-the-day/)**)

And Cochran appeared to benefit from a wave of sympathy after a group of pro-McDaniel activists was arrested and charged with a lurid conspiracy to break into a nursing home and take photographs of the senator's wife, Rose Cochran, who suffers from progressive dementia.

All that was not enough to propel Cochran across the finish line. It is now unclear which national groups would continue to spend millions on the runoff, or whether Cochran will continue to enjoy the foursquare support of Mississippi's Republican establishment.

Cochran did not give a speech on election night. His campaign tweeted that the race was a "dead heat," writing: "New campaign starts tomorrow. Three weeks to victory!" In his own election night remarks, McDaniel expressed confidence that he would emerge as the nominee, "whether it's tomorrow or three weeks from tonight."

(**Also on POLITICO: Primary day: The 7 key questions (http://www.politico.com/story/2014/06/primary-night-the-7-key-questions-107343.html)**)

"This is a historic moment in this state's history. And because of your hard work, because of your dedication, we sit here tonight leading a 42-year incumbent," McDaniel said.

Cochran backers acknowledged ahead of Tuesday's vote that a runoff would be an alarming prospect, one that would likely force the senator to compete with an even smaller group of voters that skews still further to the right.

Democrats have watched the race as intently as Republicans: Despite Mississippi's strongly conservative tilt, Democrats hope to mount a competitive general-election campaign against McDaniel, a slash-and-burn ideological activist who fashions himself after Texas Sen. Ted Cruz and has a hefty record of incendiary statements and personal associations.

Within the past two weeks, private Democratic polling has shown that the party's nominee, former Rep. Travis Childers, would start a general election statistically tied with McDaniel. A race against Cochran, who is well-liked by independents and many Democrats, would be difficult to the point of futility.

Even if he was unable to capture his party's nomination outright Tuesday, McDaniel's upset showing is an agonizing blow to entrenched GOP leaders in Jackson and Washington D.C. — and a banner triumph for the national conservative groups that plowed millions into his campaign.

In a season of defeats for the activist wing of the Republican Party, McDaniel represents a powerful corrective to forecasts of the tea party's demise. Though McDaniel reported raising only $1.3 million for his own campaign, Club for Growth put $2.5 million into boosting him; Senate Conservatives Fund spent more than $1 million as other spenders, including Tea Party Patriots and Citizens United, piled on.

Cochran enjoyed heavy-duty outside backing for his campaign, as well, including a $1.7 million effort by the Mississippi Conservatives super PAC, a group led by Republican National Committee member Henry Barbour and promoted by Haley Barbour, the former Mississippi governor. Business groups including the U.S. Chamber of Commerce and the National Association of Realtors added hundreds of thousands of dollars more to Cochran's air support.

Now, all that spending may wind on for the better part of a month, costing millions of dollars more and likely intensifying already-bitter divisions the race has opened within the GOP.

Even with that looming risk, some influential GOP strategists would still favor an all-out war on McDaniel, whose record of controversial statements about Mississippi-centric issues, such as hurricane relief, and past incendiary

remarks about immigration and homosexuality may make him a tough sell for middle-of-the road Republicans and the party's major donors.

Author: Alexander Burns (@aburnspolitico)

Short URL: http://politi.co/U9Nrnv

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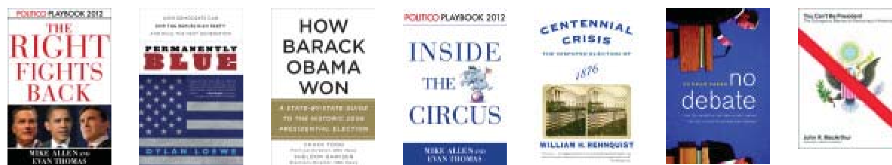

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,

Plaintiffs,

v.

FEDERAL ELECTION COMMISSION,

Defendant.

Civ. No. 14-1243 (RMC)

DECLARATION OF JAYCI A SADIO

EXHIBIT 25

The Washington Post

The Fix

Thad Cochran faces very tough odds in the runoff. Here’s why.

By Aaron Blake June 4, 2014

It's not official, but Sen. Thad Cochran (R-Miss.) is very likely headed to a three-week runoff with state Sen. Chris McDaniel (R).

And while the race is close enough that anything can happen -- it's currently McDaniel 49.5 percent to Cochran 48.9 percent -- history suggests Cochran faces a tough path.

That's because runoffs are very unkind to incumbents.

We looked at seven times since 2000 in which an incumbent has faced a primary runoff, and then compared the primary vote totals to the runoff totals in each race. In all but two cases, the challenger took at least 75 percent off the votes that were "up for grabs" in the runoff, and in two of those cases, the incumbent actually *lost* votes in the runoff.

(We're including six congressional races and also added Texas Lt. Gov. David Dewhurst's runoff loss this year -- because examples of incumbents facing runoffs is so rare and we wanted more data.)

Here's how that looks, chartified:

One of the exceptions to the rule was Rep. William Jefferson (D-La.), who actually lapped his opponent in his 2008 primary runoff. That was a highly unusual set of circumstances, of course, as Jefferson was under federal indictment. He also happened to be running in a primary runoff on the same day as President Obama's historic election as the first black president. Jefferson was the lone African American candidate in the runoff in heavily black New Orleans.

Just a month later, Jefferson inexplicably lost to a Republican in one of the most Democratic districts in the country. Clearly, this had a lot to do with Obama.

The other exception was Sen. Blanche Lincoln (D-Ark.), who in 2010 got a big dose of help from national Democrats concerned with keeping her seat in Democratic hands. She won the runoff -- taking more "up for grabs" voters than her opponent, Lt. Gov. Bill Halter -- but lost big in the general election.

The rest of the seven races above demonstrate the idea that the primary is generally all about the incumbent, and if someone doesn't vote for the incumbent in the primary, it's unlikely they'll be wooed in that direction in the runoff.

On top of that, turnout in runoffs is often much lower, which generally leads to a more ideologically polarized electorate. More motivated voters tend to be more conservative in GOP primaries, which again hurts Cochran.

Now, this data shouldn't be oversold. After all, there are less than 2 percentage points worth of votes up for grabs -- far less than in any of the examples above. And all Cochran needs to do to get to 50 percent plus one is gain a little more than 1 percentage point. That's certainly doable, and Lincoln's example should be heartening, especially if the national GOP rallies for Cochran.

But if history is any guide, those third-candidate voters will favor McDaniel, as will the

turnout in the runoff -- which is likely an even bigger factor.

Aaron Blake covers national politics and writes regularly for The Fix.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs,	)
v.	) Civ. No. 14-1243 (RMC)
FEDERAL ELECTION COMMISSION, Defendant.	)

DECLARATION OF JAYCI A SADIO

EXHIBIT 26

State of Alaska 2010 General Election
November 2, 2010
Official Results

Date:12/28/10
Time:14:32:52
Page:1 of 1

Registered Voters 494876 - Cards Cast 258746 52.29%

Num. Report Precinct 438 - Num. Reporting 438 100.00%

US SENATOR

		Total	
Number of Precincts		438	
Precincts Reporting		438	100.0 %
Times Counted		258746/494876	52.3 %
Total Votes		255962	
Carter, Tim	NA	927	0.36%
Gianoutsos, Ted	NA	458	0.18%
Haase, Fredrick	LIB	1459	0.57%
McAdams, Scott T.	DEM	60045	23.46%
Miller, Joe	REP	90839	35.49%
Write-in Votes		102234	39.94%

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*,	)	
Plaintiffs,	)	
v.	)	Civ. No. 14-1243 (RMC)
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF JAYCI A SADIO

EXHIBIT 27

The Washington Post

Advertisement

In Alaska's Senate race, Murkowski's write-in bid bears fruit

By Sandhya Somashekhar
Washington Post Staff Writer
Thursday, November 4, 2010; 12:25 AM

First, she was the shoo-in. Then she was the underdog. Now, in the closing moments of a quirky midterm election season, Sen. Lisa Murkowski (R-Alaska) appeared to be on the verge of making history as the first successful write-in candidate for Senate in more than 50 years.

In a six-week blitz aimed at defeating the tea party-backed candidate who toppled her in the primary, Murkowski barnstormed the state, handing out bracelets and reminding voters how to spell her name. She rebuffed fellow Republicans who implored her to drop out. She seemed to be having fun.

By late Wednesday, with 99 percent of precincts reporting, Murkowski was presumed to be on the brink of reelection. That's because 41 percent of Alaska voters wrote in their choice for Senate, compared to 34 percent who voted for Republican nominee Joe Miller and 24 percent who voted for Democrat Scott McAdams, according to preliminary results. Final tallies likely won't be available for weeks.

A Murkowski victory would be a remarkable turnaround for an incumbent who had been disowned by her party, and signaled the limitations of novice tea party candidacies. Many of the movement's candidates have been skillful at pushing the GOP to the right and energizing primary voters. But some, like Miller, found greater difficulty appealing to a broader electorate this season. Lisa Murkowski's decision not to accept a primary defeat may be a lesson for other Republicans worried about insurgent attacks in the future. Not that mounting a winning write-in campaign for Senate is easy. No one has done it successfully since South Carolina's Strom Thurmond in 1954.

Alaska is vast of land but sparse of voters, a state where campaigning door-to-door

can mean climbing into a puddle-jumper. It is known for its political dynasties and its family feuds, one of which, between the Murkowskis and the Palins, played out in this election. (Sarah Palin, who defeated Murkowski's father, Frank, for governor in 2006, was a big backer of Miller's campaign.)

"There is a very, very strong propensity to elect Republicans" in Alaska, said Ivan Moore, a pollster in the state whose clients include Republicans and Democrats. "But from an ideological standpoint, there is a very, very large moderate center up here. It was the centrists who elected Lisa yesterday because of Scott McAdams's inexperience and Joe Miller's loony-tunes, firebrand style of conservatism."

Not that Miller is conceding the race.

"With tens of thousands of absentee votes yet to be counted, and the disposition of the write-in ballots cast unknown, who will be Alaska's next United States senator is yet to be determined," spokesman Randy DeSoto wrote in an e-mail to The Washington Post. "We will all have to have some patience as we allow the Division of Elections to complete the ballot counting process."

Election officials in Alaska say they are still counting absentee ballots and have yet to develop a plan to start scrutinizing the write-in ballots. Once they begin, they will be studying the ballots for "voter intent," a subjective standard that will have attorneys from both sides hovering over the canvassers' shoulders. Depending on the closeness of the results, there could be lawsuits.

But Tuesday night, a beaming Murkowski all but declared victory at an election party in Anchorage.

"We are in the process of making history," she told a CNN reporter. "They said it couldn't be done . . . We looked at that and said, 'If it can be done anywhere, it can be done in Alaska.' "

Miller, meanwhile, kept a low profile on election night and has since. Though he was the front-runner for weeks, his public approval rating took a nose dive after it emerged that, while working for the Fairbanks North Star Borough, he used a government computer for political purposes and lied about it. In addition, he earned ridicule after his private security guards handcuffed a reporter who sought to question him at a campaign event.

As Senate races go, this one was among the stranger stories of 2010. Murkowski, a

one-term senator, was one of those establishment-blessed candidates who was expected to cruise to victory. But she was caught off guard by the tea party, whose activists were bent on rattling the sense of entitlement they felt so many in power held.

In August, Miller, a politically inexperienced attorney from Fairbanks, surged to a surprise win in the primary with the help of tea party voters. He had the backing of the Tea Party Express, which poured $500,000 into his campaign, and the endorsement of former governor Palin, a personal friend whose enmity with the Murkowski family is legendary in Alaska politics.

(Frank Murkowski, a former U.S. senator, had considered appointing Palin to fill out his Senate term when he was elected governor. Instead, he picked his daughter.)

Like other Republicans who fell victim to the tea party's wrath, such as Sen. Robert F. Bennett in Utah and Sen. Mike Castle in Delaware, Murkowski initially conceded to allow Miller a clear shot at the seat. Weeks later, though, she changed her mind and decided to wage what even many of her supporters believed was a quixotic campaign - in part because of the challenge of persuading voters to bypass the multiple-choice ballot and pencil in a long and difficult-to-spell name.

To solve that problem, Murkowski focused enormous attention on her name in advertisements and public appearances. In one of the more absurd turns in the race, Murkowski spelled her own name wrong in a television ad meant to encourage people to write it in at the ballot box.

This is how she and Strom Thurmond became linked forever. When Thurmond mounted his successful Senate write-in campaign, he was a former governor who had returned to the private sector to practice law and entered the race to succeed Burnet R. Maybank, a Democrat, who had died in office.

Now, Murkowski is hoping to return to Washington as the first-ever sitting senator to win reelection by write-in ballot.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA HOLMES, et al.,	)	
Plaintiff,	)	Civ. No. 14-1243 (RMC)
v.	)	
	)	DECLARATION
FEDERAL ELECTION COMMISSION,	)	
Defendant.	)	

DECLARATION OF EILEEN J. LEAMON

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Eileen J. Leamon. I am a resident of Springfield, Virginia. I am over 21 years of age.

2. I am employed as the Deputy Assistant Staff Director for Disclosure in the Public Disclosure Division of the Federal Election Commission ("FEC or "Commission"), located at 999 E Street, NW, Washington, DC 20463. I have been employed in this capacity since April 1997.

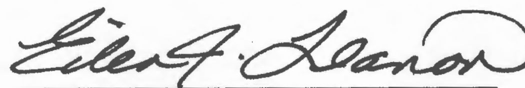
3. I make this declaration based on my personal knowledge and in support of the Commission's Brief Opposing Certification and in Support of Summary Judgment in Favor of the Commission and Proposed Findings of Fact / Statement of Material Facts and Constitutional Questions in the above-captioned matter.

4. As part of my duties at the Commission I review and compile for publication by the Commission official federal election results published by state election offices and from other official sources.

5. Exhibit 1 attached hereto contains true and accurate copies of excerpts of the Commission's records of the official election results for the United States Senate and House of Representatives from the 2003-04 election cycle through the 2013-14 election cycle, with page numbers added (*e.g.*, "Leamon Decl. Exh. 1 – Page 001") for the convenience of the Court. I compiled these records from the official election results of state election offices and from other official sources. The full Commission compilations for the 2003-04 election cycle through the 2011-12 cycle are published by the FEC and available on the Commission's website at http://www.fec.gov/pubrec/electionresults.shtml. The cover pages to each volume indicating the year of the compilation and whether the results relate to House or Senate elections are included for the convenience of the Court. The Commission's compilation of the results from the 2013-14 election cycle are copies of printouts from a database I maintain of the official results of federal elections during that time period. Those printouts are publicly available in the Commission's Public Records Office, but are not yet available on the Commission's website.

6. Exhibit 2 attached hereto contains true and correct copies of printouts from a database I maintain of the official results of special elections for the United States Senate and House of Representatives from the 2003-04 election cycle through the 2013-14 election cycle, with page numbers added (*e.g.*, "Leamon Decl. Exh. 2 – Page 001") for the convenience of the Court. I compiled the information from the official election results of state election offices and from other official sources. These results are publicly available in the Commission's Public Records Office.

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



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

Executed March 13, 2015.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HOLMES, *et al.*, Plaintiffs, v. FEDERAL ELECTION COMMISSION, Defendant.	)	Civ. No. 14-1243 (RMC)

DECLARATION OF EILEEN J. LEAMON

EXHIBIT 1

2014 STATE BALLOT LIST: ALABAMA
PRIMARY ELECTION: 6/3/14
OFFICIAL RESULTS
(Distributed 7/17/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
AL	S	S6AL00195	(I)	Sessions, Jeff	REP	Unopposed	
AL	01	H4AL01156		LeFlore, Burton R.	DEM	Unopposed	
AL	01	H4AL01123	(I)	Byrne, Bradley	REP	Unopposed	
AL	02	H4AL02071		Wright, Erick	DEM	Unopposed	
AL	02	H0AL02087	(I)	Roby, Martha	REP	Unopposed	
AL	03	H4AL03061		Smith, Jesse T.	DEM	Unopposed	
AL	03	H4AL03053		Casson, Thomas	REP	15,999	
AL	03	H2AL03032	(I)	Rogers, Mike	REP	50,372	
AL	04	H6AL04098	(I)	Aderholt, Robert	REP	Unopposed	
AL	05	H0AL05163	(I)	Brooks, Mo	REP	49,117	
AL	05	H4AL05074		Hill, Jerry	REP	12,038	
AL	06	H4AL06130		Vise, Avery	DEM	Unopposed	
AL	06	H2AL06126		Beason, Scott	REP	14,451	
AL	06	H4AL06106		Brooke, Will	REP	13,130	
AL	06	H4AL06080		DeMarco, Paul	REP	30,894	***RUNOFF ELECTION ON JULY 15TH***
AL	06	H4AL06072		Mathis, Chad	REP	14,420	
AL	06	H4AL06098		Palmer, Gary	REP	18,655	***RUNOFF ELECTION ON JULY 15TH***
AL	06	H4AL06122		Shattuck, Robert	REP	587	
AL	06	H4AL06114		Vigneulle, Tom	REP	2,397	
AL	07	H4AL07096		Johnson, Tamara Harris	DEM	14,374	
AL	07	H0AL07086	(I)	Sewell, Terri A.	DEM	74,953	

PARTY KEY
DEM = Democratic
REP = Republican

2014 STATE BALLOT LIST: ALABAMA
RUNOFF ELECTION: 7/15/14
OFFICIAL RESULTS
(Distributed 10/9/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	RUNOFF VOTES	CANDIDATE ADDRESS
AL	06	H4AL06080		DeMarco, Paul	REP	27,333	
AL	06	H4AL06098		Palmer, Gary	REP	47,525	

PARTY KEY
DEM = Democratic
REP = Republican

2014 STATE BALLOT LIST: GEORGIA
PRIMARY ELECTION: 5/20/14
OFFICIAL RESULTS
(Distributed 6/30/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
GA	S	S4GA11293		Miles, O. "Steen"	DEM	39,418	
GA	S	S4GA11277		Nunn, M. Michelle	DEM	246,369	
GA	S	S4GA11228		Radulovacki, Branko "Rad"	DEM	11,101	
GA	S	S4GA11251		Robinson, Todd Anthony	DEM	31,822	
GA	S	S6GA00101		Broun, Paul Collins	REP	58,297	
GA	S	S4GA11301		Gardner, Arthur A. "Art"	REP	5,711	
GA	S	S2GA00100		Gingrey, J. P. "Phil"	REP	60,735	
GA	S	S4GA11236		Grayson, Derrick E.	REP	6,045	
GA	S	S4GA11244		Handel, Karen C.	REP	132,944	
GA	S	S4GA11210		Kingston, J. H. "Jack"	REP	156,157	
GA	S						***RUNOFF ELECTION ON JULY 22ND***
GA	S	S4GA11285		Perdue, David A.	REP	185,466	
GA	S						***RUNOFF ELECTION ON JULY 22ND***
GA	01	H4GA01120		Reese, Brian Corwin	DEM	6,122	
GA	01						***RUNOFF ELECTION ON JULY 22ND***
GA	01	H4GA01104		Smith, Marc Anthony	DEM	5,836	
GA	01	H4GA01112		Tavio, Amy L.	DEM	6,148	
GA	01						***RUNOFF ELECTION ON JULY 22ND***
GA	01	H4GA01039		Carter, E. L. "Buddy"	REP	18,971	
GA	01						***RUNOFF ELECTION ON JULY 22ND***
GA	01	H4GA01088		Carter, Darwin	REP	2,819	
GA	01	H4GA01070		Chapman, J. L. "Jeff"	REP	6,918	
GA	01	H4GA01054		Johnson, Robert E. "Bob"	REP	11,890	
GA	01						***RUNOFF ELECTION ON JULY 22ND***
GA	01	H4GA01138		Martin, Earl T.	REP	1,063	
GA	01	H4GA01096		McCallum, John A.	REP	10,715	
GA	02	H2GA02031	(I)	Bishop, Sanford D.	DEM	39,941	
GA	02	H4GA02078		Childs, Vivian L.	REP	7,252	
GA	02	H4GA02060		Duke, Gregory P. "Greg"	REP	16,468	
GA	03	H0GA13099		Flanagan, C. E. "Chip"	REP	16,294	
GA	03	H4GA08067	(I)	Westmoreland, Lynn A.	REP	37,106	
GA	04	H4GA04116		Brown, Thomas E. "Tom"	DEM	21,909	
GA	04	H6GA04129	(I)	Johnson, Henry C. "Hank," Jr.	DEM	26,514	
GA	05	H6GA05217	(I)	Lewis, John R.	DEM	48,001	
GA	06	H2GA06107		Montigel, Robert G.	DEM	11,493	
GA	06	H4GA06087	(I)	Price, T. E. "Tom"	REP	44,074	

2014 STATE BALLOT LIST: GEORGIA
PRIMARY ELECTION: 5/20/14
OFFICIAL RESULTS
(Distributed 6/30/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
GA	07	H4GA04124		Wight, Thomas D.	DEM	7,141	
GA	07	H0GA07133	(I)	Woodall, W. Robert "Rob"	REP	33,804	
GA	08	H0GA08099	(I)	Scott, J. Austin	REP	36,073	
GA	09	H4GA09057		Vogel, David D.	DEM	6,415	
GA	09	H2GA09150	(I)	Collins, Douglas A. "Doug"	REP	49,951	
GA	09	H4GA09065		Fontaine, Bernard A. "Bernie"	REP	12,315	
GA	10	H4GA10089		Dious, I. K. "Kenneth"	DEM	15,965	
GA	10	H4GA10071		Collins, M. A. "Mike"	REP	17,143	***RUNOFF ELECTION ON JULY 22ND***
GA	10	H4GA10063		Gerrard, Gary	REP	3,830	
GA	10	H0GA07125		Hice, Jody B.	REP	17,408	***RUNOFF ELECTION ON JULY 22ND***
GA	10	H4GA10055		Sheldon, Donna H.	REP	7,972	
GA	10	H2GA10117		Simpson, Stephen K.	REP	2,423	
GA	10	H4GA10097		Slowinski, Brian Richard	REP	1,027	
GA	10	H4GA10105		Swan, S. Mitchell	REP	2,167	
GA	11	H4GA11053		Barr, R. L. "Bob"	REP	14,704	***RUNOFF ELECTION ON JULY 22ND***
GA	11	H2GA11180		Levene, S. Allan	REP	962	
GA	11	H4GA11079		Lindsey, Edward H. "Ed"	REP	8,448	
GA	11	H4GA11061		Loudermilk, Barry D.	REP	20,862	***RUNOFF ELECTION ON JULY 22ND***
GA	11	H4GA11095		Mrozinski, Larry	REP	2,288	
GA	11	H4GA11087		Pridemore, Tricia R.	REP	9,745	
GA	12	H4GA12010	(I)	Barrow, John J.	DEM	26,324	
GA	12	H2GA12121		Allen, R. W. "Rick"	REP	25,093	
GA	12	H4GA12044		Dutton, Delvis William	REP	6,644	
GA	12	H8GA12011		Stone, John E.	REP	5,826	
GA	12	H0GA08081		Vann, Diane Swanson	REP	1,237	
GA	12	H4GA12051		Yu, Eugene C.	REP	7,677	
GA	13	H4GA13034		Owens, Michael C.	DEM	6,367	
GA	13	H2GA13012	(I)	Scott, David A.	DEM	29,486	
GA	14	H0GA09030	(I)	Graves, J. T. "Tom"	REP	32,343	
GA	14	H4GA14016		Herron, Kenneth L., Sr.	REP	11,324	

2014 STATE BALLOT LIST: GEORGIA
PRIMARY ELECTION: 5/20/14
OFFICIAL RESULTS
(Distributed 6/30/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS

PARTY KEY
DEM = Democratic
REP = Republican

2014 STATE BALLOT LIST: GEORGIA
RUNOFF ELECTION: 7/22/14
OFFICIAL RESULTS
(Distributed 8/20/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
GA	S	S4GA11210		Kingston, J. H. "Jack"	REP	237,448	
GA	S	S4GA11285		Perdue, David A.	REP	245,951	
GA	01	H4GA01120		Reese, Brian Corwin	DEM	6,531	
GA	01	H4GA01112		Tavio, Amy L.	DEM	3,821	
GA	01	H4GA01039		Carter, E. L. "Buddy"	REP	22,871	
GA	01	H4GA01054		Johnson, Robert E. "Bob"	REP	19,632	
GA	10	H4GA10071		Collins, M. A. "Mike"	REP	22,684	
GA	10	H0GA07125		Hice, Jody B.	REP	26,975	
GA	11	H4GA11053		Barr, R. L. "Bob"	REP	17,807	
GA	11	H4GA11061		Loudermilk, Barry D.	REP	34,667	

PARTY KEY
DEM = Democratic
REP = Republican

2014 STATE BALLOT LIST: IOWA 3RD CONGRESSIONAL DISTRICT
RUNOFF CONVENTION: 6/21/14
OFFICIAL RESULTS
(Distributed 3/10/15)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	RUNOFF VOTES	CANDIDATE ADDRESS
IA	03	H4IA03099		Cramer, Robert	REP		
IA	03	H4IA03123		Grandanette, Joe	REP		
IA	03	H4IA03081		Schultz, Matt	REP		
IA	03	H4IA03107		Shaw, Monte	REP		
IA	03	H4IA03115		Young, David	REP	276*	
IA	03	H0IA03139		Zaun, Brad	REP	221*	

PARTY KEY
REP = Republican

*Note: There were 5 rounds of balloting. These are the results of the 5th and final ballot. The results of the other rounds were:

CANDIDATE	FIRST BALLOT	SECOND BALLOT	THIRD BALLOT	FOURTH BALLOT
Cramer, Robert	75	60		
Grandanette, Joe	7	2		
Schultz, Matt	95	88	85	
Shaw, Monte	118	122	126	120
Young, David	86	81	102	171
Zaun, Brad	130	157	188	206

2014 STATE BALLOT LIST: IOWA
PRIMARY ELECTION: 6/3/14
OFFICIAL RESULTS
(Distributed 7/23/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
IA	S	S4IA00087		Braley, Bruce	DEM	62,600	
IA	S			Scattered	W(DEM)	545	
IA	S	S4IA00111		Clovis, Sam	REP	28,418	
IA	S	S4IA00129		Ernst, Joni	REP	88,535	
IA	S	S4IA00152		Jacobs, Mark	REP	26,523	
IA	S	S4IA00137		Schaben, Scott	REP	2,233	
IA	S	S4IA00095		Whitaker, Matt	REP	11,884	
IA	S			Scattered	W(REP)	155	
IA	01	H4IA01093		Dandekar, Swati	DEM	5,076	
IA	01	H4IA01101		Kajtazovic, Anesa	DEM	4,067	
IA	01	H4IA01069		Murphy, Pat	DEM	10,189	
IA	01	H4IA01085		O'Brien, Dave	DEM	1,846	
IA	01	H4IA01077		Vernon, Monica	DEM	6,559	
IA	01			Scattered	W(DEM)	18	
IA	01	H2IA01055		Blum, Rod	REP	16,886	
IA	01	H2IA04091		Boliver, Gail E.	REP	2,413	
IA	01	H0IA02099		Rathje, Steve	REP	11,420	
IA	01			Scattered	W(REP)	42	
IA	02	H6IA02146	(I)	Loebsack, Dave	DEM	17,154	
IA	02			Scattered	W(DEM)	117	
IA	02	H4IA02042		Lofgren, Mark S.	REP	11,634	
IA	02	H8IA02043		Miller-Meeks, Mariannette	REP	15,043	
IA	02	H4IA02059		Waldren, Matthew C.	REP	3,746	
IA	02			Scattered	W(REP)	52	
IA	03	H4IA03065		Appel, Staci	DEM	9,233	
IA	03			Scattered	W(DEM)	75	
IA	03	H4IA03099		Cramer, Robert	REP	9,032	
IA	03						***RUNOFF CONVENTION ON JUNE 21ST***
IA	03	H4IA03123		Grandanette, Joe	REP	661	
IA	03						***RUNOFF CONVENTION ON JUNE 21ST***
IA	03	H4IA03081		Schultz, Matt	REP	8,464	
IA	03						***RUNOFF CONVENTION ON JUNE 21ST***
IA	03	H4IA03107		Shaw, Monte	REP	7,220	
IA	03						***RUNOFF CONVENTION ON JUNE 21ST***
IA	03	H4IA03115		Young, David	REP	6,604	
IA	03						***RUNOFF CONVENTION ON JUNE 21ST***
IA	03	H0IA03139		Zaun, Brad	REP	10,522	
IA	03						***RUNOFF CONVENTION ON JUNE 21ST***
IA	03			Scattered	W(REP)	42	

2014 STATE BALLOT LIST: IOWA
PRIMARY ELECTION: 6/3/14
OFFICIAL RESULTS
(Distributed 7/23/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
IA	04	H4IA04113		Mowrer, Jim	DEM	9,900	
IA	04			Scattered	W(DEM)	42	
IA	04	H2IA05072	(I)	King, Steve	REP	43,098	
IA	04			Scattered	W(REP)	382	

PARTY KEY
DEM = Democratic
REP = Republican

2014 STATE BALLOT LIST: MISSISSIPPI
PRIMARY ELECTION: 6/3/14
OFFICIAL RESULTS
(Distributed 7/23/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
MS	S	S4MS00138		Childers, Travis W.	DEM	63,548	
MS	S	S4MS00146		Compton, William Bond, Jr.	DEM	8,465	
MS	S	S4MS00153		Marcy, Bill	DEM	10,361	
MS	S	S4MS00161		Rawl, Jonathan	DEM	3,492	
MS	S	S4MS00179		Carey, Thomas L.	REP	4,854	
MS	S	S8MS00055	(I)	Cochran, Thad	REP	156,313	
MS	S						***RUNOFF ELECTION ON JUNE 24TH***
MS	S	S4MS00120		McDaniel, Chris	REP	157,728	
MS	S						***RUNOFF ELECTION ON JUNE 24TH***
MS	S	S4MS00062		O'Hara, Shawn	REF	Unopposed	
MS	01	H4MS01110		Dickey, Ron E.	DEM	9,741	
MS	01	H2MS01031		Weathers, Rex N.	DEM	5,022	
MS	01	H0MS01043	(I)	Nunnelee, Alan	REP	56,550	
MS	01	H2MS01114		Bedwell, Danny	LIB	Unopposed	
MS	01	H4MS01128		Walley, Lajena	REF	Unopposed	
MS	02	H4MS02175		Fairconetue, Damien	DEM	1,860	
MS	02	H4MS02068	(I)	Thompson, Bennie G.	DEM	41,618	
MS	02	H4MS02191		Shoemake, Shelley	REF	Unopposed	
MS	02	H4MS02183		Ray, Troy	IND*	*	
MS	03	H4MS03033		Liljeberg, Jim	DEM	2,490	
MS	03	H4MS00013		Magee, Douglas MacArthur (Doug)	DEM	7,738	
MS	03						***RUNOFF ELECTION ON JUNE 24TH***
MS	03	H4MS03041		Quinn, Dennis C.	DEM	5,820	
MS	03						***RUNOFF ELECTION ON JUNE 24TH***
MS	03	H4MS02043		Caraway, Hardy	REP	7,258	
MS	03	H8MS03067	(I)	Harper, Gregg	REP	85,674	
MS	03	H4MS01102		Washer, Barbara Dale	REF	Unopposed	
MS	03	H4MS03058		Gerrard, Roger	IND*	*	
MS	04	H4MS04114		Causey, Trish	DEM	5,063	
MS	04	H2MS04225		Moore, Matt	DEM	6,355	
MS	04	H4MS04122		Carter, Tom	REP	4,955	
MS	04	H4MS04098		Kelly, Tavish C.	REP	1,129	
MS	04	H0MS04120	(I)	Palazzo, Steven McCarty	REP	54,268	
MS	04	H4MS04130		Taylor, Gene	REP	46,133	
MS	04	H2MS04175		Vincent, Ron	REP	904	
MS	04	H4MS04148		Robinson, Joey	LIB	Unopposed	
MS	04	H4MS04155		Jackson, Eli "Sarge"	REF	Unopposed	
MS	04	H2MS04209		Burleson, Cindy	IND*	*	

2014 STATE BALLOT LIST: MISSISSIPPI

PRIMARY ELECTION: 6/3/14

OFFICIAL RESULTS

(Distributed 7/23/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
MS	04	H4MS04106		Reich, Ed	IND*	*	

PARTY KEY

DEM = Democratic
REP = Republican
LIB = Libertarian
REF = Reform
IND = Independent*

*Note: Independent Candidates for General Election Listed for Informational Purposes Only. Not on Primary Ballot.

2014 STATE BALLOT LIST: MISSISSIPPI
RUNOFF ELECTION: 6/24/14
OFFICIAL RESULTS
(Distributed 7/23/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
MS	S	S8MS00055	(I)	Cochran, Thad	REP	194,972	
MS	S	S4MS00120		McDaniel, Chris	REP	187,249	
MS	03	H4MS00013		Magee, Douglas MacArthur (Doug)	DEM	4,925	
MS	03	H4MS03041		Quinn, Dennis C.	DEM	4,462	

PARTY KEY
DEM = Democratic
REP = Republican

2014 STATE BALLOT LIST: NORTH CAROLINA
PRIMARY ELECTION: 5/6/14
OFFICIAL RESULTS
(Distributed 6/13/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
NC	S	S8NC00239	(I)	Hagan, Kay	DEM	372,209	
NC	S	S4NC00238		Reeves, Ernest T.	DEM	43,257	
NC	S	S4NC00212		Stewart, Will	DEM	66,903	
NC	S	S4NC00220		Alexander, Ted	REP	9,258	
NC	S	S4NC00246		Bradshaw, Alex Lee	REP	3,528	
NC	S	S4NC00147		Brannon, Greg	REP	132,630	
NC	S	S4NC00170		Grant, Heather	REP	22,971	
NC	S	S4NC00154		Harris, Mark	REP	85,727	
NC	S	S4NC00196		Kryn, Edward	REP	1,853	
NC	S	S2NC00141		Snyder, Jim	REP	9,414	
NC	S	S4NC00162		Tillis, Thom	REP	223,174	
NC	S	S4NC00253		D'Annunzio, Tim	LIB	794	
NC	S	S2NC00257		Haugh, Sean	LIB	1,226	
NC	01	H4NC01046	(I)	Butterfield, G. K.	DEM	60,847	
NC	01	H2NC01206		Whittacre, Dan	DEM	14,147	
NC	01	H4NC01095		Rich, Arthur	REP	5,519	
NC	01	H4NC01103		Shypulefski, Brent	REP	5,232	
NC	02	H4NC02127		Aiken, Clay	DEM	11,678	
NC	02	H4NC02119		Crisco, Keith	DEM	11,288	
NC	02	H2NC00018		Morris, Toni	DEM	5,616	
NC	02	H0NC02059	(I)	Ellmers, Renee	REP	21,412	
NC	02	H0NC04147		Roche, Frank	REP	15,045	
NC	03	H8NC03043		Adame, Marshall	DEM	Unopposed	
NC	03	H4NC03059		Griffin, Taylor	REP	20,024	
NC	03	H2NC01081	(I)	Jones, Walter	REP	22,616	
NC	03	H4NC03067		Novinec, Al (Big Al)	REP	1,798	
NC	04	H6NC04037	(I)	Price, David	DEM	Unopposed	
NC	04	H4NC04115		Wright, Paul	REP	Unopposed	
NC	05	H4NC05245		Brannon, Joshua (Josh)	DEM	8,010	***RUNOFF ELECTION ON JULY 15TH***
NC	05	H4NC05260		Henley, Gardenia	DEM	6,417	***RUNOFF ELECTION ON JULY 15TH***
NC	05	H4NC05252		Holleman, Michael W.	DEM	5,618	
NC	05	H4NC05278		Stinson, Will	DEM	4,189	
NC	05	H4NC05286		Doyle, Philip	REP	16,175	
NC	05	H4NC05146	(I)	Foxx, Virginia	REP	49,572	

2014 STATE BALLOT LIST: NORTH CAROLINA
PRIMARY ELECTION: 5/6/14
OFFICIAL RESULTS
(Distributed 6/13/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
NC	06	H4NC06136		Davis, Bruce	DEM	14,882	
NC	06	H4NC06086		Fjeld, Laura	DEM	19,066	
NC	06	H4NC06102		Berger, Phil, Jr.	REP	15,127	
							RUNOFF ELECTION ON JULY 15TH
NC	06	H4NC06151		Causey, Mike	REP	1,427	
NC	06	H4NC06144		Kopf, Kenn	REP	510	
NC	06	H4NC06128		Matheny, Zach	REP	5,043	
NC	06	H0NC06175		Phillips, Jeff	REP	3,494	
NC	06	H6NC13020		Sutherland, Charlie	REP	458	
NC	06	H4NC06110		VonCannon, Bruce	REP	5,055	
NC	06	H4NC06052		Walker, Mark	REP	11,123	
							RUNOFF ELECTION ON JULY 15TH
NC	06	H4NC06060		Webb, Don	REP	1,899	
NC	07	H4NC07068		Barfield, Jonathan, Jr.	DEM	21,966	
NC	07	H4NC07092		Martin, Walter A., Jr.	DEM	15,741	
NC	07	H4NC07084		Andrade, Chris	REP	3,000	
NC	07	H2NC07096		Rouzer, David	REP	23,010	
NC	07	H4NC07076		White, Woody	REP	17,389	
NC	07	H4NC07100		Casteen, J. Wesley	LIB	Unopposed	
NC	08	H2NC08219		Blue, Antonio	DEM	Unopposed	
NC	08	H2NC08185	(I)	Hudson, Richard	REP	Unopposed	
NC	09	H2NC09134	(I)	Pittenger, Robert	REP	29,505	
NC	09	H4NC09148		Steinberg, Michael	REP	14,146	
NC	10	H4NC10104		MacQueen, Tate	DEM	Unopposed	
NC	10	H4NC10096		Lynch, Richard	REP	8,273	
NC	10	H4NC10047	(I)	McHenry, Patrick	REP	29,400	
NC	11	H4NC11086		Hill, Tom	DEM	16,819	
NC	11	H4NC11078		Ruehl, Keith	DEM	14,272	
NC	11	H2NC11080	(I)	Meadows, Mark	REP	Unopposed	
NC	12	H4NC12100		Adams, Alma	DEM	15,235	
NC	12	H4NC12076		Battle, George	DEM	4,342	
NC	12	H4NC12050		Brandon, Marcus	DEM	2,856	
NC	12	H4NC12084		Graham, Malcolm	DEM	8,180	
NC	12	H4NC12126		Mitchell, James (Smuggie)	DEM	1,775	
NC	12	H4NC12092		Osborne, Curtis C.	DEM	1,733	
NC	12	H4NC12159		Patel, Rajive	DEM	502	
NC	12	H4NC12134		Coakley, Vince	REP	8,652	

2014 STATE BALLOT LIST: NORTH CAROLINA
PRIMARY ELECTION: 5/6/14
OFFICIAL RESULTS
(Distributed 6/13/14)

STATE	D	FEC ID#	(I)	CANDIDATE NAME	PARTY	PRIMARY VOTES	CANDIDATE ADDRESS
NC	12	H4NC12142		Threatt, Leon	REP	2,439	
NC	13	H4NC13041		Conlon, Virginia	DEM	6,308	
NC	13	H4NC13033		Cleary, Brenda	DEM	24,631	
NC	13	H4NC13058		Sanyal, Arunava (Ron)	DEM	4,052	
NC	13	H2NC13110	(I)	Holding, George	REP	Unopposed	

PARTY KEY
DEM = Democratic
REP = Republican
LIB = Libertarian